House Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

CHAPTER 101

HOUSE BILL 2168

AN ACT

AMENDING SECTION 11-952.01, ARIZONA REVISED STATUTES; RELATING TO PUBLIC AGENCY JOINT EXERCISE OF POWERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 11-952.01, Arizona Revised Statutes, is amended to read:

11-952.01. Public agency pooling of property, fidelity, liability, workers' compensation, life, health, accident and disability coverage; exemptions; board of trustees; contract; termination; audit; insolvency; definition

A. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article for the joint purchasing of insurance, including prepaid legal insurance or reinsurance, or to pool retention of their risks for property, fidelity and liability losses and to provide for the payment of such property loss, fidelity loss, prepaid legal insurance or claim of liability made against any member of the pool, including any elected or appointed official, officer or employee covered by the pool, on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party.

B. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article to establish a workers' compensation pool to provide for the payment of workers' compensation claims pursuant to title 23, chapter 6 on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party. A workers' compensation pool established pursuant to this subsection may provide coverage for workers' compensation, employers' liability and occupational disease claims. A workers' compensation pool is subject to approval as a self-insurer by the industrial commission pursuant to section 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6 and rules adopted pursuant to that chapter in addition to the requirements of this section. The industrial commission, by rule, resolution or order, may adopt requirements for the administration of a workers' compensation pool under this subsection, including separation or commingling of funds, accounting, auditing, reporting, actuarial standards and procedures.

C. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements for the joint purchase of life insurance, disability insurance, accident insurance or health benefits plan insurance or may pool retention of their risks of loss for life, disability, health or accident claims made against any public agency member of the pool or to jointly provide the health and medical services authorized in section 36-2907. Public agencies may establish pools for the purposes of this subsection by any of the following methods:

1. On a cooperative or contract basis.

2. By the formation of a nonprofit corporation.

3. By contracts or intergovernmental agreements with the Arizona health care cost containment system administration.

4. By the execution of a trust agreement directly by the agencies or by contracting with a third party.

D. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article for the joint purchasing of insurance for property, liability or workers' compensation losses or to pool retention of their risks for property and liability loss to cover the public agency, its elected officials and employees and the contractor and subcontractor of every tier engaged in the performance of a construction project for the public agency. Public agencies may establish pools for the purpose of this subsection by any of the following methods:

1. On a cooperative or contract basis.

2. By the formation of a nonprofit corporation.

3. By the execution of a trust agreement directly by the agencies or by contracting with a third party.

E. Section 10-11301 does not apply to nonprofit corporations formed pursuant to this section.

F. Title 41, chapter 23 does not apply to the procurement of insurance or reinsurance, or to the procurement of the services provided for in subsection K, paragraph 8 of this section, by any pool established pursuant to this section.

G. Title 43 does not apply to any pool established pursuant to this section. Any pool established pursuant to this section is exempt from taxation under title 43.

H. Each pool shall be operated by a board of trustees consisting of at least three persons who are elected officials or employees of public entities within this state. The board of trustees shall notify the director of the department of insurance of the existence of the pool and shall file with the director and with the attorney general a copy of the intergovernmental agreement or contract. ~~The attorney general shall file a copy of the agreement or contract with the secretary of state as required by section 11-952.~~ The board of trustees of each group shall do all of the following:

1. Establish terms and conditions of coverage within the pool, including exclusions of coverage.

2. Ensure that all claims are paid promptly.

3. Take all necessary precautions to safeguard the assets of the group.

4. Maintain minutes of its meetings.

5. Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.

6. If the pool is a workers' compensation pool, file a copy of the agreement with the director of the industrial commission.

I. If the pool includes private, nonprofit educational institutions, each private, nonprofit educational institution shall post a bond, cash deposit or other comparable financial security in an amount that is equal to at least one and one-half times the amount of the private, nonprofit educational institution's annual premium to ensure payment of the school's or institution's legal liabilities and other obligations if the pool is determined to be insolvent or is otherwise found to be unable to discharge the pool's legal liabilities and other obligations pursuant to subsection N of this section.

J. The board of trustees shall not:

1. Extend credit to individual members for payment of a premium, except pursuant to payment plans established by the board.

2. Borrow any monies from the group or in the name of the group except in the ordinary course of business.

K. In addition to the requirements of section 11-952, a contract or agreement made pursuant to this section shall contain the following:

1. A provision for a system or program of loss control.

2. A provision for termination of membership, including either:

(a) Cancellation of individual members of the pool by the pool.

