

17:49A-1 to 17:49A-16

LEGISLATIVE HISTORY CHECKLIST

NJSA	17:49A-1 to 17:49A-16			"Non profit Corporation-- Keys Amendment Facility Insurance Pooling Act"
LAWS	1987	CHAPTER	431	
Bill No.	S2342			
Sponsor (s)	Di Francesco			
Date Introduced	June 26, 1987			
Committee:	Assembly Insurance			
	Senate Labor, Industry and Professions			
Amended during passage		No		
Date of Passage:	Assembly January 11, 1988			
	Senate June 29, 1987			
Date of approval	January 15, 1988			
Following statements are attached if available:				
Sponsor statement:				Yes
Committee Statement:	Assembly			Yes
	Senate			Yes
Fiscal Note				No
Veto Message				No
Message on signing				No
Following were printed:				
Reports				No
Hearings				No

SENATE, No. 2342
STATE OF NEW JERSEY

INTRODUCED JUNE 26, 1986

By Senator DiFRANCESCO

Referred to Committee on Labor, Industry and Professions

AN ACT to permit certain not-for-profit and nonprofit corporations and medical and non-medical residential facilities to form joint self-insurance pools and supplementing Title 15A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known, and may be cited as the "Nonprofit
2 Corporation-Keys Amendment Facility Insurance Pooling Act."

1 2. The Legislature finds and declares that:

2 a. The lack of availability and escalating cost of liability insur-
3 ance, when available, has caused a crisis nationally and in this
4 State. Not-for-profit and nonprofit corporations as well as medical
5 and non-medical facilities that provide residences for the elderly
6 and disabled have been especially hard hit by the liability insurance
7 crisis.

8 b. It is the public policy of this State that facilities which operate
9 without profit or provide residential settings where significant
10 numbers of elderly or disabled Supplemental Security Income
11 (SSI) recipients reside should have access to adequate and afford-
12 able liability insurance coverage.

13 c. To this end, it is incumbent upon the State to provide a means
14 by which adequate and affordable liability coverage can be obtained
15 by these entities.

1 3. As used in this act:

2 a. "Board" means the board of trustees or the group of persons
3 vested with management of the business and affairs of a nonprofit

4 corporation regardless of the name by which the group or persons
5 are designated.

6 b. "Keys amendment facility" means a medical or non-medical
7 residential setting designated by the State as a facility that meets
8 the requirements of the "Social Security Act," Pub. L. 93-233
9 (42 U. S. C. § 1382e) as implemented by (45 CFR § 1397.1 et seq.).

10 c. "Nonprofit corporation" means any corporation organized
11 under the "New Jersey Nonprofit Corporation Act," N. J. S.
12 15A:1-1 et seq., or any corporation as defined by N. J. S. 15A:1-2e.

13 d. "Owner" means the person or group vested with ownership and
14 management of a Keys amendment facility regardless of the name
15 by which the person or group is designated.

1 4. a. The board of a nonprofit corporation may, by resolution,
2 agree to participate with any other nonprofit corporation or corpo-
3 rations in a joint insurance fund for the purpose of insuring against
4 liability, property damage, and workers' compensation.

5 b. The owner of a Keys amendment facility may agree, in writing,
6 to participate with any other Keys amendment facility or facilities
7 in a joint insurance fund for the purpose of insuring against lia-
8 bility, property damage, and workers' compensation.

1 5. a. Upon the establishment of a nonprofit corporation joint
2 insurance fund, the chief executive officer or the board of each
3 participating nonprofit corporation shall appoint one of its officers
4 or one member of its board to represent that nonprofit corporation
5 as insurance fund commissioner. Together, they shall constitute
6 an insurance fund commission. Commissioners shall hold office at the
7 pleasure of the chief executive officer or board who appointed them,
8 or as long as they remain a member of the board or a corporate
9 officer, whichever shall be less, and until their successors shall have
10 been duly appointed and qualified. In the event that the number
11 of nonprofit corporations represented is an even number, an addi-
12 tional member shall be annually selected by the participating non-
13 profit corporations. If the total number of commissioners exceeds
14 seven, the commissioners shall annually meet to select not more
15 than seven commissioners to serve as the executive committee of
16 the fund. The executive committee shall exercise the full power
17 and authority of the commission. Vacancies on the executive com-
18 mittee shall be filled by election of the entire commission. The
19 commissioners shall serve without compensation. Any vacancy in
20 the office of insurance fund commissioner shall be filled by an
21 appointment by the chief executive officer or board of the partici-
22 pating nonprofit corporation as described in this subsection. The
23 commission shall annually elect a chairman and a secretary.

