

As Reported by the House Insurance Committee

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H. B. No. 416

Representative Schuring

Cosponsor: Representative Bishoff

A BILL

To amend sections 149.431 and 3345.202 and to enact 1
section 3345.203 of the Revised Code to enable 2
state colleges and universities to establish 3
joint self-insurance pools. 4

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

Section 1. That sections 149.431 and 3345.202 be amended 5
and section 3345.203 of the Revised Code be enacted to read as 6
follows: 7

Sec. 149.431. (A) Except as provided in sections 9.833 ~~and~~ 8
~~, 2744.081, and 3344.203~~ of the Revised Code, any governmental 9
entity or agency and any nonprofit corporation or association, 10
except a corporation organized pursuant to Chapter 1719. of the 11
Revised Code prior to January 1, 1980 or organized pursuant to 12
Chapter 3941. of the Revised Code, that enters into a contract 13
or other agreement with the federal government, a unit of state 14
government, or a political subdivision or taxing unit of this 15
state for the provision of services shall keep accurate and 16
complete financial records of any moneys expended in relation to 17
the performance of the services pursuant to such contract or 18

agreement according to generally accepted accounting principles. 19
Such contract or agreement and such financial records shall be 20
deemed to be public records as defined in division (A) (1) of 21
section 149.43 of the Revised Code and are subject to the 22
requirements of division (B) of that section, except that: 23

(1) Any information directly or indirectly identifying a 24
present or former individual patient or client or such an 25
individual patient's or client's diagnosis, prognosis, or 26
medical treatment, treatment for a mental or emotional disorder, 27
treatment for mental retardation or a developmental disability, 28
treatment for drug abuse or alcoholism, or counseling for 29
personal or social problems is not a public record; 30

(2) If disclosure of the contract or agreement or 31
financial records is requested at a time when confidential 32
professional services are being provided to a patient or client 33
whose confidentiality might be violated if disclosure were made 34
at that time, disclosure may be deferred if reasonable times are 35
established when the contract or agreement or financial records 36
will be disclosed. 37

(3) Any nonprofit corporation or association that receives 38
both public and private funds in fulfillment of any such 39
contract or other agreement is not required to keep as public 40
records the financial records of any private funds expended in 41
relation to the performance of services pursuant to the contract 42
or agreement. 43

(B) Any nonprofit corporation or association that receives 44
more than fifty per cent of its gross receipts excluding moneys 45
received pursuant to Title XVIII of the "Social Security Act," 46
49 Stat. 620 (1935), 42 U.S.C. 301, as amended, in a calendar 47
year in fulfillment of a contract or other agreement for 48

services with a governmental entity shall maintain information 49
setting forth the compensation of any individual serving the 50
nonprofit corporation or association in an executive or 51
administrative capacity. Such information shall be deemed to be 52
public records as defined in division (A)(1) of section 149.43 53
of the Revised Code and is subject to the requirements of 54
division (B) of that section. 55

Nothing in this section shall be construed to otherwise 56
limit the provisions of section 149.43 of the Revised Code. 57

Sec. 3345.202. (A) As used in this section, "state 58
university or college" has the same meaning as in division (A) 59
(1) of section 3345.12 of the Revised Code. 60

(B) The board of trustees of a state university or college 61
may provide insurance coverages, in any amount authorized by the 62
board, protecting the state university or college, the members 63
of the board, the officers and employees of the state university 64
or college, or other persons authorized by the board, or any one 65
or more of them, against loss or liability that arises or is 66
claimed to have arisen from acts or omissions while acting 67
within the scope of their employment or official 68
responsibilities or while engaged in activities at the request 69
or direction, or for the benefit, of the state university or 70
college. 71

Such coverage may be provided in any one or more of the 72
following ways: 73

(1) The purchase of a policy or policies of liability 74
insurance from an insurer or insurers licensed to do business in 75
this state; 76

(2) Establishment or participation in a program of self- 77

insurance, by trust or in any other manner the board considers 78
prudent. Any self-insurance program shall file annually, with 79
the superintendent of insurance, a report certified by a 80
competent property and casualty actuary. The superintendent of 81
insurance shall review such report. If such a self-insurance 82
program has more than a single college or university 83
participant, all participants shall be provided with the annual 84
actuarial reports of the program. 85

(3) Establishment of or participation in a captive 86
insurance company that is licensed to do business in this state, 87
another state, or a foreign country-; 88

(4) Establishment of, or participation in, a joint self- 89
insurance pool under section 3345.203 of the Revised Code. 90

(C) Insurance coverages under division (B) (1), (2), ~~or~~ 91
(3), or (4) of this section may include coverage for the defense 92
or costs of defense or settlement, including attorney's fees, of 93
any covered person or entity and be paid for from any funds 94
under the control of the state university or college. 95