(b) Election by an individual member of the pool to terminate its participation.

3. A provision requiring the pool to pay all claims for which each member incurs liability during each member's period of membership.

4. A provision stating that each member is not relieved of its liability incurred during the member's period of membership except through the payment of losses by the pool or by the member.

5. A provision for the maintenance of claim reserves equal to known incurred losses and an estimate of incurred but not reported claims.

6. A provision for a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled or paid.

7. A provision that the pool may establish offices where necessary in this state and employ necessary staff to carry out the purposes of the pool.

8. A provision that the pool may retain legal counsel, actuaries, auditors, engineers, private consultants and advisors.

9. A provision that the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers.

10. A provision that the pool may purchase, lease or rent real and personal property it deems necessary.

11. A provision that the pool may enter into financial services agreements with banks and other financial institutions, that it may issue checks in its own name and that it may invest its monies in equity securities, mutual funds and investment funds registered with the United States securities and exchange commission, debt obligations and any eligible investment permitted by section 35-323.

L. A pool or a terminating member shall provide at least ninety days' written notice of the termination or cancellation. A workers' compensation pool shall notify the industrial commission of the termination or cancellation of a member thirty days before the termination or cancellation of the member.

M. The pool shall be audited annually at the expense of the pool by a certified public accountant, with a copy of the report submitted to the governing body or chief executive officer of each member of the pool and to the director of the department of insurance. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the claim reserves of the pool, including an estimate of the incurred but not reported claims. The department of insurance shall examine each public agency pool once every five years. The director of the department of insurance may examine a public agency pool sooner than five years from the preceding examination if the director has reason to believe that the pool is insolvent. The costs of any examination shall be paid by the pool subject to the examination.

N. If, as a result of the annual audit or an examination by the director of the department of insurance, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the director of the department of insurance shall notify the administrator and the board of trustees of the pool of the deficiency and the director's list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within sixty days after the date of the notice, the director shall notify the chief executive officer or the governing bodies, if any, of the members of the pool, the governor, the president of the senate and the speaker of the house of representatives that the pool has failed to comply with the recommendations of the director.

O. If a pool is determined to be insolvent or is otherwise found to be unable to discharge its legal liabilities and other obligations, each agreement or contract shall provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's annual contribution in order to satisfy the amount of deficiency. The assessment shall not exceed the amount of each member's annual contribution to the pool.

P. A pool established pursuant to this section may make available programs providing for insurance coverages described in subsections A, B and C of this section to those charter schools governed by section 15-183,

subsection M and, except for a workers' compensation pool, to private, nonprofit educational institutions.

Q. In addition to the authority set forth in this title, a pool established pursuant to this section may invest public monies on behalf of pool members, but any such investments shall be limited to those permitted by section 35-323, except as provided in section 15-1225, subsection G. A pool established pursuant to this section may not invest monies that are required by law to be deposited with a county treasurer.

R. A pool established pursuant to this section, by the adoption of a resolution of continuing effect, may authorize and request the state treasurer to invest funds for the pool pursuant to section 35-326.

S. A POOL ESTABLISHED PURSUANT TO THIS SECTION MAY OFFER SERVICES ON BEHALF OF POOL PARTICIPANTS THAT PARTICIPATE IN THE UNEMPLOYMENT INSURANCE PROGRAM ADMINISTERED BY THE DEPARTMENT OF ECONOMIC SECURITY, INCLUDING THE OPTION TO MAKE PAYMENTS IN LIEU OF CONTRIBUTIONS AS PERMITTED BY SECTIONS 23-750 AND 23-751. THE POOL IS DEEMED AN AGENT OF THE POOL PARTICIPANTS AS EMPLOYERS FOR THE PURPOSES OF TITLE 23, CHAPTER 4.

~~S.~~ T. For the purposes of this section, "health benefits plan" means a hospital or medical service corporation policy or certificate, a health care services corporation contract, a multiple employer welfare arrangement or any other arrangement under which health and medical benefits and services are provided to two or more persons.

APPROVED BY THE GOVERNOR MARCH 30, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 31, 2015.

Passed the House March 4, 2015

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 24, 2015

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

25th day of March, 2015

at 3:31 o'clock P. M.

Secretary to the Governor

Approved this 30th day of

March

at 12:55 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 31st day of March, 2015

at 10:00 o'clock A M.

Secretary of State

H.B. 2168