As Reported by the House Insurance Committee

131st General Assembly Regular Session 2015-2016

H. B. No. 416

Representative Schuring Cosponsor: Representative Bishoff

A BILL

To amend sections 149.431 and 3345.202 and to enact	1
section 3345.203 of the Revised Code to enable	2
state colleges and universities to establish	3
joint self-insurance pools.	4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 149.431 and 3345.202 be amended	5
and section 3345.203 of the Revised Code be enacted to read as	6
follows:	7
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Sec. 149.431. (A) Except as provided in sections 9.833-and-	8
, 2744.081, and 3344.203 of the Revised Code, any governmental	9
entity or agency and any nonprofit corporation or association,	10
except a corporation organized pursuant to Chapter 1719. of the	11
Revised Code prior to January 1, 1980 or organized pursuant to	12
Chapter 3941. of the Revised Code, that enters into a contract	13
or other agreement with the federal government, a unit of state	14
government, or a political subdivision or taxing unit of this	15
state for the provision of services shall keep accurate and	16
complete financial records of any moneys expended in relation to	17
the performance of the services pursuant to such contract or	18

agreement according to generally accepted accounting principles. 19 Such contract or agreement and such financial records shall be 20 deemed to be public records as defined in division (A)(1) of 21 section 149.43 of the Revised Code and are subject to the 22 requirements of division (B) of that section, except that: 23

(1) Any information directly or indirectly identifying a
present or former individual patient or client or such an
individual patient's or client's diagnosis, prognosis, or
medical treatment, treatment for a mental or emotional disorder,
treatment for mental retardation or a developmental disability,
treatment for drug abuse or alcoholism, or counseling for
personal or social problems is not a public record;

(2) If disclosure of the contract or agreement or financial records is requested at a time when confidential professional services are being provided to a patient or client whose confidentiality might be violated if disclosure were made at that time, disclosure may be deferred if reasonable times are established when the contract or agreement or financial records will be disclosed.

(3) Any nonprofit corporation or association that receives both public and private funds in fulfillment of any such contract or other agreement is not required to keep as public records the financial records of any private funds expended in relation to the performance of services pursuant to the contract or agreement.

(B) Any nonprofit corporation or association that receivesmore than fifty per cent of its gross receipts excluding moneysreceived pursuant to Title XVIII of the "Social Security Act,"49 Stat. 620 (1935), 42 U.S.C. 301, as amended, in a calendaryear in fulfillment of a contract or other agreement for

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services with a governmental entity shall maintain information 49 setting forth the compensation of any individual serving the 50 nonprofit corporation or association in an executive or 51 administrative capacity. Such information shall be deemed to be 52 public records as defined in division (A) (1) of section 149.43 53 of the Revised Code and is subject to the requirements of 54 division (B) of that section. 55

Nothing in this section shall be construed to otherwise56limit the provisions of section 149.43 of the Revised Code.57

Sec. 3345.202. (A) As used in this section, "state58university or college" has the same meaning as in division (A)59(1) of section 3345.12 of the Revised Code.60

(B) The board of trustees of a state university or college 61 may provide insurance coverages, in any amount authorized by the 62 board, protecting the state university or college, the members 63 of the board, the officers and employees of the state university 64 or college, or other persons authorized by the board, or any one 65 or more of them, against loss or liability that arises or is 66 claimed to have arisen from acts or omissions while acting 67 within the scope of their employment or official 68 responsibilities or while engaged in activities at the request 69 or direction, or for the benefit, of the state university or 70 college. 71

Such coverage may be provided in any one or more of the 72 following ways: 73

(1) The purchase of a policy or policies of liability
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insurance from an insurer or insurers licensed to do business in
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this state;
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(2) Establishment or participation in a program of self- 77

insurance, by trust or in any other manner the board considers 78 prudent. Any self-insurance program shall file annually, with 79 the superintendent of insurance, a report certified by a 80 competent property and casualty actuary. The superintendent of 81 insurance shall review such report. If such a self-insurance 82 program has more than a single college or university 83 participant, all participants shall be provided with the annual 84 actuarial reports of the program. 85 (3) Establishment of or participation in a captive 86 insurance company that is licensed to do business in this state, 87 another state, or a foreign country-; 88 (4) Establishment of, or participation in, a joint self-89 insurance pool under section 3345.203 of the Revised Code. 90 (C) Insurance coverages under division (B) (1), (2), or-91 (3), or (4) of this section may include coverage for the defense 92 or costs of defense or settlement, including attorney's fees, of 93 any covered person or entity and be paid for from any funds 94 under the control of the state university or college. 95 (D) Provision of any insurance coverage under divisions 96 (B) (1) to (3) of this section is not a waiver of any immunity or 97 defense available to the state university or college or to any 98 covered person or entity. 99 Sec. 3345.203. (A) As used in this section: 100 (1) "Claims expenses" means payment of judgments, 101 settlement of claims, expense, loss, and damage. 102 (2) "State university or college" has the same meaning as 103 in section 3345.12 of the Revised Code. 104 (B) Regardless of whether a state university or college 105

