

ACT 186

H.B. NO. 320

A Bill for an Act Relating to Risk Management.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to assist the University of Hawaii in managing its risks by:

- (1) Creating the University of Hawaii risk management special fund; and
- (2) Providing the board of regents with the authority to approve the indemnification of persons, companies, and government entities, as necessary to receive research and other funds for educational purposes.

With the passage of Act 115, Session Laws of Hawaii 1998, which granted significant autonomy to the University of Hawaii, the legislature has increasingly looked to the university to become more autonomous in the management of its affairs. Since 2001, the legislature has required the university to identify funds from its revenue sources to pay for settlements and judgments. This requirement, coupled with the trend of expecting the university to become less dependent on general funds in the future, has caused the university to creatively manage its risks and exposures by augmenting the State's excess insurance coverage. The university has opted to

establish a risk management program to manage its risks and exposures by purchasing insurance, establishing a self-insurance program, or a combination of the two. This Act provides the statutory authority for the university to implement its risk management program in cooperation with the State's risk management program. The authorization provided hereunder shall not alter the university's status as an agency of the State. Within the parameters provided by the legislature, as provided in this Act, the university is charged with the responsibility of paying for its own legal claims, including settlements and judgments, and directed to be responsible for managing its risks and exposures by purchasing insurance, establishing a self-insurance program, or both.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- University of Hawaii risk management special fund. (a) There is created the University of Hawaii risk management special fund. The following may be deposited into the special fund:

- (1) Appropriations by the legislature;
- (2) Assessments for risk management costs as applicable against any funds of the university;
- (3) Moneys received from the settlement of claims or losses of the university that are not contractually or otherwise obligated for other purposes; and
- (4) Moneys received pursuant to an insurance policy.

(b) Notwithstanding any other law to the contrary, the university may transfer funds at its disposal into the special fund to be expended for the purposes provided herein.

(c) Revenues deposited into the special fund may be expended by the university for costs and expenses associated with the administration and operation of the risk management program, including but not limited to insurance premiums, retention payments, claims administration and operation, settlements, payment of judgments, other obligations, and legal fees and costs.

(d) Notwithstanding any other law to the contrary, the board of regents may agree in writing to an indemnity provision by which the University of Hawaii agrees to indemnify, defend, and hold harmless any person, corporation, or entity that sponsors research at the university when all of the following conditions are satisfied:

- (1) When such person, corporation, or entity requires an indemnity in writing as a condition for receiving a grant, benefit, service, or interest in or right to use property;
- (2) The president, or the president's designee, following a favorable review by the university general counsel, or the counsel's designee, approves the proposed indemnification; and
- (3) The chief financial officer, pursuant to section 304-6, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the university that may be reasonably anticipated to arise under the indemnity provision or has determined that it is not in the best interest of the university to obtain insurance.

(e) Nothing in this section shall be construed to expand the scope of liability of the university beyond that set forth in chapters 661 and 662.

(f) Nothing in this section shall be construed to waive the immunity of the university from suit in federal courts guaranteed by the Eleventh Amendment to the United States Constitution. An indemnity provision not in strict compliance with this section shall not give rise to a claim against the university under chapter 304 or 661 or otherwise waive the university's sovereign immunity.

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(g) The board shall develop internal policies and procedures for the management of risk at the university that are consistent with the goals of public accountability.

(h) The board shall report annually to the legislature the sources of revenue into and expenditures made from the special fund no later than twenty days before the convening of each regular session of the legislature.”

SECTION 3. If any provision of this Act, or the application thereof to any person or entity or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2003.

(Approved June 16, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.