24 b. Upon the establishment of a Keys amendment facility joint
25 insurance fund, the owner of each participating Keys amendment
26 facility shall represent, or the owners shall appoint one
27 owner to represent that facility as insurance fund commissioner.
28 Together, they shall constitute an insurance fund commission.
29 Commissioners of Keys amendment facility joint insurance funds
30 who represent a facility that has more than one owner shall serve
31 as commissioner as long as they remain an owner of the facility
32 and until their successors shall have been duly appointed and
33 qualified. In the event that the number of facilities is an even
34 number, an additional member shall be annually selected by the
35 participating facilities. If the total number of commissioners ex-
36 ceeds seven, the commissioners shall annually meet to select not
37 more than seven commissioners to serve as the executive committee
38 of the fund. The executive committee shall exercise the full power
39 and authority of the commission. Vacancies on the executive com-
40 mittee shall be filled by election of the entire commission. The
41 commissioners shall serve without compensation. Any vacancy in
42 the office of insurance fund commissioner shall be filled by the
43 owner of a Keys amendment facility as described in this subsection.
44 The commission shall annually elect a chairman and a secretary.

1 6. The commissioners of any joint insurance fund created under
2 the provisions of this act shall prepare and, after the approval
3 by resolution of the board of each participating nonprofit corpo-
4 ration, or approval of the owner of each participating Keys amend-
5 ment facility, as the case may be, shall adopt bylaws for the joint
6 insurance fund. The bylaws shall include, but not be limited to:

7 a. Procedures for the organization and administration of the
8 joint insurance fund, the insurance fund commission and, if appro-
9 priate, the executive board of the fund. The procedures may
10 include the designation of one participating nonprofit corporation
11 or Keys amendment facility, as the case may be, to serve as the
12 lead agency to be responsible for the custody and maintenance of
13 the assets of the fund and such other duties as may be assigned
14 by the commissioners of the fund;

15 b. Procedures for the assessment of members for their contri-
16 butions to the fund and for the collection of contributions in
17 default;

18 c. Procedures for the maintenance and administration of appro-
19 priate reserves in accordance with sound actuarial principles;

20 d. Procedures for the purchase of commercial direct insurance or
21 reinsurance, if any;

22 e. Contingency plans for paying losses in the event that the fund
23 is exhausted;

- 24 f. Procedures governing loss adjustment and legal fees;
 25 g. Procedures for the joining of the fund by a nonparticipating
 26 nonprofit corporation or Keys amendment facility, as the case
 27 may be;
 28 h. Procedures for the withdrawal from the fund by a participat-
 29 ing nonprofit corporation or Keys amendment facility, as the case
 30 may be;
 31 i. Procedures for the expulsion of a participating nonprofit
 32 corporation or Keys amendment facility, as the case may be;
 33 j. Procedures for the termination and liquidation of the joint
 34 insurance fund and the payment of its outstanding obligations; and
 35 k. Such other procedures and plans as the Commissioner of
 36 Insurance may require by rule or regulation.

1 7. The commissioners shall prepare, or cause to be prepared,
 2 a plan of risk management for the joint insurance fund. The plan
 3 shall include, but not be limited to:

- 4 a. The perils or liabilities to be insured against;
 5 b. Limits of coverage, whether self-insurance, direct insurance
 6 purchased from a commercial carrier, or reinsurance;
 7 c. The amount of risk to be retained by the fund;
 8 d. The amount of reserves to be established;
 9 e. The contributions to be paid by each participating nonprofit
 10 corporation or Keys amendment facility, as the case may be;
 11 f. Coverage to be purchased from a commercial insurer, if any;
 12 g. Reinsurance to be purchased, if any, and the amount of
 13 premium therefor; and
 14 h. Such other procedures and information as the Commissioner
 15 of Insurance may require by rule or regulation.

16 For purposes of this section "a plan of risk management" is a
 17 plan, and activities carried out under the plan, binding upon the
 18 participants in a joint insurance fund to reduce risk of loss with
 19 respect to a particular line of insurance protection or coverage
 20 provided by a fund. Plans of risk management also include the
 21 administration of one or more funds, including the processing and
 22 defense of claims brought against or on behalf of participants.

