

## LEGISLATIVE BILL 664

Approved by the Governor April 30, 2001

Introduced by Bromm, 23; Baker, 44; Engel, 17; Erdman, 47; Kremer, 34;  
Jones, 43

AN ACT relating to the Intergovernmental Risk Management Act; to amend sections 44-4302 to 44-4304, 44-4313, 44-4315, and 44-4317, Reissue Revised Statutes of Nebraska, and section 44-4320, Revised Statutes Supplement, 2000; to authorize use of risk management pools for employee health, dental, accident, and life insurance purposes; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 44-4302, Reissue Revised Statutes of Nebraska, is amended to read:

44-4302. The Legislature hereby finds and declares that protection against losses due to liability and damage or loss of property and provision of employee benefit plans is essential to the proper functioning of state and local government. The resources of state and local governmental agencies are often burdened by the securing of necessary insurance protection ~~against such losses and employee benefits~~ through standard insurance carriers. In addition, the Legislature finds that benefits can be derived through pooling of purchasing by state and local government. Proper risk management requires the spreading of risk so as to minimize fluctuation in insurance needs. The Legislature further finds that all contributions of financial and administrative resources made by state and local governmental agencies pursuant to an agreement authorized by the Intergovernmental Risk Management Act are made for a public and governmental purpose.

Sec. 2. Section 44-4303, Reissue Revised Statutes of Nebraska, is amended to read:

44-4303. ~~As used in~~ For purposes of the Intergovernmental Risk Management Act, unless the context otherwise requires:

(1) Accident insurance means insurance against loss of expense resulting from the sickness of the insured, from the bodily injury or death of the insured by accident, or both;

(2) Dental insurance means a contractual arrangement to provide specified dental services, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost of such services is to be spread directly or indirectly among a group of persons;

(3) Errors and omissions liability ~~shall mean~~ means liability to which a member of a governing body of a public agency, an elected or appointed officer of a public agency, or an employee of a public agency may be subject in an individual capacity by reason of any error, misstatement, misleading statement, act, omission, neglect of duty, or breach of duty, including misfeasance or nonfeasance, in the performance of duties for the public agency;

~~(2)~~ (4) General liability ~~shall mean~~ means any liability, other than workers' compensation liability, to which a public agency may be subject (a) directly, (b) by reason of liability arising out of an act or omission of its employee, agent, or officer in the course and scope of employment, (c) by reason of liability arising out of an act or omission of its student in the course and scope of education or training, or (d) by reason of liability it has assumed by contract. It ~~shall include~~ includes, but is not be limited to, liability commonly protected against by casualty insurance, general liability insurance, professional liability insurance, automobile insurance, motor vehicle liability insurance, and surety and fidelity insurance;

~~(3)~~ (5) Group self-insurance ~~shall mean~~ means the pooling of public money by a risk management pool from contributions by its members for the purpose of payment of losses incurred by members which are protected against by the pool;

(6) Health insurance means any hospital, surgical, or medical expense-incurred policy or health maintenance organization contract. Health insurance does not include (a) accident-only, disability income, hospital confinement indemnity, dental, or credit insurance, (b) coverage issued as a supplement to liability insurance, (c) medicare or insurance provided as a supplement to medicare, (d) insurance arising from workers' compensation provisions, (e) automobile medical payment insurance, (f) any other specific

limited coverage, or (g) insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy;

(7) Life insurance means insurance upon lives of persons, including endowments and annuities, and every insurance pertaining thereto and disability benefits;

~~(4)~~ (8) Member ~~shall mean~~ means a public agency which is a party to an agreement providing for the establishment and operation of a risk management pool;

~~(5)~~ (9) Public agency ~~shall mean~~ means any county, city, village, school district, public power district, rural fire district, or other political subdivision of this state, the State of Nebraska, the University of Nebraska, and any corporation whose primary function is to act as an instrumentality or agency of the State of Nebraska;

~~(6)~~ (10) Risk management pool or pool ~~shall mean~~ means an association formed by two or more public agencies by an agreement pursuant to the Intergovernmental Risk Management Act providing for joint and cooperative action in the use of their financial or administrative resources in order to accomplish any of the public and governmental purposes authorized by the act;

~~(7)~~ (11) Standard insurance ~~shall mean~~ means any policy of insurance issued by a company licensed to transact insurance business in the State of Nebraska or any policy of insurance issued in accordance with the requirements for a lawful surplus lines insurance transaction;

~~(8)~~ (12) State of Nebraska ~~shall include~~ includes any department, agency, board, bureau, commission, or council of the State of Nebraska authorized to participate in a risk management pool by the Risk Manager pursuant to section 81-8,239.01; and

~~(9)~~ (13) Workers' compensation liability ~~shall mean~~ means liability to which a public agency may be subject as an employer under the Nebraska Workers' Compensation Act.