secures insurance coverages under division (B)(1), (2), or (3)	106
of section 3345.202 of the Revised Code, the board of trustees	107
of the state university or college may join with other state	108
universities or colleges in establishing and maintaining a joint	109
self-insurance pool to do both of the following:	110
(1) Provide for payment of claims expenses that arise, or	111
are claimed to have arisen, from an act or omission of the state	112
university or college or any of its employees or other persons	113
authorized by the board while doing either of the following:	114
(a) Acting in the scope of their employment or official	115
<u>responsibilities;</u>	116
(b) Being engaged in activities undertaken at the request	117
or direction, or for the benefit, of the state university or	118
<pre>college;</pre>	119
(2) Indemnify or hold harmless the state university's or	120
college's employees against such loss or damage.	121
The joint self-insurance pool shall be pursuant to a	122
written agreement and to the extent that the board considers the	123
pool to be necessary.	124
(C) All of the following apply to a joint self-insurance	125
pool under this section:	126
(1) The funds shall be reserved as are necessary, in the	127
exercise of sound and prudent actuarial judgment, to cover	128
potential state university or college and employee liabilities,	129
loss, and damage. A report of aggregate amounts so reserved and	130
aggregate disbursements made from such funds shall be prepared	131
and maintained in the office of the pool administrator described	132
in division (C)(2) of this section. The report shall be prepared	133
and maintained not later than ninety days after the close of the	134

pool's fiscal year.

The report required by this division shall include, but 136 not be limited to, the aggregate of disbursements made for the 137 administration of the pool, including claims paid, costs of the 138 legal representation of state universities or colleges and 139 employees, and fees paid to consultants. The report also shall 140 be accompanied by a written report of a member of the American 141 academy of actuaries certifying whether the amounts reserved 142 conform to the requirements of this division, are computed in 143 accordance with accepted loss reserving standards, and are 144 fairly stated in accordance with sound loss reserving 145 principles. 146

The pool administrator described in division (C)(2) of 147 this section shall make the report required by this division 148 available for inspection by any person at all reasonable times 149 during regular business hours. Upon the request of such person, 150 the pool administrator shall make copies of the report available 151 at cost within a reasonable period of time. The report required 152 by this division is in lieu of the records required by division 153 (A) of section 149.431 of the Revised Code. 154

(2) The board of trustees establishing a joint self-155 insurance pool may award a contract, without the necessity of 156 competitive bidding, to a pool administrator for purposes of 157 administration of the joint self-insurance pool. A "pool 158 administrator" may be any person, political subdivision, limited 159 liability company organized under Chapter 1705. of the Revised 160 Code, nonprofit corporation organized under Chapter 1702. of the 161 Revised Code, or regional council of governments created under 162 Chapter 167. of the Revised Code. The board shall not enter into 163 such a contract without full, prior, public disclosure of all 164

Page 6

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terms and conditions. The disclosure shall include, at a	165
minimum, a statement listing all representations made in	166
connection with any possible savings and losses resulting from	167
the contract, and potential liability of any state university or	168
college or employee. The proposed contract and statement shall	169
be disclosed and presented at a meeting of the board of trustees	170
of the state university or college prior to the meeting at which	171
the board of trustees of the state university or college	172
authorizes the contract.	173
(3) A joint self-insurance pool shall include a contract	174
with a member of the American academy of actuaries for the	175
preparation of the written evaluation of the reserve funds	176
required under division (C)(1) of this section.	177
(4) A joint self-insurance pool may allocate the costs of	178
funding the pool among the funds or accounts in the treasuries	179
of the state universities or colleges on the basis of their	180
relative exposure and loss experience. A joint self-insurance	181
program may require any deductible under the program to be paid	182
from funds or accounts in the treasury of the state university	183
or college from which a loss was directly attributable.	184
(D) Two or more state universities or colleges may also	185
authorize the establishment and maintenance of a joint risk-	186
management program, including but not limited to the employment	187
of risk managers and consultants, for the purpose of preventing	188
and reducing the risks covered by insurance, self-insurance, or	189
joint self-insurance programs.	190
<u>(E) A state university or college is not liable under a</u>	191
joint self-insurance pool for any amount in excess of amounts	192
payable pursuant to the written agreement for the participation	193
of the state university or college in the joint self-insurance	194