(D) Provision of any insurance coverage under divisions 96
(B) (1) to (3) of this section is not a waiver of any immunity or 97
defense available to the state university or college or to any 98
covered person or entity. 99

Sec. 3345.203. (A) As used in this section: 100

(1) "Claims expenses" means payment of judgments, 101
settlement of claims, expense, loss, and damage. 102

(2) "State university or college" has the same meaning as 103
in section 3345.12 of the Revised Code. 104

(B) Regardless of whether a state university or college 105

secures insurance coverages under division (B) (1), (2), or (3) 106
of section 3345.202 of the Revised Code, the board of trustees 107
of the state university or college may join with other state 108
universities or colleges in establishing and maintaining a joint 109
self-insurance pool to do both of the following: 110

(1) Provide for payment of claims expenses that arise, or 111
are claimed to have arisen, from an act or omission of the state 112
university or college or any of its employees or other persons 113
authorized by the board while doing either of the following: 114

(a) Acting in the scope of their employment or official 115
responsibilities; 116

(b) Being engaged in activities undertaken at the request 117
or direction, or for the benefit, of the state university or 118
college; 119

(2) Indemnify or hold harmless the state university's or 120
college's employees against such loss or damage. 121

The joint self-insurance pool shall be pursuant to a 122
written agreement and to the extent that the board considers the 123
pool to be necessary. 124

(C) All of the following apply to a joint self-insurance 125
pool under this section: 126

(1) The funds shall be reserved as are necessary, in the 127
exercise of sound and prudent actuarial judgment, to cover 128
potential state university or college and employee liabilities, 129
loss, and damage. A report of aggregate amounts so reserved and 130
aggregate disbursements made from such funds shall be prepared 131
and maintained in the office of the pool administrator described 132
in division (C) (2) of this section. The report shall be prepared 133
and maintained not later than ninety days after the close of the 134

pool's fiscal year. 135

The report required by this division shall include, but 136
not be limited to, the aggregate of disbursements made for the 137
administration of the pool, including claims paid, costs of the 138
legal representation of state universities or colleges and 139
employees, and fees paid to consultants. The report also shall 140
be accompanied by a written report of a member of the American 141
academy of actuaries certifying whether the amounts reserved 142
conform to the requirements of this division, are computed in 143
accordance with accepted loss reserving standards, and are 144
fairly stated in accordance with sound loss reserving 145
principles. 146

The pool administrator described in division (C) (2) of 147
this section shall make the report required by this division 148
available for inspection by any person at all reasonable times 149
during regular business hours. Upon the request of such person, 150
the pool administrator shall make copies of the report available 151
at cost within a reasonable period of time. The report required 152
by this division is in lieu of the records required by division 153
(A) of section 149.431 of the Revised Code. 154

(2) The board of trustees establishing a joint self- 155
insurance pool may award a contract, without the necessity of 156
competitive bidding, to a pool administrator for purposes of 157
administration of the joint self-insurance pool. A "pool 158
administrator" may be any person, political subdivision, limited 159
liability company organized under Chapter 1705. of the Revised 160
Code, nonprofit corporation organized under Chapter 1702. of the 161
Revised Code, or regional council of governments created under 162
Chapter 167. of the Revised Code. The board shall not enter into 163
such a contract without full, prior, public disclosure of all 164

terms and conditions. The disclosure shall include, at a 165
minimum, a statement listing all representations made in 166
connection with any possible savings and losses resulting from 167
the contract, and potential liability of any state university or 168
college or employee. The proposed contract and statement shall 169
be disclosed and presented at a meeting of the board of trustees 170
of the state university or college prior to the meeting at which 171
the board of trustees of the state university or college 172
authorizes the contract. 173

(3) A joint self-insurance pool shall include a contract 174
with a member of the American academy of actuaries for the 175
preparation of the written evaluation of the reserve funds 176
required under division (C) (1) of this section. 177

(4) A joint self-insurance pool may allocate the costs of 178
funding the pool among the funds or accounts in the treasuries 179
of the state universities or colleges on the basis of their 180
relative exposure and loss experience. A joint self-insurance 181
program may require any deductible under the program to be paid 182
from funds or accounts in the treasury of the state university 183
or college from which a loss was directly attributable. 184

(D) Two or more state universities or colleges may also 185
authorize the establishment and maintenance of a joint risk- 186
management program, including but not limited to the employment 187
of risk managers and consultants, for the purpose of preventing 188
and reducing the risks covered by insurance, self-insurance, or 189
joint self-insurance programs. 190

