

LEGISLATIVE BILL 167

Approved by the Governor June 7, 1991

Introduced by Kristensen, 37; Nelson, 35; Peterson, 21

AN ACT relating to public employees; to amend section 44-1615, Reissue Revised Statutes of Nebraska, 1943; to adopt the Political Subdivisions Self-Funding Benefits Act; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide severability; to repeal the original section; and to declare an emergency.

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

Section 1. Sections 1 to 26 of this act shall be known and may be cited as the Political Subdivisions Self-Funding Benefits Act.

Sec. 2. The purpose of the Political Subdivisions Self-Funding Benefits Act is to permit political subdivisions to provide employee benefits to employees and their dependents through self-funding by establishing, participating in, and administering employee benefit plans. It is also the purpose of the act to require political subdivisions using self-funding for employee benefit plans to meet certain requirements to protect the benefits of covered employees and covered dependents.

Sec. 3. For purposes of the Political Subdivisions Self-Funding Benefits Act, the definitions found in sections 4 to 13 of this act shall be used.

Sec. 4. Accruals shall mean funds to cover all expected claims, reserves, and expenses to operate the self-funded portion of the employee benefit plan for a plan year.

Sec. 5. Covered dependent shall mean a dependent who is enrolled in an employee benefit plan.

Sec. 6. Covered employee shall mean an employee who is enrolled in an employee benefit plan.

Sec. 7. Employee benefit plan shall mean a plan provided pursuant to section 14 of this act for covered employees and covered dependents.

Sec. 8. Excess insurance shall mean (1) aggregate insurance, (2) specific insurance, or (3) insurance in excess of a deductible, of which the plan sponsor assumes some or all of the risk for the deductible, purchased from an insurer.

Sec. 9. Independent actuary shall mean a member in good standing of the Society of Actuaries or the American Academy of Actuaries who is not an employee of the plan sponsor. Selection of an independent actuary by a plan sponsor shall comply with the conflict of interest provisions of the Nebraska Political Accountability and Disclosure Act.

Sec. 10. Insurer shall mean an insurer as defined in section 44-103 which holds a certificate of authority to transact the business of insurance in this state.

Sec. 11. Plan sponsor shall mean any political subdivision providing an employee benefit plan.

Sec. 12. Political subdivision shall include villages, cities, counties, school districts, public power districts, technical community colleges, natural resources districts, and all other units of local government.

Sec. 13. Self-funding or self-funded shall mean assumption of primary liability or responsibility for certain risks or benefits rather than transferring the liability or responsibility to some other entity and may include the deductible portion when a plan sponsor assumes some or all of the risk for the deductible of an insured plan.

Sec. 14. Any political subdivision may establish, participate in, and administer employee benefit plans for its employees or its employees and their dependents which will provide hospitalization, medical, surgical, and sickness and accident coverage or any one or more of such coverages. Such coverages shall be provided through self-funding in combination with excess insurance or through self-funding without excess insurance pursuant to subsection (4) of section 22 of this act. Such coverages may include employee and dependent deductibles and copayments.

Sec. 15. (1) A plan sponsor shall not be considered an insurer under the laws of this state. The use of any self-funding by a plan sponsor shall not constitute transacting the business of insurance and shall not be subject to regulation by the Department of Insurance.

(2) A plan sponsor shall not be a member of the Nebraska Property and Liability Insurance Guaranty Association or the Nebraska Life and Health Insurance Guaranty Association. The Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association

Act shall not be applicable to the self-funded portion of an employee benefit plan.

Sec. 16. The Political Subdivisions Self-Funding Benefits Act shall not apply to coverage for workers' compensation.

Sec. 17. (1) The governing body of the plan sponsor shall approve the use of any self-funding for its employee benefit plan.

(2) The self-funded portion of an employee benefit plan shall comply with the Political Subdivisions Self-Funding Benefits Act. The self-funded portion of the employee benefit plan shall be solely for the benefit of the employees and dependents of the plan sponsor and shall not be pooled with the self-funded portion of an employee benefit plan of another plan sponsor.

(3) Each plan sponsor shall be liable for payment of valid claims under its employee benefit plan.

(4) The governing body of the plan sponsor shall annually review the self-funded portion of the employee benefit plan for compliance with section 19 of this act.