pool. Under a joint self-insurance pool agreement a state	195
university or college may, to the extent permitted under the	196
written agreement, assume the risks of any other state	197
university or college, including the indemnification of its	198
employees. A joint self-insurance pool, established under this	199
section, is deemed a separate legal entity for the public	200
purpose of enabling the members of the joint self-insurance pool	201
to obtain insurance or to provide for a formalized, jointly	202
administered self-insurance fund for its members. An entity	203
created pursuant to this section is exempt from all state and	204
local taxes.	205
(F)(1) In the manner provided by and subject to the	206
applicable provisions of section 3345.12 of the Revised Code,	207
any state university or college may issue obligations and may	208
also issue notes in anticipation of such obligations, pursuant	209
to a resolution of its board of trustees or other governing body	210
for the purpose of providing funds to do both of the following:	211
(a) Pay claims expenses, whether by way of a reserve or	212
otherwise;	213
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(b) Pay the state university or college's portion of the	214
cost of establishing and maintaining a joint self-insurance pool	215
or to provide for the reserve in a special fund authorized by	216
division (C)(1) of this section.	217
(2) Sections 9.98 to 9.983 of the Revised Code apply to	218
bonds or notes authorized under this section.	219
binds of notes authorized ander this section.	219
(G)(1) A joint self-insurance pool, in addition to its	220
powers to provide self-insurance against any and all liabilities	221
under this chapter, may also include any one or more of the	222
following forms of property or casualty self-insurance for the	223

purpose of covering any other liabilities or risks of the	224
members of the pool:	225
<u>(a) Public general liability, professional liability, or</u>	226
employee liability;	227
(b) Individual or fleet motor vehicle or automobile	228
liability and protection against other liability and loss	229
associated with the ownership, maintenance, and use of motor	230
vehicles;	231
(c) Aircraft liability and protection against other	232
liability and loss associated with the ownership, maintenance,	233
and use of aircraft;	234
(d) Fidelity, surety, and guarantee;	235
(e) Loss or damage to property and loss of use and	236
occupancy of property by fire, lightning, hail, tempest, flood,	237
earthquake, or snow, explosion, accident, or other risk;	238
(f) Marine, inland transportation and navigation, boiler,	239
containers, pipes, engines, flywheels, elevators, and machinery;	240
(g) Environmental impairment;	241
(h) Loss or damage by any hazard upon any other risk to	242
which state universities or colleges are subject, which is not	243
prohibited by statute or at common law from being the subject of	244
casualty or property insurance.	245
(2) A joint self-insurance pool is not an insurance	246
company. Its operation does not constitute doing an insurance	247
business and is not subject to the insurance laws of this state.	248
(H) A public official or employee of a state university or	249
college who is or becomes a member of the governing body of a	250

joint self-insurance pool in which the state university or	251
college participates is not in violation of any of the following	252
as a result of the state university or college entering into the	253
written agreement to participate in the pool or into any	254
contract with the pool:	255
(1) Division (D) or (E) of section 102.03 of the Revised	256
Code;	257
(2) Division (C) of section 102.04 of the Revised Code;	258
(3) Section 2921.42 of the Revised Code.	259
(I) This section shall not be construed to affect the	260
ability of any state university or college to self-insure under	261
the authority conferred by any other section of the Revised	262
Code.	263
(J) The establishment or participation in a joint self-	264
insurance pool under this section shall not constitute a waiver_	265
of any immunity or defense available to the member state	266
university or college or to any covered entity.	267
(K)(1) Both of the following shall be determined in the	268
<u>court of claims pursuant to section 2743.02 of the Revised Code:</u>	269
court of claims pursuant to section 2743.02 of the Nevised code.	205
(a) Any claims or litigation relating to the	270
administration of a joint self-insurance pool created pursuant	271
to this section, including any immunities or defenses;	272
(b) Any claims relating to the scope of or denial of	273
coverage under that pool or its administration.	274
(2) The pool administrator described in division (C)(2) of	275
this section and its employees, while in the course of	276
administering a joint-insurance pool under this section, shall:	277

(a) Be deemed to be an instrumentality of the state for	278
the purposes of Chapter 2743. of the Revised Code;	279
(b) Be deemed to be performing a public duty, as defined	280
in section 2743.01 of the Revised Code; and	281
(c) Have the defenses to, and immunities from, civil	282
liability provided in section 2743.02 of the Revised Code.	283
Section 2. That existing sections 149.431 and 3345.202 of	284
the Revised Code are hereby repealed.	285