(E) A state university or college is not liable under a 191
joint self-insurance pool for any amount in excess of amounts 192
payable pursuant to the written agreement for the participation 193
of the state university or college in the joint self-insurance 194

pool. Under a joint self-insurance pool agreement a state 195
university or college may, to the extent permitted under the 196
written agreement, assume the risks of any other state 197
university or college, including the indemnification of its 198
employees. A joint self-insurance pool, established under this 199
section, is deemed a separate legal entity for the public 200
purpose of enabling the members of the joint self-insurance pool 201
to obtain insurance or to provide for a formalized, jointly 202
administered self-insurance fund for its members. An entity 203
created pursuant to this section is exempt from all state and 204
local taxes. 205

(F) (1) In the manner provided by and subject to the 206
applicable provisions of section 3345.12 of the Revised Code, 207
any state university or college may issue obligations and may 208
also issue notes in anticipation of such obligations, pursuant 209
to a resolution of its board of trustees or other governing body 210
for the purpose of providing funds to do both of the following: 211

(a) Pay claims expenses, whether by way of a reserve or 212
otherwise; 213

(b) Pay the state university or college's portion of the 214
cost of establishing and maintaining a joint self-insurance pool 215
or to provide for the reserve in a special fund authorized by 216
division (C) (1) of this section. 217

(2) Sections 9.98 to 9.983 of the Revised Code apply to 218
bonds or notes authorized under this section. 219

(G) (1) A joint self-insurance pool, in addition to its 220
powers to provide self-insurance against any and all liabilities 221
under this chapter, may also include any one or more of the 222
following forms of property or casualty self-insurance for the 223

<u>purpose of covering any other liabilities or risks of the</u>	224
<u>members of the pool:</u>	225
<u>(a) Public general liability, professional liability, or</u>	226
<u>employee liability;</u>	227
<u>(b) Individual or fleet motor vehicle or automobile</u>	228
<u>liability and protection against other liability and loss</u>	229
<u>associated with the ownership, maintenance, and use of motor</u>	230
<u>vehicles;</u>	231
<u>(c) Aircraft liability and protection against other</u>	232
<u>liability and loss associated with the ownership, maintenance,</u>	233
<u>and use of aircraft;</u>	234
<u>(d) Fidelity, surety, and guarantee;</u>	235
<u>(e) Loss or damage to property and loss of use and</u>	236
<u>occupancy of property by fire, lightning, hail, tempest, flood,</u>	237
<u>earthquake, or snow, explosion, accident, or other risk;</u>	238
<u>(f) Marine, inland transportation and navigation, boiler,</u>	239
<u>containers, pipes, engines, flywheels, elevators, and machinery;</u>	240
<u>(g) Environmental impairment;</u>	241
<u>(h) Loss or damage by any hazard upon any other risk to</u>	242
<u>which state universities or colleges are subject, which is not</u>	243
<u>prohibited by statute or at common law from being the subject of</u>	244
<u>casualty or property insurance.</u>	245
<u>(2) A joint self-insurance pool is not an insurance</u>	246
<u>company. Its operation does not constitute doing an insurance</u>	247
<u>business and is not subject to the insurance laws of this state.</u>	248
<u>(H) A public official or employee of a state university or</u>	249
<u>college who is or becomes a member of the governing body of a</u>	250

joint self-insurance pool in which the state university or 251
college participates is not in violation of any of the following 252
as a result of the state university or college entering into the 253
written agreement to participate in the pool or into any 254
contract with the pool: 255

(1) Division (D) or (E) of section 102.03 of the Revised 256
Code; 257

(2) Division (C) of section 102.04 of the Revised Code; 258

(3) Section 2921.42 of the Revised Code. 259

(I) This section shall not be construed to affect the 260
ability of any state university or college to self-insure under 261
the authority conferred by any other section of the Revised 262
Code. 263

(J) The establishment or participation in a joint self- 264
insurance pool under this section shall not constitute a waiver 265
of any immunity or defense available to the member state 266
university or college or to any covered entity. 267

(K) (1) Both of the following shall be determined in the 268
court of claims pursuant to section 2743.02 of the Revised Code: 269

(a) Any claims or litigation relating to the 270
administration of a joint self-insurance pool created pursuant 271
to this section, including any immunities or defenses; 272

(b) Any claims relating to the scope of or denial of 273
coverage under that pool or its administration. 274

(2) The pool administrator described in division (C) (2) of 275
this section and its employees, while in the course of 276
administering a joint-insurance pool under this section, shall: 277

<u>(a) Be deemed to be an instrumentality of the state for</u>	278
<u>the purposes of Chapter 2743. of the Revised Code;</u>	279
<u>(b) Be deemed to be performing a public duty, as defined</u>	280
<u>in section 2743.01 of the Revised Code; and</u>	281
<u>(c) Have the defenses to, and immunities from, civil</u>	282
<u>liability provided in section 2743.02 of the Revised Code.</u>	283
Section 2. That existing sections 149.431 and 3345.202 of	284
the Revised Code are hereby repealed.	285