1 8. No joint insurance fund shall begin providing insurance
 2 coverage to its participants until its bylaws and plan of risk
 3 management have been approved as provided in this section.

- 4 a. The commissioners of each joint insurance fund shall file with
 5 the Commissioner of Insurance for his approval a copy of the
 6 fund's bylaws adopted pursuant to section 6 of this act and a copy
 7 of the fund's plan of risk management prepared pursuant to sec-
 8 tion 7 of this act.

9 b. Within 30 working days of receipt, the Commissioner of
10 Insurance shall either approve or disapprove the bylaws or plan
11 of risk management of any joint insurance fund. If the Com-
12 missioner of Insurance fails either to approve or disapprove the
13 bylaws or plan of risk management within that 30 working day
14 period, the bylaws or plan shall be deemed approved.

15 c. If any bylaws or plan shall be disapproved, the Commissioner
16 of Insurance shall set forth in writing the reason for disapproval.
17 Upon the receipt of the notice of disapproval, the commissioners
18 of the affected joint insurance fund may request a hearing. The
19 hearing shall be convened by the Commissioner of Insurance in a
20 timely manner.

1 9. Upon the approval of its bylaws and plan of risk management
2 pursuant to the provisions of section 8 of this act, a joint insurance
3 fund may provide insurance coverage to its participants by self-
4 insurance, the purchase of commercial insurance or reinsurance,
5 or any combination thereof.

1 10. The commissioners may, from time to time, amend the bylaws
2 and plan of risk management of the fund; provided, however, that
3 no such amendment shall take effect until approved as provided
4 in this section.

5 a. The commissioners shall file with the Commissioner of Insur-
6 ance for his approval a copy of any amendment to the bylaws of
7 the fund upon approval, by resolution, of the board of each par-
8 ticipating nonprofit corporation, or written approval signed by
9 the owner of each participating Keys amendment facility, as the
10 case may be, or any amendment to the plan of risk management,
11 upon adoption by the commissioners.

12 b. Within 30 working days of receipt, the Commissioner of In-
13 surance shall either approve or disapprove any amendment to the
14 bylaws or plan of risk management. If the Commissioner of In-
15 surance fails either to approve or disapprove the amendment within
16 that 30 working day period, the amendment shall be deemed
17 approved.

18 c. If any amendment shall be disapproved, the Commissioner of
19 Insurance shall set forth in writing the reasons for disapproval.
20 Upon the receipt of the notice of disapproval, the commissioners
21 of the affected joint insurance fund may request a hearing. The
22 hearing shall be convened by the Commissioner of Insurance in a
23 timely manner.

1 11. The Commissioner of Insurance shall have the authority to
2 suspend or terminate the authority of any joint insurance fund, or
3 to assume control of the insurance fund, or to direct or take any

4 action he may deem necessary, for good cause, to enable a fund
5 to meet its obligations, cover its expected losses or to liquidate,
6 rehabilitate or otherwise modify its affairs. Such action shall be
7 taken by the Commissioner of Insurance in the event of:

8 a. Failure to comply with the rules and regulations promulgated
9 by the Commissioner of Insurance or with any of the provisions
10 of this act;

11 b. A failure to comply with a lawful order of the Commissioner
12 of Insurance; or

13 c. A deterioration of the financial condition of the fund to the
14 extent that it causes an adverse effect upon the ability of the joint
15 insurance fund to pay expected losses.

1 12. The Commissioner of Insurance may, in his discretion, require
2 the commissioners of any fund to file copies of any agreements or
3 contracts entered into by the commissioners of the fund, or any
4 other pertinent documents as he may deem necessary.

1 13. The insurance fund commissioners or the executive board
2 thereof, as the case may be, shall cause an annual audit to be
3 conducted by an independent certified public accountant in accor-
4 dance with the rules and regulations promulgated by the Com-
5 missioner of Insurance pursuant to section 16 of this act. Copies
6 of every audit shall be submitted to the Commissioner of Insurance
7 within 30 working days of its completion.

1 14. The Commissioner of Insurance may conduct an examination
2 of any joint insurance fund that he deems necessary. The expense
3 of any such examination shall be borne by the fund.

