

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.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001

# A Bill

SENATE BILL 444

4  
5 By: Senator Everett  
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## For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE 23-79-210 CONCERNING  
10 DIRECT CAUSES OF ACTION AGAINST LIABILITY INSURANCE  
11 CARRIERS OF ENTITIES WITH TORT IMMUNITY; AND FOR OTHER  
12 PURPOSES.  
13

## Subtitle

14 AN ACT TO AMEND ARKANSAS CODE 23-79-210  
15 CONCERNING DIRECT CAUSES OF ACTION  
16 AGAINST LIABILITY INSURANCE CARRIERS OF  
17 ENTITIES WITH TORT IMMUNITY.  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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23 SECTION 1. Arkansas Code 23-79-210, concerning direct causes of action  
24 against liability insurance carriers, is amended to read as follows:

25 23-79-210. Direct cause of action against liability insurer where  
26 insured not subject to tort suit.

27 (a)(1) When a commercial policy of liability insurance is carried by  
28 any cooperative nonprofit corporation, association, or organization, or by any  
29 municipality, agency, or subdivision of a municipality, or of the state, or by  
30 any 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 organization,  
34 association, municipality, or subdivision, its servants, agents, or employees  
35 acting within the scope of their employment or agency, then the person, firm,  
36 or corporation so injured or damaged shall have a direct cause of action

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1 against the insurer with which ~~the~~ a commercial policy of liability insurance  
 2 is carried to the extent of the amounts provided for in the insurance policy  
 3 as would ordinarily be paid under the terms of the policy.

4 (2) The insurer shall be directly liable to the injured person,  
 5 firm, or corporation for damages to the extent of the coverage in ~~the~~ a  
 6 commercial policy of liability insurance policy, and the plaintiff may proceed  
 7 directly against the insurer regardless of the fact that the actual tortfeasor  
 8 may not be sued under the laws of the state.

9 (b)(1) Any of the organizations or entities not subject to suit for  
 10 tort described in subsection (a) of this section and the officers of those  
 11 organizations or entities upon the request of any person so injured or damaged  
 12 shall disclose the existence of ~~any~~ a commercial policy of liability  
 13 insurance, the name of the insurer, and the terms, amounts, and limits  
 14 provided by the policy or policies.

15 (2)(A) If a non-profit or charitable organization or entity is  
 16 sued directly and intends to assert tort immunity, then within thirty (30)  
 17 days of being served with the complaint, the organization or entity shall  
 18 notify the plaintiff's counsel, by certified mail, that it is asserting tort  
 19 immunity with the name and address of its liability insurance carrier.

20 (B) Plaintiff's counsel shall add the designated insurance  
 21 carrier as a party defendant within thirty (30) days after receipt of the  
 22 notice, and once duly served within the time allowed by law, the insurance  
 23 carrier shall not be entitled to raise the statute of limitations applicable  
 24 to the charitable or non-profit organization or entity as a defense to the  
 25 claim by virtue of the use of the thirty (30) day notice provision under this  
 26 subdivision.

27 (C) Nothing within this section shall preclude a plaintiff  
 28 from challenging the charitable or non-profit status of an organization or  
 29 entity despite the addition of the liability carrier as a party to the  
 30 litigation.

31 (c)(1) Nothing in this section shall ~~be deemed to~~ require the  
 32 organization or entity not subject to suit for tort to carry a commercial  
 33 policy of liability insurance. This section provides only for a direct action  
 34 against the commercial insurer by the injured or damaged person in the event a  
 35 commercial policy of liability insurance is so carried.

36 (2) Any medical care provider, as defined in § 16-114-201, which

1 chooses not to carry a commercial policy of liability insurance shall waive  
2 the defense of tort immunity or any other defense or immunity from suit based  
3 on its status as a charity or non-profit organization and it shall be subject  
4 to suit for its torts.

5 ~~(2)~~(3) The substance of this section shall by operation of law be  
6 a part of ~~any~~ a commercial policy of liability insurance policy so carried,  
7 notwithstanding the terms of the policy itself; and any limitation in any  
8 policy restricting the right to recover to a judgment first being obtained  
9 against a tortfeasor shall be void.

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11 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General  
12 Assembly of the State of Arkansas that the Arkansas Supreme Court in George v.  
13 Jefferson Hospital Association, 337 Ark. 206, 987 S.W. 2d 710 (1999)  
14 interpreted charitable immunity under Arkansas law in a manner which prevents  
15 patients injured through negligence in a hospital, which has no liability  
16 coverage or is self insured, from asserting their Constitutional right to a  
17 remedy; that this act insures that victims of negligence in the hospitals of  
18 the State of Arkansas have a remedy and a way to enforce their rights. This  
19 act is immediately necessary to prevent one more patient, who is a victim of  
20 negligence, from being denied a remedy at law. Therefore, an emergency is  
21 declared to exist and this act being immediately necessary for the  
22 preservation of the public peace, health and safety shall become effective on  
23 the date of its approval by the Governor. If the bill is neither approved nor  
24 vetoed by the Governor, it shall become effective on the expiration of the  
25 period of time during which the Governor may veto the bill. If the bill is  
26 vetoed by the Governor and the veto is overridden, it shall become effective  
27 on the date the last house overrides the veto.

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