

CHAPTER 99

AN ACT concerning the formation of State college risk management groups and joint liability funds, supplementing chapter 64 of Title 18A of the New Jersey Statutes and amending P.L.2007, c.56.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.18A:64-86 Definitions relative to State college risk management groups, joint liability funds.

1. As used in this act:

"Board of trustees" or "trustees" means the board of trustees established pursuant to the bylaws of the State college risk management group to govern or manage the risk management programs, joint liability funds, and related services of the group.

"Certified audit" means an audit upon which an auditor expresses a professional opinion that the accompanying statements present fairly the financial position of a joint liability fund in conformity with generally accepted accounting principles consistently applied, and includes tests of the accounting records and other auditing procedures as considered necessary in the circumstances.

"Commissioner" means the Commissioner of Banking and Insurance.

"Contributions" means the moneys paid by a member of a State college risk management group in amounts as may be set by the board of trustees or other officers as provided in the group's bylaws for the purposes of participating in a joint liability fund or funds, or securing risk management programs or related services.

"Joint liability fund" or "fund" means a joint liability fund established by a State college risk management group pursuant to this act. The joint liability fund is a fund of public moneys from contributions made by members of a State college risk management group for the purpose of securing insurance, risk management programs, or related services as authorized by this act.

"State college" means any of the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes.

"State college risk management group" or "group" means an association formed by two or more State colleges for the development, administration, and provision of risk management programs, joint liability funds for the payment of liabilities incurred by the State colleges and not funded by the State of New Jersey pursuant to the provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., and related services.

"Risk management program" means a plan, and activities carried out under the plan, by a State college risk management group to reduce risk of loss with respect to liabilities incurred by the State colleges, including safety engineering and other loss prevention and control techniques. A risk management program also includes the administration of one or more joint liability funds, including the processing and defense of claims brought against or on behalf of members of the group.

C.18A:64-87 State college authorized to insure, contract, provide for certain insurable interests.

2. A State college is authorized to insure, contract or provide for any insurable interest of the State college in the manner authorized by section 3 of this act, for the following:

a. Any loss or damage to its property, real or personal, motor vehicles, equipment or apparatus;

b. Loss or damage from liability as established by the “New Jersey Contractual Liability Act,” N.J.S.59:13-1 et seq.;

c. Loss or damage from liability as established by the workers’ compensation law, R.S.34:15-1 et seq.; and

d. Expenses of defending any claim against the State college, trustee, officer, employee or servant arising out of and in the course of the performance of their duties, whether or not liability exists on the claim, not eligible for defense and indemnification by the State of New Jersey in accordance with the provisions of the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq.

C.18A:64-88 Formation of, membership in, State college risk management group.

3. a. Any two or more State colleges may form and become members of a State college risk management group. A State college may take this action by resolution of the board of trustees of the State college. Through membership in a State college risk management group, a State college may participate in any joint liability funds, risk management programs or related services offered or provided by the group. The group shall have the power to establish funds for coverages authorized in section 2 of this act and to jointly purchase insurance or coverages under a master policy or contract of insurance for participating members. The group shall have the power to take other actions necessary to developing, administering, and providing risk management programs, joint liability funds, joint insurance purchases, and related services.

b. The bylaws of the State college risk management group shall provide that any State college may join the group, provided it agrees to comply with the standards for membership, including risk management programs, which shall be established by the group, and may be a member as long as it complies with the standards for membership.

c. A State college risk management group may sue or be sued for the liabilities and coverages authorized by section 2 of this act and shall appoint a natural person residing in this State or a corporation authorized to do business in this State as its agent for service of process. The group shall notify the commissioner and the Office of the Attorney General of the appointment.

d. A State college risk management group shall not be considered or deemed to be an insurance company or an insurer under the laws of this State and the development, administration or provision by a group of joint liability funds, risk management programs, and related services shall not constitute the transaction of insurance or the conducting of an insurance business. A group shall not be subject to the provisions of Title 17, Subtitle 3 of the Revised Statutes.

C.18A:64-89 Bylaws of State college risk management group.

4. a. The bylaws of a State college risk management group shall:

- (1) set forth a statement of purposes of the group;
- (2) set forth provisions for organization of the group, including governance by a board of trustees;
- (3) provide for the delivery of risk management programs in conjunction with any joint liability fund which the board of trustees shall establish;
- (4) set forth procedures to enforce the collection of any contributions or payments in default;
- (5) set forth membership standards as required in section 3 of this act;

(6) require that, for each joint liability fund, a contract or contracts of specific and aggregate excess insurance or reinsurance is maintained, if available, unless otherwise recommended by the trustees upon the advice and report of an independent actuary;

(7) set forth procedures for:

(a) withdrawal from the group and a fund by a member;

(b) termination of the group or fund and disposition of assets; and

(c) determining the obligations, if any, of a member in the event that the group is unable to pay indemnification obligations and expenses payable from a fund administered by it;

(8) require an annual certified audit to be prepared and filed with the commissioner;

(9) require that any joint liability fund be developed and operated in accordance with accepted and sound actuarial practices;

(10) provide that any expenditure of moneys in a fund be in furtherance of the purpose of the fund; and

(11) set forth other provisions as desired for operation and governance of the group.

b. The bylaws of a State college risk management group shall provide for governance of the group by a board of trustees selected in accordance with the provisions of the bylaws. The bylaws shall provide for trustee powers and duties and shall include, but not be limited to, the following powers of the board of trustees:

