1   State of Arkansas   *As Engrossed: H3/16/07 S3/23/07*

2   86th General Assembly   **A Bill**

3   Regular Session, 2007   HOUSE BILL   2487

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5   By: Representative Bond

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8   **For An Act To Be Entitled**

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

14   **Subtitle**

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".

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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,

36 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) Any self-insurance fund, pooled liability fund, or similar*
5   *fund maintained by a medical care provider for the payment or indemnification*
6   *of the medical care provider's liabilities for medical injuries under § 16-*
7   *114-201 et seq. shall be deemed to be liability insurance susceptible to*
8   *direct action under this section.*
9   (2)(3) The insurer shall be directly liable to the injured
10 person, firm, or corporation for damages to the extent of the coverage in the
11 liability insurance policy, and the plaintiff may proceed directly against
12 the insurer regardless of the fact that the actual tortfeasor may not be sued
13 under the laws of the state.
14   (b) Any of the organizations or entities not subject to suit for tort
15 described in subsection (a) of this section and the officers of those
16 organizations or entities upon the request of any person so injured or
17 damaged shall disclose the existence of any liability insurance, the name of
18 the insurer, and the terms, amounts, and limits provided by the policy or
19 policies.
20   (c)(1) Nothing in this section shall be deemed to require the
21 organization or entity not subject to suit for tort to carry liability
22 insurance. This section provides only for a direct action against the insurer
23 by the injured or damaged person in the event liability insurance is so
24 carried.
25   (2) The substance of this section shall by operation of law be a
26 part of any liability insurance policy so carried, notwithstanding the terms
27 of the policy itself, and any limitation in any policy restricting the right
28 to recover to a judgment's first being obtained against a tortfeasor shall be
29 void.
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31   *SECTION 2. NOT TO BE CODIFIED. Nothing in this act confers any*
32 *regulatory authority that did not exist prior to the effective date of this*
33 *act upon any governmental agency over any self-insurance fund, pooled*
34 *liability fund, or similar fund maintained by a medical provider.*
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36   */s/ Bond*