

LEGISLATIVE BILL 542

Approved by the Governor March 21, 1990

Introduced by Lindsay, 9; Ashford, 6; Landis, 46

AN ACT relating to the University of Nebraska; to amend sections 44-2824 and 44-2855, Reissue Revised Statutes of Nebraska, 1943; to authorize establishment of risk-loss trusts; to provide for the use of such trusts; to provide for applicability of certain laws; to provide requirements for certain risk-loss trusts; to provide duties for the Director of Insurance; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. The Board of Regents of the University of Nebraska may establish, maintain, and administer one or more risk-loss trusts for the purpose of paying losses and expenses incurred by the university from (1) general and professional liability, including, but not limited to, judgments, awards, and settlements of claims and suits arising under the Nebraska Hospital-Medical Liability Act, the State Contract Claims Act, the State Miscellaneous Claims Act, and the State Tort Claims Act, (2) damage, destruction, or loss of real or personal property, and (3) errors and omissions liability. Any such risk-loss trust shall contain provisions relating to defense and settlement of claims and suits covered by the trust. No risk-loss trust established pursuant to this section shall be a member of the Nebraska Property and Liability Insurance Guaranty Association.

Sec. 2. Whenever any claim or suit against the University of Nebraska or any of its officers, agents, or employees is covered by a risk-loss trust established pursuant to section 1 of this act, the provisions of such trust on defense and settlement of claims and suits covered by the trust shall be applicable notwithstanding any inconsistent provisions of the State Tort Claims Act. The Attorney General and State Claims Board shall cooperate with the university in administering the defense and settlement provisions of any such trust.

Sec. 3. That section 44-2824, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

44-2824. (1) To be qualified under the Nebraska Hospital-Medical Liability Act, a health care provider or such health care provider's employer, employee, or partner shall:

(a) File with the director proof of financial responsibility, pursuant to section 44-2827 or section 4 of this act, in the amount of two hundred thousand dollars for each occurrence. In the case of physicians or nurse anesthetists and their employers, employees, or partners, an aggregate liability amount of six hundred thousand dollars for all occurrences or claims made in any policy year for each named insured shall be provided. In the case of hospitals and their employees, an aggregate liability amount of one million dollars for all occurrences or claims made in any policy year or risk-loss trust year shall be provided. Such policy may be written on either an occurrence or a claims-made basis. Any risk-loss trust shall be established and maintained only on an occurrence basis. Such qualification shall remain effective only as long as insurance coverage or risk-loss trust coverage as required remains effective; and

(b) Pay the surcharge and any special surcharge levied on all health care providers pursuant to sections 44-2829 to 44-2831.

(2) Subject to the requirements in subsection subsections (1) and (4) of this section, the qualification of a health care provider shall be either on an occurrence or claims-made basis and shall be the same as the insurance coverage provided by the insured's policy.

(3) The director shall have authority to permit qualification of health care providers who have retired or ceased doing business if such health care providers have primary insurance coverage under subsection (1) of this section.

(4) A health care provider who is not qualified under the act at the time of the alleged occurrence giving rise to a claim shall not, for purposes of that claim, qualify under the act notwithstanding subsequent filing of proof of financial responsibility and payment of a required surcharge.

(5) Qualification of a health care provider under the Nebraska Hospital-Medical Liability Act shall continue only as long as the health care provider meets the requirements for qualification. A health care provider who has once qualified under the Nebraska Hospital-Medical Liability Act and who fails to renew or

continue his or her qualification in the manner provided by law and by the rules and regulations of the Department of Insurance shall cease to be qualified under such act.

Sec. 4. (1) Any general acute hospital as defined in subdivision (3) of section 71-2017.01 or a psychiatric or mental hospital as defined in subdivision (7) of such section operated by the Board of Regents of the University of Nebraska may, in addition to the methods of establishing financial responsibility provided in section 44-2827, establish financial responsibility by a risk-loss trust.

(2) In order to establish financial responsibility through the use of a risk-loss trust, the risk-loss trust shall be approved in writing by the director. Such approval shall expire on the last day of April in each year and shall be renewed annually thereafter if the risk-loss trust continues to comply with the requirements of the Nebraska Hospital-Medical Liability Act and any rules and regulations adopted and promulgated thereunder.

(3) The director shall approve the use of a risk-loss trust to establish financial responsibility if he or she determines from a review of the plan of operation or feasibility study for the risk-loss trust that (a) the risk-loss trust will comply with all of the applicable requirements of the act, (b) the risk-loss trust has a financial plan which provides for adequate funding and adequate reserves to establish and maintain financial responsibility, and (c) the risk-loss trust has a plan of management designed to provide for its competent operation and management.

(4) Any risk-loss trust shall be established and maintained only on an occurrence basis, shall maintain reserves for payment of claims, and shall process and act upon claims in accordance with guidelines acceptable for Nebraska domestic insurance companies. The funds, or any part thereof, of any risk-loss trust may be invested as authorized in Chapter 44, article 3, for any domestic property and casualty insurance company.

(5) Any risk-loss trust shall file with the director, on or before March 1 of each year, a financial statement under oath for the year ending December 31 immediately preceding which shall include an actuarial or loss-reserve specialist's opinion. The trust shall annually be audited by an independent accountant, and such audit shall be filed with the director.

(6) The director may examine the business

affairs, records, and assets of such risk-loss trust to assure that it will be able to establish and maintain financial responsibility. Any examination conducted by the director or his or her authorized representative shall be at the expense of the risk-loss trust.

(7) If the director finds after notice to the Board of Regents of the University of Nebraska and a hearing that the risk-loss trust is not maintaining financial responsibility, he or she may order the board to take such action as is necessary to establish financial responsibility and upon failure by the board to comply therewith may revoke approval of such trust.

(8) If any hospital establishes financial responsibility as provided in subsection (1) of this section, the annual surcharge amount which shall be levied against the board pursuant to section 44-2829 shall be established annually by the director after giving consideration to the following factors:

(a) The surcharge rate for hospitals set by the director pursuant to such section;

(b) The average rates charged by insurers of Nebraska hospitals;

(c) Variations in coverage provisions, liability limits, or deductibles between insurance provided by private insurers and the coverage provided by the risk-loss trust; and

(d) The loss experience of the board.

(9) The director may adopt and promulgate reasonable rules and regulations necessary and proper to carry out this section.

Sec. 5. That section 44-2855, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2855. Sections 44-2801 to 44-2855 and section 4 of this act shall be known and may be cited as the Nebraska Hospital-Medical Liability Act.

Sec. 6. That original sections 44-2824 and 44-2855, Reissue Revised Statutes of Nebraska, 1943, are repealed.