

SB 732

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THE STATE SENATE
Thursday, February 20, 2003

Senate Bill No. 732
As Amended

SENATE BILL NO. 732 - By: SMITH of the Senate and McCARTER of the House.

An Act relating to Governmental Tort Claims Act and risk management; amending 74 O.S. 2001, Section 85.58A, as last amended by Section 6, Chapter 483, O.S.L. 2002 (74 O.S. Supp. 2002, Section 85.58A), which relates to risk management program; conforming language; expanding authority of Risk Management Administrator; authorizing agencies to recommend settlements; prohibiting agencies from offering settlements without consent; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.58A, as last amended by Section 6, Chapter 483, O.S.L. 2002 (74 O.S. Supp. 2002, Section 85.58A), is amended to read as follows:

Section 85.58A A. The Department of Central Services shall establish for all state agencies, whether or not subject to the Central Purchasing Act, and other entities as provided by law a comprehensive professional risk management program which shall:

- 1. Identify and evaluate risks of loss and exposures to loss to officers, employees and properties;
- 2. Minimize risks through loss-prevention and loss-control programs;

1 3. Transfer risks, if economically advantageous to the state,
2 by acquiring commercial insurance, contractual pass through of
3 liability, or by other means;

4 4. Consolidate and administer risk management plans and
5 programs including self-insurance programs, except Workers'
6 Compensation Insurance and State Employees Group Insurance;

7 5. Determine feasibility of and, if feasible, establish self-
8 insurance programs, considering whether a program may be self-
9 supporting to remain financially and actuarially sound;

10 6. Provide a system to allocate insurance and program costs to
11 determine payment for insurance coverage and program expenses
12 provided by the Department of Central Services;

13 7. When requested by a state retirement system, CompSource
14 Oklahoma or the State and Education Employees Group Insurance Board,
15 assist in obtaining insurance authorized by law. If requested by the
16 Oklahoma State Regents for Higher Education, assist trust funds for
17 which the State Regents serve as trustees in obtaining insurance
18 authorized by law;

19 8. Assist state agencies and officers, employees, and members
20 thereof, charged with licensing authority, in obtaining insurance
21 for liability for judgments, based on the licensing authority,
22 rendered by any court pursuant to federal law;

1 9. When requested by a public trust established pursuant to
2 Title 60 of the Oklahoma Statutes of which the State of Oklahoma is
3 the beneficiary, obtain, provide or assist the public trust in
4 obtaining insurance authorized by law or trust indenture covering
5 any board member, trustee, official, officer, employee or volunteer
6 for errors and omissions or liability risks arising from the
7 performance of their official duties pursuant to law or trust
8 indenture; and

9 10. When requested by the State Regents, for the purpose of
10 insuring real property required pursuant to Section 4018 of Title 70
11 of the Oklahoma Statutes, of which the State Regents is the
12 beneficiary, obtain, provide or assist the State Regents in
13 obtaining insurance for the real property pursuant to the provisions
14 of this section.

15 B. The Director of Central Services may hire or contract for
16 the services of a Risk Management Administrator to supervise the
17 Comprehensive Professional Risk Management Program established
18 pursuant to this section. If appointed by the Director as a state
19 employee, the Risk Management Administrator shall be in the
20 unclassified service.

21 C. The Risk Management Administrator shall evaluate insurance
22 coverage needs and in force for state agencies, whether or not
23 subject to the Central Purchasing Act, and other entities as

1 provided by law. All entities shall submit to the Risk Management
2 Administrator all information which the Risk Management
3 Administrator deems necessary to perform this duty.

4 D. The Risk Management Administrator in conjunction with the
5 State Purchasing Director under the authority of the Director of
6 Central Services may negotiate insurance coverage and services
7 contracts. The State Purchasing Director shall ensure open
8 processes for solicitation and qualification of insurance coverage
9 and services providers. The State Purchasing Director shall award
10 contracts for insurance coverage and services to the ~~provider which~~
11 providers that offer the best and final terms and conditions.

12 E. The school districts of this state may request the Risk
13 Management Administrator to advise for the purchase of insurance
14 coverage for the school districts.

15 F. A state agency, whether or not subject to the Central
16 Purchasing Act, that contemplates purchase of property and casualty
17 insurance, shall provide details of the proposed purchase to the
18 Risk Management Administrator for approval or disapproval prior to
19 the purchase.

20 G. The Director of Central Services shall promulgate rules to
21 effect the provisions of the comprehensive professional risk
22 management program.

1 H. 1. a. Any community action agency established pursuant to
2 Sections 5035 through 5040 of this title may
3 participate in the comprehensive professional risk
4 management program established pursuant to this
5 section for risks incurred as a result of operating a
6 Head Start program or providing transportation
7 services to the public. The Risk Management
8 Administrator shall obtain or provide for insurance
9 coverage for such community action agencies or bonding
10 for employees of such community action agencies. Any
11 liability insurance coverage obtained or provided
12 shall include expenses for administrative and legal
13 services obtained or provided by the Risk Management
14 Administrator.

15 b. The Risk Management Administrator shall determine
16 criteria for participation in the risk management
17 program by such community action agencies. In
18 addition, the Risk Management Administrator may
19 require each such community action agency to:
20 (1) provide adequate qualified personnel and suitable
21 facilities and equipment for operating a Head
22 Start program or providing transportation
23 services to the public, and

1 (2) comply with such standards as are necessary for
2 the protection of the clients it serves.

3 2. To receive coverage pursuant to this section, a community
4 action agency shall make payments for any insurance coverage and
5 shall otherwise comply with the provisions of this section and rules
6 promulgated by the Department pursuant to the provisions of this
7 section.

8 3. Requests for the insurance coverage provided pursuant to the
9 provisions of this subsection shall be submitted in writing to the
10 Risk Management Administrator by the community action agencies.

11 I. The Risk Management Administrator may provide or obtain for
12 any state agency, public trust with the state as a beneficiary and
13 a director, officer, employee or member thereof, insurance for
14 liability for loss, including judgments, awards, settlements, costs
15 and legal expenses, resulting from violations of rights or
16 privileges secured by the Constitution or laws of the United States
17 of America which occur while a director, officer, employee or member
18 is acting within the scope of service to the State of Oklahoma. The
19 insurance shall be for coverage in excess of the limits on liability
20 established by the Governmental Tort Claims Act but shall not limit
21 or waive any immunities now or hereafter available to the State of
22 Oklahoma or any state agency, any public trust with the state as a
23 beneficiary, or any director, officer, employee or member thereof,

1 including, but not limited to, any immunities under the Eleventh
2 Amendment to the Constitution of the United States, state sovereign
3 immunity, and any absolute or qualified immunity held by any
4 director, officer, employee or member.

5 J. The Risk Management Administrator shall have authority to
6 settle claims determined valid pursuant to applicable laws. A state
7 agency, whether or not subject to the Central Purchasing Act, may
8 recommend a claim settlement to the Administrator. In no event
9 shall a state agency official offer to settle a claim involving
10 funds or coverage under the authority of the Administrator without
11 prior consent of the Administrator.

12 SECTION 2. This act shall become effective November 1, 2003.

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-18-03 - DO
14 PASS, As Amended and Coauthored.