

AN ACT

ENTITLED, An Act to revise certain provisions regarding organization and operation of the public entity pool for liability.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 3-22-1 be amended to read as follows:

3-22-1. There is hereby established the South Dakota public entity pool for liability effective March 1, 1987. PEPL shall provide defense and liability coverage for any state entity or employee as provided for within the coverage document issued by PEPL. Nothing in this chapter may be construed to require payment of a particular claim or class of claims, to create any cause of action, nor to waive or limit any immunity or legal defense otherwise available to any covered claim. Punitive damages may not be recovered pursuant to this chapter. No claim for indemnity or contribution by the United States, arising directly or indirectly from the acts or omissions of the South Dakota National Guard, its agents, officers, members, or employees, which is cognizable under the Federal Tort Claims Act may be prosecuted under this chapter.

Section 2. That § 3-22-2 be amended to read as follows:

3-22-2. Terms used in this chapter mean:

- (1) "PEPL," the public entity pool for liability established pursuant to this chapter;
- (2) "Bureau," the Bureau of Administration;
- (3) "Covered claim," a claim or civil action arising in tort from the operation of a motor vehicle, a ministerial act, or another act for which coverage is provided under the PEPL coverage document;
- (4) "Coverage document," the written agreement between the director and the Governor setting forth the terms, conditions, limits, and scope of coverage provided by PEPL for a covered claim;

- (5) "Director," the director of PEPL appointed by the commissioner of administration pursuant to this chapter;
- (6) "Employee," any permanent or temporary employee or elected or appointed officer of any state entity whether compensated or not;
- (7) "Fund," the public entity pool for liability fund established pursuant to this chapter; and
- (8) "State entity," the State of South Dakota and all of its branches, agencies, boards and commissions.

Section 3. That § 3-22-5 be amended to read as follows:

3-22-5. The bureau may:

- (1) Select a director who shall serve at the pleasure of the bureau;
- (2) Enter contracts for actuarial determinations, claims adjustment and investigation, loss control and risk management, legal services, or other services the director determines to be necessary to carry out the purposes of this chapter;
- (3) Enter contracts for insurance and reinsurance the director determines to be necessary to carry out the purposes of this chapter. Any such contract is not subject to the provisions of chapter 5-23;
- (4) Develop a coverage document, agreed to by the director and the Governor, to establish the type and scope of covered claims, limits of coverage, terms and conditions of coverage, and costs of coverage; and
- (5) Based on annual actuarial calculations, impose and collect contributions from covered state entities for the estimated amount necessary to extend coverage and maintain appropriate reserves for covered claims.

Section 4. That § 3-22-6 be amended to read as follows:

3-22-6. The bureau may, pursuant to chapter 1-26, establish rules for:

- (1) Submission, reporting, handling, and payment of claims;
- (2) Implementation of risk management and loss control practices;
- (3) Rates and timing of contributions by state entities for coverage;
- (4) Collection and reporting of data regarding claims; and
- (5) Other procedures necessary for operation of PEPL.

Section 5. That § 3-22-7 be amended to read as follows:

3-22-7. PEPL may pay a covered claim established by judgment or negotiated settlement as provided in the coverage document and which is not barred or avoidable through sovereign immunity or other substantive law. No employee is subject to personal liability for any covered claim in excess of the coverage provided by PEPL. The PEPL shall be fully subrogated to any right of recovery a state entity or employee may be entitled to, associated with any claim paid pursuant to this section.

Section 6. That § 3-22-8 be repealed.

Section 7. That § 3-22-9 be repealed.

Section 8. That § 3-22-10 be repealed.

Section 9. That § 3-22-11 be amended to read as follows:

3-22-11. The director, at the director's sole discretion, may determine the disposition or payment amount of any covered claim. However, the director shall consult with the attorney general prior to entering a negotiated settlement of any civil action arising from a covered claim.

Section 10. That § 3-22-13 be repealed.

Section 11. That § 3-22-13.1 be repealed.

Section 12. That § 3-22-14 be repealed.

Section 13. That § 3-22-17 be amended to read as follows:

3-22-17. Pursuant to S.D. Const., Art. III, § 27, suits against the state are authorized only for a covered claim to the extent coverage is provided in the coverage document. Nothing in this chapter

may be construed to otherwise waive or abrogate any immunity or defense available to any state entity or employee.

Section 14. That § 3-22-20 be amended to read as follows:

3-22-20. This chapter is intended as direct state action within the meaning of federal antitrust laws.

Section 15. That § 3-22-22 be repealed.

Section 16. That § 3-22-23 be repealed.

Section 17. That § 3-22-24 be repealed.

Section 18. That § 3-22-25 be repealed.

Section 19. That chapter 3-22 be amended by adding thereto a NEW SECTION to read as follows:

Nothing in this chapter limits the formation or operation of any pool arrangement formed pursuant to chapter 1-24.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1061

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1061
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State