1	State of Arkansas
2	85th General Assembly
3	Regular Session, 2005

<h1 style="text-align:center">A Bill</h1>

HOUSE BILL   2126

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5   By: Representative Harrelson

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For An Act To Be Entitled

9   AN ACT TO PROVIDE A DIRECT CAUSE OF ACTION

10   AGAINST THE INSURER OF AN INSOLVENT OR BANKRUPT

11   INSURED; AND FOR OTHER PURPOSES.

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Subtitle

14   AN ACT TO PROVIDE A DIRECT CAUSE OF

15   ACTION AGAINST THE INSURER OF AN

16   INSOLVENT OR BANKRUPT INSURED.

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

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21   SECTION 1. Arkansas Code Title 23, Chapter 79, Subchapter 2 is amended

22   to add an additional section to read as follows:

23   23-79-211. Direct cause of action against insurer of insolvent

24   insured.

25   (a) No policy or contract of liability insurance shall be issued or

26   delivered in this state unless it contains provisions that the insolvency or

27   bankruptcy of the insured shall not release the insurer from the payment of

28   damages for injuries sustained or loss caused during the existence of the

29   policy.

30   (b)(1) Any judgment which may be rendered against the insured for

31   which the insurer is liable that has not been fully satisfied shall be deemed

32   prima facie evidence of the insolvency of the insured, and an action may

33   thereafter be maintained against the insurer within the terms and limits of

34   the policy by the injured person or his or her survivors or heirs.

35   (2) The injured person or his or her survivors or heirs shall

36   have a right of direct action against the insurer within the terms and limits

1   of the policy.

2   (3)   The direct action may be brought:

3   (A)   Against the insurer or against the insured and insurer

4   jointly and severally; and

5   (B)   In the county in which the accident or injury occurred

6   or in the county in which an action could be brought against either the

7   insured or the insurer under the general rules of venue prescribed by the

8   laws of this state.

9   (4)   However, the direct action may be brought against the

10   insurer alone only when:

11   (A)   The insured has been adjudged a bankrupt by a court of

12   competent jurisdiction or when proceedings to adjudge an insured a bankrupt

13   have been commenced before a court of competent jurisdiction;

14   (B)   The insured is insolvent;

15   (C)   Service of citation or other process cannot be made on

16   the insured;

17   (D)   The cause of action is for damages as a result of an

18   offense or quasi-offense between children and their parents or between

19   married persons;

20   (E)   When the insurer is an uninsured motorist carrier; or

21   (F)   The insured is deceased.

22   (5)   The right of direct action shall exist whether or not:

23   (A)   The policy of insurance sued upon was written or

24   delivered in the State of Arkansas; or

25   (B)   The policy of insurance contains a provision

26   forbidding a direct action, provided that the accident or injury occurred

27   within the State of Arkansas.

28   (c)   Nothing contained in this section shall be construed to affect the

29   provisions of the policy or contract if the provisions are not in violation

30   of the laws of this state.

31   (d)   It is the intent of this section that:

32   (1)   Any action brought under the provisions of this section

33   shall be subject to all of the lawful conditions of the policy or contract

34   and the defenses which could be raised by the insurer to a direct action

35   brought by the insured, provided that the terms and conditions of the policy

36   or contract are not in violation of the laws of this state; and

1   (2) All liability policies subject to the terms and limits of

2 the policies are executed for the benefit of all injured persons to whom the

3 insured is liable and to the survivors or heirs of the injured persons.

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