(5) The plan sponsor shall keep confidential employee benefit plan information held by it which personally identifies employees and their dependents and the nature of any claims submitted by employees and their dependents. Any agent of the plan sponsor shall not use or disclose any such information to any person except to the extent necessary to administer claims or as otherwise authorized by law. No information regarding claims submitted by employees and their dependents and held by the plan sponsor shall be used directly or indirectly to alter the terms and conditions of employment of the employees. Any plan sponsor, member of its governing body, officer, employee, or agent who knowingly or willfully violates this subsection shall be guilty of a Class III misdemeanor.

Sec. 18. A plan sponsor shall provide each covered employee with a copy of a summary of the self-funded portion of the employee benefit plan. The summary shall contain a written description of the major provisions of the self-funded portion of the plan, including (1) a table of contents, (2) a description of benefits, (3) the funding arrangement, and (4) the claims and appeals procedures required by section 23 of this act.

Sec. 19. (1) A plan sponsor shall establish accruals at a satisfactory level to provide funds to cover one hundred percent of expected claims, reserves

as required in subsection (2) of this section, and expenses to operate the self-funded portion of the employee benefit plan. Accruals shall be reevaluated for adequacy at least annually. Accruals shall be funded through contributions by the plan sponsor or through a combination of contributions by the plan sponsor and employee. Accruals which become available during a month when claims are less than projected for that month shall be maintained and available for a month when claims exceed those projected for that month.

(2) A plan sponsor shall establish reserves for claims which have been incurred by covered employees and covered dependents under the self-funded portion of the employee benefit plan but which have not yet been presented for payment. The appropriate amount of the reserves shall be on an actuarially sound basis as determined by (a) an independent actuary or (b) an insurer.

(3) A plan sponsor shall establish a restricted and segregated fund exclusively for the deposit of monthly accruals and other assets pertaining to the self-funded portion of the employee benefit plan. As long as the self-funded portion of an employee benefit plan is in effect, all contributions shall be deposited as collected in the restricted and segregated fund.

(4) Disbursements from the restricted and segregated fund established pursuant to subsection (3) of this section shall be made only for the following specified employee benefit plan expenses: (a) Payment of claims; (b) cost of insurance coverage; (c) payment of service fees applicable to employee benefit plan design, payment of claims, materials explaining benefits, actuarial assistance, legal assistance, and accounting assistance; and (d) other expenses directly related to the operation of the employee benefit plan. If the plan sponsor is a city of the metropolitan class and if such plan sponsor has a surplus in its restricted and segregated fund at the end of any fiscal year, such surplus may be treated and used as surplus funds in accordance with and pursuant to the city's home rule charter.

(5) If an employee benefit plan is discontinued, the plan sponsor shall maintain the restricted and segregated fund established pursuant to subsection (3) of this section for a period of one year from the date of discontinuation for payment of any claims which have not been filed. At the end of the one-year period, the funds shall no longer be restricted

and segregated and may be returned to operational funds of the plan sponsor.

Sec. 20. The governing body of a plan sponsor shall approve an annual report showing the beginning and ending balance of the fund established pursuant to section 19 of this act, deposits of monthly accruals and other assets of the fund, and a separate accounting to reflect required reserves.

Sec. 21. If the fund established pursuant to section 19 of this act is not adequate to fully cover all disbursements under the self-funded portion of the employee benefit plan, the plan sponsor shall contribute funds from other sources so that the employee benefit plan continues to comply with the Political Subdivisions Self-Funding Benefits Act.

Sec. 22. (1) Except as provided in subsection (4) of this section, the plan sponsor shall obtain excess insurance which will limit the plan sponsor's total claims liability for each plan year to not more than one hundred twenty-five percent of the expected claims liability as projected by an independent actuary or insurer.

(2) If the expected claims liability of the self-funded portion of the employee benefit plan is exceeded, the plan sponsor shall fund such additional liability by (a) allocating necessary funds from the operating fund of the general fund, (b) setting up an additional reserve in the operating fund of the general fund, or (c) setting up the monthly accruals at a level to fund claims in excess of the expected claims liability.

(3) An insurer shall pay claims for which it is obligated under excess insurance within three months of the time the claims are paid by the plan sponsor.

