

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

**Act 750 of the Regular Session**

*As Engrossed: H3/16/07 S3/23/07*

**A Bill**

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007

HOUSE BILL 2487

4  
5 By: Representative Bond  
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**For An Act To Be Entitled**

8  
9 AN ACT TO AMEND ARKANSAS CODE § 23-79-210 TO DEEM  
10 ALL FUNDS SET ASIDE FOR INDEMNIFICATION OF A  
11 MEDICAL CARE PROVIDER'S LIABILITY TO BE  
12 "LIABILITY INSURANCE"; AND FOR OTHER PURPOSES.  
13

**Subtitle**

14  
15 AN ACT TO AMEND ARKANSAS CODE § 23-79-  
16 210 TO DEEM ALL FUNDS SET ASIDE FOR  
17 INDEMNIFICATION OF A MEDICAL CARE  
18 PROVIDER'S LIABILITY TO BE "LIABILITY  
19 INSURANCE".  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 SECTION 1. Arkansas Code § 23-79-210 is amended to read as follows:  
25 23-79-210. Direct cause of action against liability insurer when  
26 insured not subject to tort suit.

27 (a)(1) When liability insurance is carried by any cooperative  
28 nonprofit corporation, association, or organization, or by any municipality,  
29 agency, or subdivision of a municipality, or of the state, or by any  
30 improvement district or school district, or by any other organization or  
31 association of any kind or character and not subject to suit for tort, and if  
32 any person, firm, or corporation suffers injury or damage to person or  
33 property on account of the negligence or wrongful conduct of the  
34 organization, association, municipality, or subdivision, its servants,  
35 agents, or employees acting within the scope of their employment or agency,



1 then the person, firm, or corporation so injured or damaged shall have a  
2 direct cause of action against the insurer with which the liability insurance  
3 is carried to the extent of the amounts provided for in the insurance policy  
4 as would ordinarily be paid under the terms of the policy.

5 (2) Any self-insurance fund, pooled liability fund, or similar  
6 fund maintained by a medical care provider for the payment or indemnification  
7 of the medical care provider's liabilities for medical injuries under § 16-  
8 114-201 et seq. shall be deemed to be liability insurance susceptible to  
9 direct action under this section.

10 ~~(2)~~(3) The insurer shall be directly liable to the injured  
11 person, firm, or corporation for damages to the extent of the coverage in the  
12 liability insurance policy, and the plaintiff may proceed directly against  
13 the insurer regardless of the fact that the actual tortfeasor may not be sued  
14 under the laws of the state.

15 (b) Any of the organizations or entities not subject to suit for tort  
16 described in subsection (a) of this section and the officers of those  
17 organizations or entities upon the request of any person so injured or  
18 damaged shall disclose the existence of any liability insurance, the name of  
19 the insurer, and the terms, amounts, and limits provided by the policy or  
20 policies.

21 (c)(1) Nothing in this section shall be deemed to require the  
22 organization or entity not subject to suit for tort to carry liability  
23 insurance. This section provides only for a direct action against the insurer  
24 by the injured or damaged person in the event liability insurance is so  
25 carried.

26 (2) The substance of this section shall by operation of law be a  
27 part of any liability insurance policy so carried, notwithstanding the terms  
28 of the policy itself, and any limitation in any policy restricting the right  
29 to recover to a judgment's first being obtained against a tortfeasor shall be  
30 void.

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32 SECTION 2. NOT TO BE CODIFIED. Nothing in this act confers any  
33 regulatory authority that did not exist prior to the effective date of this  
34 act upon any governmental agency over any self-insurance fund, pooled  
35 liability fund, or similar fund maintained by a medical provider.

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*/s/ Bo*

*APPROVED: 3/30/2007d*