

INDEMNIFICATION RESERVE FUND Act 315 of 1977

AN ACT to authorize certain institutions of higher education to establish an indemnification reserve fund to pay losses arising out of professional liability, institutional liability, premises liability, or the institution's vicarious liability which occurs in the scope of employment, program, or authority; to establish a risk management system; to prescribe powers and duties of the department of licensing and regulation and the department of treasury; and to provide for the satisfaction of judgments and the settlement of claims.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978;—Am. 1982, Act 24, Imd. Eff. Mar. 4, 1982.

The People of the State of Michigan enact:

390.1121 Meanings of words and phrases.

Sec. 1. For the purposes of this act, the words and phrases defined in sections 2 to 5 shall have the meanings ascribed to them in those sections.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978.

390.1122 Definitions; A to E.

Sec. 2. (1) "Accident year" means the calendar year in which an incurred loss takes place.

(2) "Agent" means an officer, employee, student, or authorized person or entity of the university.

(3) "Aggregate", when used in connection with incurred loss, incurred loss reserves, or paid losses means the total of each of loss or reserve.

(4) "Excess loss" means a loss in excess of the funded level of the indemnification reserve fund.

(5) "Expected loss" means the total of incurred loss and incurred but not reported loss.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978.

390.1123 Definitions; I to L.

Sec. 3. (1) "Incurred but not reported loss" means an incurred loss which has not been reported.

(2) "Incurred but not reported loss reserves" means the amount estimated to be required to pay incurred losses which have not been reported and related expenses allocated with respect to those losses.

(3) "Incurred loss" means a loss which has been reported to the university and for which the university may have liability.

(4) "Incurred loss reserves" means the amount estimated to be required to pay incurred losses and related expenses.

(5) "Indemnification reserve fund" means cash or investments in a university fund or a trustee account outside the university, a commercial liability insurance policy, or other evidence of financial obligation available to pay losses arising out of professional liability, premises liability, or both.

(6) "Loss" means the happening of an event from a peril included within those protected by the policy of indemnification of the university, including related expenses related to professional liability, premises liability, or both.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978;—Am. 1982, Act 24, Imd. Eff. Mar. 4, 1982.

390.1124 Definitions; P.

Sec. 4. (1) "Paid loss" means a loss which has been paid plus expenses allocated and paid with respect to that loss.

(2) "Premises liability" means liability for personal injury or property damage, singly or in any combination, which the university becomes legally obligated to pay and which arises out of an occurrence in any medical facility owned, leased, or operated by the university.

(3) "Professional liability" means:

(a) Health care professional liability which the university becomes legally obligated to pay or for which the university assumes the obligation to pay as damages or costs because of injury to a person arising out of the rendering of, or failure to render, health care services, including:

(i) Medical, surgical, dental, nursing, or other health care treatment or services to a person, including the furnishing of food or beverage and the maintenance of facilities in connection with the furnishing of the health care treatment and services.

(ii) Furnishing or dispensing drugs or medical, dental, or surgical supplies or appliances.

(iii) Handling of or performing post-mortem examinations on human bodies.

(iv) Service performed by a person as a member of a formal accreditation or similar professional board or

committee of the university or other service approved by the university, or service performed by a person as a person charged with the duty of executing directives of that board or committee.

(b) Any other medical malpractice claims arising from an occurrence on premises owned, leased, or operated by the university where health care is delivered.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978;—Am. 1982, Act 24, Imd. Eff. Mar. 4, 1982.

390.1125 Definitions; R to U.

Sec. 5. (1) "Related expenses" means the costs of litigation, investigation, attorney fees, and administrative expenses.

(2) "Risk management system" means a system or plan to do all of the following:

(a) Employ independent actuaries or other qualified technical experts to determine and measure to the extent possible through accepted and established actuarial procedures and techniques the financial condition of the indemnification reserve fund, the expected loss, and the required funding to which the university or its agents are subject because of professional liability, premises liability, or both.

(b) Implement a program for reducing or eliminating the incidents which give rise to potential professional liability, premises liability, or both.

(3) "Third party reimbursor" means a person, firm, organization, corporation, or government agency, other than the university or its agent, which reimburses the university for reasonable costs related to the payment of losses arising out of professional liability, premises liability, or both.

(4) "University" means university of Michigan, Michigan state university, or Wayne state university.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978;—Am. 1982, Act 24, Imd. Eff. Mar. 4, 1982.

390.1126 Assumption by state of excess loss of university or its agents; conditions.

Sec. 6. The state shall assume the excess loss of the university or its agents if the university adopts an indemnification and hold harmless policy in which the university agrees to indemnify, save harmless, and defend its agents against professional liability and premises liability arising out of, related to, or incurred in the course of, employment, assigned duties, course of academic studies, or authority and establishes an indemnification reserve fund consistent with this act.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978;—Am. 1982, Act 24, Imd. Eff. Mar. 4, 1982.

390.1127 State payment of excess loss of university; qualifications; indemnification reserve fund; compliance with MCL 500.100 to 500.8302.

Sec. 7. (1) To qualify for state payment of excess loss, a university shall develop and implement a risk management system, which shall be filed with and approved by the state insurance bureau, and shall establish and maintain an indemnification reserve fund.

(2) The indemnification reserve fund may consist of 2 components:

(a) Available funds or other evidence of financial obligation from third party reimbursors.

(b) Funds from the university. The university shall fund its portion of the indemnification reserve fund at a rate necessary to fully fund the annual expected loss for the current accident year as determined by the risk management system.

(3) By participating in the fund, the university shall not be relieved of complying with the requirements of Act No. 218 of the Public Acts of 1956, as amended, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978.

390.1128 Information to be filed with state insurance bureau.

Sec. 8. At the end of each year, the university shall file the following information with the state insurance bureau:

(a) The annual expected loss for the next accident year, which shall be computed together with an accounting of the indemnification reserve fund.

(b) The status of the indemnification reserve fund, which shall be computed as the sum of the following:

(i) All previous payments from the university.

(ii) All previous payments from third party reimbursors.

(iii) Any balance due from third party reimbursors.

(c) The status of the paid and expected aggregate loss, which shall be computed as the sum of the following:

(i) Aggregate incurred loss reserves.

(ii) Aggregate incurred but not reported loss reserves.

- (iii) Aggregate paid loss from all past periods, including current year.
- (iv) Actual expenses paid or incurred with respect to the indemnification program.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978.

390.1129 Annual excess loss as obligation of state; payment; limitation; payment of incurred loss.

Sec. 9. (1) The annual excess loss shall be an obligation of this state and shall be paid directly to the claimant from the general fund of the state.

(2) The amount paid by the state shall not exceed \$100,000.00 per judgment, settlement, or award per year, plus interest at a rate not to exceed 6% per year of the unpaid balance until the entire amount of the judgment, settlement, or award is paid.

(3) An incurred loss shall first be paid from the indemnification reserve fund.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978.

390.1130 Naming state as party prohibited; act or fund not to be mentioned at trial or hearing.

Sec. 10. The state of Michigan shall not be named as a party in a legal action commenced against a university or its agent, nor shall the existence of this act or the indemnification reserve fund be mentioned during the course of a trial or hearing.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978.

390.1131 Annual report.

Sec. 11. The insurance commissioner shall submit an annual report to the governor and the legislature regarding the implementation of this act and the excess loss obligations assumed by the state.

History: 1977, Act 315, Imd. Eff. Jan. 9, 1978.