

State of Arkansas
86th General Assembly
Regular Session, 2007

A Bill

HOUSE BILL 2487

By: Representative Bond

For An Act To Be Entitled

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

Subtitle

AN ACT TO AMEND ARKANSAS CODE § 23-79-
210 TO DEEM ALL FUNDS SET ASIDE FOR
INDEMNIFICATION OF A MEDICAL CARE
PROVIDER'S LIABILITY TO BE "LIABILITY
INSURANCE".

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

SECTION 1. Arkansas Code § 23-79-210 is amended to read as follows:
23-79-210. Direct cause of action against liability insurer when
insured not subject to tort suit.

(a)(1) When liability insurance is carried by any cooperative
nonprofit corporation, association, or organization, or by any municipality,
agency, or subdivision of a municipality, or of the state, or by any
improvement district or school district, or by any other organization or
association of any kind or character and not subject to suit for tort, and if
any person, firm, or corporation suffers injury or damage to person or
property on account of the negligence or wrongful conduct of the
organization, association, municipality, or subdivision, its servants,
agents, or employees acting within the scope of their employment or agency,
then the person, firm, or corporation so injured or damaged shall have a



1 direct cause of action against the insurer with which the 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)(A) Any funds set aside by a medical care provider under
5 § 16-114-201 et seq. for the payment or indemnification of the medical care
6 provider's liabilities shall be deemed to be "liability insurance"
7 susceptible to direct action under this section no matter what form the funds
8 take.

9 (B) This subdivision (a)(2) specifically includes
10 liability pools to which the medical care provider contributes.

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

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

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

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