

**§ 115D-58.12. Liability insurance; tort actions against boards of trustees.**

(a) Boards of trustees may purchase liability insurance only from companies duly licensed and authorized to sell insurance in this State or from other qualified companies as determined by the Department of Insurance. Each contract of insurance must, by its terms, adequately insure the board of trustees against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligence or torts of the agents and employees of such board of trustees or institution when acting within the scope of their authority or the course of their employment. Any company which enters into such a contract of insurance with a board of trustees by such act waives any defense based upon the governmental immunity of such board.

(b) Any person sustaining damages, or in case of death, his personal representative, may sue a board of trustees insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in a county of the administrative area of the institution against which the suit is brought; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal, or discretionary function of such board of trustees, to the extent that such board is insured as provided by this section.

(c) Nothing in this section shall be construed to deprive any board of trustees of any defense whatsoever to any action for damages, or to restrict, limit, or otherwise affect any such defense; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to the board of trustees or commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by law.

(d) No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Liability shall not attach unless the plaintiff shall waive the right to have all issues of law and fact relating to insurance in such action determined by a jury, and such issues shall be heard and determined by the judge without resort to a jury, and the jury shall be absent during any motions, arguments, testimony, or announcements of findings of fact or conclusions of law with respect thereto, unless the defendant shall request jury trial thereon.

(e) The board of trustees of all institutions in this Chapter is authorized to pay as a necessary expense the lawful premiums of liability insurance provided in this section. (1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 1; 1985, c. 489.)