

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2327

Introduced by Assembly Member Harkey
(Coauthor: Assembly Member Torres)

February 19, 2010

An act to add Division 4 (commencing with Section 13900) to the Insurance Code, relating to risk pools.

LEGISLATIVE COUNSEL'S DIGEST

AB 2327, as amended, Harkey. Affordable housing: risk retention pool.

Existing law authorizes local agencies to enter into a joint pooling agreement to form a single statewide insurance pooling arrangement for the payment of tort liability or public liability losses incurred by those agencies.

This bill would authorize an affordable housing entity, defined to include affordable housing entities that are created under the laws of another jurisdiction or organized under the laws of another state, to join with one or more affordable housing entities in an arrangement providing for the pooling of self-insured claims or losses, as specified. The pool would be authorized to ~~include a separate legal or administrative entity whose duty it would be to administer the insurance pool~~, *be organized as a nonprofit corporation, limited liability company, partnership, or trust, whether organized under the laws of this state or another state or operating in this state or another state*. The bill would prohibit the pooling arrangement from being considered insurance or being subject

to regulation under the Insurance Code, and would require written notice to be given as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 4 (commencing with Section 13900) is
2 added to the Insurance Code, to read:

3
4 DIVISION 4. AFFORDABLE HOUSING ENTITIES RISK
5 RETENTION POOL
6

7 13900. An affordable housing entity may join with one or more
8 other affordable housing entities in an arrangement providing for
9 the pooling of self-insured claims or losses with respect to any of
10 the following:

- 11 (a) Insurance covering all or any part of any tort liability.
- 12 (b) Insurance covering any employee of the affordable housing
13 entity against all or any part of his or her liability for injury
14 resulting from an act or omission in the scope of employment.
- 15 (c) Insurance covering any board member, officer, partner,
16 manager, member, or volunteer of the affordable housing entity
17 against any liability that may arise from any act or omission in the
18 scope of participation with the affordable housing entity.
- 19 (d) Insurance covering any loss arising from physical damage
20 to motor vehicles, personal property, real property, or other
21 property owned or operated by the affordable housing entity.

22 13901. (a) The pooling arrangement established pursuant to
23 this division shall not be considered insurance, and shall not be
24 subject to regulation under this code.

25 (b) All affordable housing entities participating in a pooling
26 arrangement established pursuant to this division shall be given
27 written notice, in at least 10-point type, that the pool is not
28 regulated by the Insurance Commissioner and that the state
29 insurance insolvency guaranty funds are not available to safeguard
30 its risk.

31 13902. (a) Any insurance pool, established pursuant to this
32 division, ~~may include the organization of a separate legal or~~
33 ~~administrative entity whose duty it is to administer the insurance~~

1 pool, which may be *be organized as* a nonprofit corporation,
2 limited liability company, partnership, or trust, whether organized
3 under the laws of this state or another state or operating in another
4 state.

5 (b) Any insurance pool established pursuant to this division
6 shall have initial pooled resources of not less than two million five
7 hundred thousand dollars (\$2,500,000) in the form of cash or cash
8 equivalents.

9 (c) Any insurance pool established pursuant to this division
10 shall maintain adequate reinsurance to protect against its risks.

11 13903. All participating affordable housing entities in any
12 insurance pool, established pursuant to this division, are required
13 to agree to pay premiums or make other mandatory financial
14 contributions, as determined by the governing board, provided for
15 by the insurance pool arrangement, that are necessary to ensure a
16 financially sound risk pool.

17 13904. Any insurance pool, established pursuant to this
18 division, shall not insure against any liability that may be insured
19 against pursuant to Division 4 (commencing with Section 3200)
20 of the Labor Code.

21 13905. Nothing in this division shall be construed to authorize
22 an affordable housing entity to pay for, to insure, to contract for
23 payment of, or to provide for payment for, any part of a claim or
24 judgment against an employee of the affordable housing entity for
25 punitive or exemplary damages.

26 13906. For the purpose of this division, “affordable housing”
27 means housing developments in which some of the dwelling units
28 may be purchased or rented, with or without government assistance,
29 on a basis that is affordable to ~~individuals of low~~ *persons or*
30 *families of low or moderate* income, as defined in Section 50093
31 of the Health and Safety Code.

32 13907. For the purpose of this division, an “affordable housing
33 entity” means any of the following:

34 (a) A housing authority created under the laws of this state or
35 another jurisdiction and any agency or instrumentality of a housing
36 authority, including, but not limited to, a legal entity created to
37 conduct a self-insurance program for housing authorities that
38 complies with Chapter 5 (commencing with Section 6500) of
39 Division 7 of Title 1 of the Government Code.

1 (b) A nonprofit corporation organized under the laws of this
2 state or another state that is engaged in providing affordable
3 housing.

4 (c) A partnership, general or limited, or limited liability company
5 that is engaged in providing affordable housing and that is affiliated
6 with a housing authority described in subdivision (a) or a nonprofit
7 corporation described in subdivision (b) if the housing authority
8 or nonprofit corporation has one or more of the following:

9 (1) A financial or ownership interest in the partnership or limited
10 liability company or the right to acquire that interest.

11 (2) The power to direct the management or policies of the
12 partnership or limited liability company.

13 (3) A contract to lease, manage, or operate the affordable
14 housing owned by the partnership or limited liability company.