Sec. 3. Section 44-4304, Reissue Revised Statutes of Nebraska, is amended to read:

44-4304. (1) Any two or more public agencies may make and execute an agreement providing for joint and cooperative action in accordance with the Intergovernmental Risk Management Act to form, become members of, and operate a risk management pool for the purpose of providing to members risk management services and insurance coverages in the form of group self-insurance or standard insurance, including any combination of group self-insurance and standard insurance, to protect members against losses arising from any of the following:

~~(1)~~ (a) General liability;

~~(2)~~ (b) Damage, destruction, or loss of real or personal property, including, but not limited to, loss of use or occupancy, and loss of income or extra expense resulting from loss of use or occupancy;

~~(3)~~ (c) Errors and omissions liability; and

~~(4)~~ (d) Workers' compensation liability.

(2) Any two or more public agencies, other than school districts and educational service units, may make and execute an agreement providing for joint and cooperative action in accordance with the act to form, become members of, and operate a risk management pool for the purpose of providing to members risk management services and insurance coverages in the form of group self-insurance or standard insurance, including any combination of group self-insurance and standard insurance, to provide health, dental, accident, and life insurance to member's employees and officers.

Sec. 4. Section 44-4313, Reissue Revised Statutes of Nebraska, is amended to read:

44-4313. The capital, surplus, and other funds, or any part thereof, of any risk management pool may be invested as authorized under the Insurers Investment Act for a ~~domestic property and casualty insurance company~~ an insurer.

Sec. 5. Section 44-4315, Reissue Revised Statutes of Nebraska, is amended to read:

44-4315. Notwithstanding any other provision of law to the contrary, (1) any risk management pool organized pursuant to the Intergovernmental Risk Management Act shall not be considered an insurance company or insurer under the laws of this state, (2) any agreement forming a risk management pool or providing group self-insurance coverages to its members shall not constitute insurance or the conduct of an insurance business, and (3) no risk management pool organized pursuant to the Intergovernmental Risk Management Act shall be a member of the Nebraska Life and Health Insurance Guaranty Association or the Nebraska Property and Liability Insurance Guaranty Association.

Sec. 6. Section 44-4317, Reissue Revised Statutes of Nebraska, is amended to read:

44-4317. (1) Any public agency which has the authority to levy a tax shall be authorized to levy a tax, to contract indebtedness, and to issue general obligation bonds payable from such a tax levy to pay the premium costs of general liability insurance, property insurance, workers' compensation insurance, health, dental, or accident insurance, life insurance, and any other insurance to protect against any of the losses described in section 44-4304 and to pay all costs and expenses associated with membership in a risk management pool, including, but not limited to, standard insurance coverages, group self-insurance coverages, assessments levied by the pool, retirement of debt incurred by the pool, and operating expenses of the pool. A member of a risk management pool which has the authority to levy a tax shall be authorized to enter into agreements obligating the member to make payments beyond its current budget year for any of such purposes. Taxes for the payment of the principal of, premium of, or interest on such a general obligation bond of such public agency, the payment of such insurance premium costs, and the payment of all costs and expenses associated with membership in a risk management pool may be levied in excess of any tax limitation imposed by statute.

(2) Nothing in the Intergovernmental Risk Management Act shall be construed or interpreted as permitting the State of Nebraska, represented by the Risk Manager, to enter into any agreement or contract or do any act in contravention of the Constitution of the State of Nebraska.

Sec. 7. Section 44-4320, Revised Statutes Supplement, 2000, is amended to read:

44-4320. Every risk management pool shall pay to the Director of Insurance, on or before March 1 of each year, an amount equal to five-tenths of one percent of annual contributions received by the pool less any amount paid for excess or aggregate insurance during the immediately preceding calendar year for health, dental, and accident coverage and one percent of annual contributions received by the pool less any amount paid for excess or aggregate insurance during the immediately preceding calendar year for coverage of all other risks included within the pool's group self-insurance program. A pool which has a scheme of operations that contemplates a return of a portion of the contributions of pool members without such members being claimants under the pool's insuring agreements may deduct such return contributions and any dividends paid during the immediately preceding calendar year from the pool's contributions for the purpose of calculating the amount due. The computation of such amount shall be made on forms furnished by the Department of Insurance which shall be filed with the department together with a sworn statement by the pool's chief operating officer attesting to the accuracy of the computation. The department shall furnish such forms to each pool prior to the end of the year for which such amount is payable together with any information relative to computation of the amount as may be necessary. Upon receipt of payment, the director shall audit and examine the computations and satisfy himself or herself that the amount paid is in conformity with this section. The director shall transmit such payments to the State Treasurer. One-half of the payments shall be handled in the manner prescribed in section 77-913, and the remaining one-half of such payments shall be deposited in the General Fund promptly upon completion of the director's audit and examination and in no event later than May 1 of each year.

Sec. 8. Original sections 44-4302 to 44-4304, 44-4313, 44-4315, and 44-4317, Reissue Revised Statutes of Nebraska, and section 44-4320, Revised Statutes Supplement, 2000, are repealed.