(1) to determine and establish contributions and rates, loss reserves, surplus, limits of coverage, limits of excess or reinsurance, coverage documents, dividends and other financial and operating policies of the group or fund;

(2) to invest moneys held in trust under a fund in investments which are approved for investment by regulation of the State Investment Council for surplus moneys of the State;

(3) to purchase, acquire, hold, lease, sell and convey real and personal property, all of which property shall be exempt from taxation under chapter 4 of Title 54 of the Revised Statutes;

(4) to collect and disburse all money due to or payable by the group, or authorize such collection and disbursement;

(5) to enter into contracts with other persons or with public bodies of this State for any professional, administrative or other services as may be necessary to carry out the purposes of the group or any fund;

(6) to purchase and serve as the master policyholders, if desired, for any insurance, including excess or reinsurance; and

(7) to do all other things necessary and proper to carry out the purposes for which the group is established.

C.18A:64-90 Board of trustees of State college risk management group.

5. a. The board of trustees of a State college risk management group shall have not less than three or more than 15 trustees. A trustee shall be a natural person 18 years of age or older who is a resident of this State. A majority of the trustees of a group shall be members or employees of member State colleges, provided that a trustee who ceases to be a member or employee of a State college may be allowed to serve for not more than 90 days following cessation without violating this provision.

b. A trustee shall not be paid a salary, except that the written trust instrument may provide for reimbursement for actual expenses incurred on behalf of the fund and for compensation not to exceed \$200 for any day or portion of a day spent at a meeting of the trustees. Except as otherwise provided in this act, a trustee shall not enter into any contract

with the group or receive any moneys or other compensation or thing of value whatsoever from the group for services performed for or on behalf of the group.

C.18A:64-91 Bylaws required for functioning; annual report.

6. a. A State college risk management group, or any joint liability fund of the group, shall not begin functioning as a means of providing coverage or protection for or among its members until the group's bylaws have been filed with and approved by the commissioner. The commissioner may disapprove the bylaws only if the bylaws do not conform with the provisions of this act. The commissioner shall set forth the reasons for disapproval in writing. If the commissioner fails to approve or disapprove the bylaws within 60 days following filing of the bylaws with the commissioner, the bylaws shall be deemed approved. The reasonable costs of the commissioner's review of the bylaws shall be chargeable to the State colleges seeking to establish the group.

b. A State college risk management group shall file an annual report, on a form to be prescribed by the commissioner, and shall include a financial statement of the group's assets and liabilities, the claims paid during the preceding 12 months, current reserves, incurred losses, and any other information that the commissioner may require.

c. The commissioner shall have authority to examine the books, records and affairs of any State college risk management group or any of its liability funds at a time to be fixed by the commissioner. The reasonable costs of any examination or review shall be chargeable to the State college risk management group.

d. If at any time the commissioner determines that the State college risk management group has experienced a deterioration in its financial condition which adversely affects or will adversely affect its ability to pay expected losses, the commissioner may:

- (1) require an increase in the reserves of the group as required by section 4 of this act; or
- (2) require the purchase of excess insurance or reinsurance.

C.18A:64-92 Appropriation, payment of funds for premiums.

7. Funds for premiums required by the contract between the governing body of the State college and the board of trustees of the State college risk management group shall be appropriated and paid as set forth in the contract in the same manner as appropriations are made for other expenses of the State college.

C.18A:64-93 Rules, regulations.

8. The Commissioner of Banking and Insurance shall promulgate rules and regulations necessary to effectuate the purposes of this act pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The rules and regulations shall include, but not be limited to, the establishment, operation, modification and dissolution of a State college joint liability fund established pursuant to the provisions of this act.

9. Section 3 of P.L.2007, c.56 (C.52:18A-221) is amended to read as follows:

C.52:18A-221 Mission of the division.

3. The mission of the division shall be to implement a well-coordinated strategy to identify and respond to the needs of the various departments and agencies of State Government in this regard. Specifically, the division shall:

a. Procure insurance coverage, if appropriate, for any or all of the various departments and agencies of State Government, other than State colleges that procure coverage through risk management programs, joint liability funds, or joint insurance programs pursuant to P.L.2010, c.99 (C.18A:64-86 et seq.) and independent authorities and instrumentalities of the State, including, as otherwise required by law or as appropriate, coverage through self-insurance and use of third party administrators;

b. Assist the various departments and agencies of State Government in developing sound plans of risk management, including developing programs to protect physical assets, and developing and implementing safety programs to mitigate both the frequency and severity of accidental loss and by reviewing these plans and programs from time to time;

c. Administer the processing of all claims for the various self-administered and self-funded insurance programs of State agencies and departments, with litigation support from the Department of Law and Public Safety, except those claims processed by risk management programs, joint liability funds, or joint insurance programs established by State colleges pursuant to P.L.2010, c.99 (C.18A:64-86 et seq.);

d. Compile and distribute, on a monthly basis, accident frequency reports to the Governor, the commissioner of each principal department of State Government, and the Legislature. These reports shall track each department's current accident rate compared to historical trends and shall include summaries of any protocols in place to reduce risk; and

e. Continue all of the previous functions and responsibilities of the Bureau of Risk Management, in addition to those listed in this section, and develop new strategies and programs, as appropriate.

10. This act shall take effect immediately.

Approved December 8, 2010.