1 15. A joint insurance fund established pursuant to the provisions
2 of this act is not an insurance company nor an insurer under the
3 laws of this State, and the authorized activities of the fund do not
4 constitute the transaction of insurance nor the conducting of an
5 insurance business. A fund established pursuant to this act shall
6 not be subject to the provisions of Subtitle 3 of Title 17 of the Re-
7 vised Statutes.

1 16. The Commissioner of Insurance shall promulgate rules and
2 regulations, pursuant to the "Administrative Procedure Act," P. L.
3 1968, c. 410 (C. 52:14B-1 et seq.), to effectuate the purposes of
4 this act. Such rules and regulations shall include, but not be
5 limited to, the establishment, operation, modification and dissolu-
6 tion of joint insurance funds established pursuant to the provisions
7 of this act.

1 17. This act shall take effect on the 60th day after enactment.

STATEMENT

This bill would permit not-for-profit and nonprofit corporations as well as certain medical and non-medical facilities where significant numbers of elderly and disabled Supplemental Security Income (SSI) recipients reside, known as "Keys amendment facilities," to form joint self-insurance pools. The purpose is to improve the availability and affordability of insurance for these organizations, many of which are currently experiencing great difficulty in securing coverage at rates they can afford, if they can get coverage at all.

INSURANCE—PROPERTY AND CASUALTY

The "Nonprofit Corporation-Keys Amendment Facility Insurance Pooling Act."

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

SENATE, No. 2342

DATED: November 30, 1987

This bill, called the "Nonprofit Corporation - Keys Amendment Facility Insurance Pooling Act," would permit the establishment of joint insurance funds by not-for-profit and nonprofit corporations and by Keys amendment facilities, which are certain medical and non-medical facilities where numbers of elderly and disabled Supplemental Security Income (SSI) recipients reside. The funds could be established to insure for liability, property damage, and workers' compensation.

The bill provides for the establishment of a board of directors to govern the joint insurance funds. The board of a fund would be required to adopt bylaws for the operation of the fund, which would include procedures for the organization and administration of the fund, the assessment of the members of the fund, the establishment and maintenance of appropriate reserves, the purchase of commercial direct insurance or reinsurance, contingency plans for paying losses in the event that the fund becomes exhausted, and paying claims.

The bill requires the board to establish a plan of risk management for the joint insurance fund, which would include the amount of the risk retention, the amount of reserves to be established, and the amount of commercial insurance to be purchased, if any. The plan would be required to be submitted to the Commissioner of Insurance for his approval. The commissioner would be required to approve or disapprove the bylaws or plan of risk management of any joint insurance fund. Failure by the commissioner to act would result in the bylaws or plan being deemed to be approved. The commissioner would be required to approve any subsequent change in the bylaws or in the risk management plan.

The bill gives the commissioner general regulatory authority over the operation of the joint insurance funds and requires that the board of the fund arrange for an annual audit. The commissioner may also conduct an examination of the fund if he deems it to be necessary.

During periods of market dislocation commercial insurance has been either completely unavailable or very expensive; this type of joint insurance fund, similar to many of those which have been formed by public entities, would help to alleviate the problems caused by these market dislocations by providing an alternative source of insurance coverage to nonprofit corporations and Keys amendment facilities.

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SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 2342

STATE OF NEW JERSEY

DATED: OCTOBER 27, 1986

This bill, designated the "Nonprofit Corporation-Keys Amendment Facility Insurance Pooling Act," would permit not-for-profit and nonprofit corporations as well as certain medical and non-medical facilities where significant numbers of elderly and disabled Supplemental Security Income (SSI) recipients reside, known as "Keys amendment facilities," to form joint self-insurance funds. These funds may be formed for the purpose of insuring against liability, property damage, and workers' compensation. The insurance can be provided through either self-insurance or the purchase of direct commercial insurance or reinsurance.

Both nonprofit corporation and keys amendment facility joint insurance funds would be governed by a commission comprised of representatives of fund membership. The commissioners of each fund will be responsible for the preparation of bylaws and a plan of risk management which must be approved by the Commissioner of Insurance. In addition, the Commissioner of Insurance has the power to suspend or terminate the authority of any fund or to assume control of or take any other action necessary to enable a fund to meet its obligations, cover expected losses or to liquidate, rehabilitate or otherwise modify its affairs. Funds are to be audited annually by an independent certified public accountant. The Commissioner of Insurance is further authorized to conduct a financial examination of any fund, at the fund's expense, when he deems such an examination necessary.