(4) A city of the metropolitan class may provide an employee benefit plan without excess insurance if the city obtains a determination from an independent actuary or insurer that excess insurance is not necessary to preserve the safety and soundness of the employee benefit plan.

Sec. 23. The self-funded portion of an employee benefit plan shall provide for the following:

(1) A written claim for benefits shall be furnished to the plan sponsor (a) in case of a claim for benefits which provide any periodic payment contingent upon continuing loss, within ninety days after the termination of the period for which the plan sponsor is liable and (b) in case of a claim for any other loss, within ninety days after the date of such loss. Failure

to furnish such written claim within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time and if proof is furnished as soon as reasonably possible and in no event later than one year from the time proof is otherwise required except in the absence of legal capacity.

(2) Indemnities payable for any loss, other than loss for which periodic payment is provided, shall be paid immediately upon receipt of a written claim for benefits. All accrued indemnities for loss which provide periodic payment shall be paid at least monthly, and any balance remaining unpaid upon the termination of liability shall be paid immediately upon receipt of a written claim for benefits.

(3) If a claim remains unsettled, the plan sponsor shall send to the covered employee, covered dependent, or authorized representative a letter every ninety days. The letter shall set forth specific reasons additional time is needed for investigation; and

(4) If a claim is denied or partly denied, a written notice of the denial from the plan sponsor, together with specific reason for the denial, shall be sent to the covered employee, covered dependent, or authorized representative. A denial may be appealed directly to the plan sponsor within sixty days after receiving the notice. The plan sponsor shall inform a covered employee, covered dependent, or authorized representative of its decision within sixty days after receipt of written appeal unless an unusual circumstance requires an extension of time to investigate or consider the appeal. If an extension is needed, the plan sponsor shall inform the covered employee, covered dependent, or authorized representative of the reason and the additional time needed which shall not exceed an additional sixty days. If the claim is denied or partly denied by the plan sponsor, a claim denial may be further appealed pursuant to section 25 of this act.

Sec. 24. (1) Employee benefit plans established pursuant to the Political Subdivisions Self-Funding Benefits Act shall comply with sections 44-1640 to 44-1645 relating to continuation of coverage if subject to such sections.

(2) If any covered employee of a plan sponsor which is a school district terminates employment with such plan sponsor and obtains employment with another plan sponsor which is a school district prior to October 1, 1994, such employee or such employee and any dependents shall not be subject to any preexisting

condition period or other waiting period of the employee benefit plan of the plan sponsor with which such employment is obtained if both such plan sponsors have obtained excess insurance from the same insurer.

Sec. 25. (1) A covered employee or covered dependent may bring a civil action against a plan sponsor to require compliance with the Political Subdivisions Self-Funding Benefits Act and the self-funded portion of an employee benefit plan. When the covered employee or covered dependent brings an action against a plan sponsor, the court, upon rendering judgment against the plan sponsor, shall allow the plaintiff a reasonable sum as an attorney's fee in addition to the amount of his or her recovery, to be taxed as part of the costs. If such action is appealed, the appellate court shall allow a reasonable sum as an attorney's fee for the appeal if the plaintiff is successful.

(2) If the plaintiff fails to obtain judgment for more than may have been offered by such plan sponsor in accordance with section 25-901, the plaintiff shall not recover the attorney's fees provided in this section.

Sec. 26. Any political subdivision using self-funding to provide hospitalization, medical, surgical, and sickness and accident coverage or any one or more of such coverages for its employees or its employees and their dependents immediately prior to the effective date of this act shall comply with the Political Subdivisions Self-Funding Benefits Act no later than December 31, 1991.

Sec. 27. That section 44-1615, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1615. Any political subdivision, technical community college, municipal corporation, or public body of the State of Nebraska, except a state agency defined in section 81-8,239.01, may establish, participate in, and administer plans for the benefit of its employees or its employees and their dependents, which will provide hospitalization, medical, surgical, sickness and accident, sickness and term life insurance coverage, or any one or more of such coverages. The plans, and which shall be purchased from a corporation or corporations authorized and licensed by the Department of Insurance an insurer holding a certificate of authority to transact the business of insurance in this state except as provided in the Political Subdivisions Self-Funding Benefits Act.

Sec. 28. The Revisor of Statutes shall assign sections 1 to 26 of this act to Chapter 13.

Sec. 29. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 30. That original section 44-1615, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 31. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.