

237.13 Foster home insurance fund.

1. For the purposes of this section, "*foster home*" means either of the following:

a. An individual, as defined in section 237.1, subsection 7, who is licensed to provide child foster care and shall also be known as a "*licensed foster home*".

b. A guardian appointed on a voluntary petition pursuant to section 232.178, or a voluntary petition of a ward pursuant to section 633.557, or a conservator appointed on a voluntary petition of a ward pursuant to section 633.572, provided the ward has an income that does not exceed one hundred fifty percent of the current federal office of management and budget poverty guidelines and who does not have resources in excess of the criteria for resources under the federal supplemental security income program. However, the ward's ownership of one residence and one vehicle shall not be considered in determining resources.

2. The foster home insurance fund is created within the office of the treasurer of state to be administered by the department of human services. The fund consists of all moneys appropriated by the general assembly for deposit in the fund. The general fund of the state is not liable for claims presented against the fund. The department may contract with another state agency, or private organization, to perform the administrative functions necessary to carry out this section.

3. Except as provided in this section, the fund shall pay, on behalf of each licensed foster home, any valid and approved claim of foster children, their parents, guardians, or guardians ad litem, for damages arising from the foster care relationship and the provision of foster care services. The fund shall also compensate licensed foster homes for property damage, at replacement cost, or for bodily injury, as a result of the activities of the foster child, and reasonable and necessary legal fees incurred in defense of civil claims filed pursuant to subsection 7, paragraph "d", and any judgments awarded as a result of such claims.

4. The fund is not liable for any of the following:

a. A loss arising out of a foster parent's dishonest, fraudulent, criminal, or intentional act.

b. An occurrence which does not arise from the foster care relationship.

c. A bodily injury arising out of the operation or use of a motor vehicle, aircraft, recreational vehicle, or watercraft owned, operated by, rented, leased, or loaned to, a foster parent.

d. A loss arising out of a foster parent's lascivious acts, indecent contact, or sexual activity, as defined in chapters 702 and 709. Notwithstanding any definition to the contrary in chapters 702 and 709, for purposes of this subsection a child is a person under the age of eighteen.

e. A loss or damage arising out of occurrences prior to July 1, 1988.

f. Exemplary or punitive damages.

g. A loss or damage arising out of conduct which is in violation of administrative rules.

5. Except as provided in this section, the fund shall pay, on behalf of a guardian or conservator, the reasonable and necessary legal costs incurred in defending against a suit filed by a ward or the ward's representative and the damages awarded as a result of the suit, so long as it is determined that the guardian or conservator acted in good faith in the performance of the guardian's or conservator's duties. A payment shall not be made if there is evidence of intentional misconduct or a knowing violation of the law by the guardian or conservator, including, but not limited to, failure to carry out the applicable responsibilities required under chapter 232 and sections 633.633 through 633.635 and 633.641 through 633.650.

6. The fund is not liable for the first one hundred dollars for all claims arising out of one or more occurrences during a fiscal year related to a single foster home. The fund is not liable for damages in excess of three hundred thousand dollars for all claims arising out of one or more occurrences during a fiscal year related to a single home.

7. Procedures for claims against the fund:

a. A claim against the fund shall be filed in accordance with the claims procedures and on forms prescribed by the department of human services.

b. A claim shall be submitted to the fund within the applicable period of limitations for the appropriate civil action underlying the claim. If a claim is not submitted to the fund within the applicable time, the claim shall be rejected.

c. The department shall issue a decision on a claim within one hundred eighty days of its presentation.

d. A person shall not bring a civil action against a foster parent for which the fund may be liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid in part, and damages in excess of the payment are claimed.

8. All processing of decisions and reports, payment of claims, and other administrative actions relating to the fund shall be conducted by the department of human services.

9. The department of human services shall adopt rules, pursuant to chapter 17A, to carry out the provisions of this section.

88 Acts, ch 1223, §1; 89 Acts, ch 178, §4; 93 Acts, ch 172, §41; 99 Acts, ch 55, §15; 2001 Acts, ch 135, §1,