

REFERENCE TITLE: risk management; state agency liability

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1498

Introduced by
Senator Leach

AN ACT

AMENDING SECTION 12-820.02, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2016, CHAPTER 178, SECTION 1; AMENDING SECTION 12-820.02, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 390, SECTION 3; AMENDING SECTIONS 12-820.03, 41-621, 41-621.01, 41-622 AND 41-622.01, ARIZONA REVISED STATUTES; RELATING TO RISK MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-820.02, Arizona Revised Statutes, as amended
3 by Laws 2016, chapter 178, section 1, is amended to read:

4 12-820.02. Qualified immunity

5 A. Unless a public employee acting within the scope of the public
6 employee's employment intended to cause injury or was grossly negligent,
7 neither a public entity nor a public employee is liable for:

8 1. The failure to make an arrest or the failure to retain an
9 arrested person in custody.

10 2. An injury caused by an escaping or escaped prisoner or a youth
11 committed to the department of juvenile corrections.

12 3. An injury resulting from the probation, community supervision or
13 discharge of a prisoner or a youth committed to the department of juvenile
14 corrections, from the terms and conditions of the prisoner's or youth's
15 probation or community supervision or from the revocation of the
16 prisoner's or youth's probation, community supervision or conditional
17 release under the psychiatric security review board.

18 4. An injury caused by a prisoner to any other prisoner or an
19 injury caused by a youth committed to the department of juvenile
20 corrections to any other committed youth.

21 5. The issuance of or failure to revoke or suspend any permit,
22 license, certificate, approval, order or similar authorization for which
23 absolute immunity is not provided pursuant to section 12-820.01.

24 6. The failure to discover violations of any provision of law when
25 inspections are done of property other than property owned by the public
26 entity in question.

27 7. An injury to the driver of a motor vehicle that is attributable
28 to the violation by the driver of section 28-693, 28-1381 or 28-1382.

29 8. The failure to prevent the sale or transfer of a handgun to a
30 person whose receipt or possession of the handgun is unlawful under any
31 federal law or any law of this state.

32 9. Preventing the sale or transfer of a handgun to a person who may
33 lawfully receive or possess a handgun.

34 10. The failure to detain a juvenile taken into temporary custody or
35 arrested for a criminal offense or delinquent or incorrigible act in the
36 appropriate detention facility, jail or lockup described in section 8-305.

37 11. An injury caused by a peace officer if the injury was caused by
38 any act or omission while rendering emergency care at the scene of an
39 emergency occurrence.

40 12. AN INJURY RESULTING FROM THE INVESTIGATION, THE FAILURE TO
41 INVESTIGATE OR THE LACK OF INVESTIGATION REPORTS OR EVIDENCE OF ABUSE OR
42 NEGLECT OF CHILDREN OR VULNERABLE ADULTS.

43 13. AN INJURY RESULTING FROM THE CARE THAT IS PROVIDED OR WILL BE
44 PROVIDED BY THIS STATE AND ITS DEPARTMENTS, AGENCIES, BOARDS OR
45 COMMISSIONS TO AN INDIVIDUAL PARTICIPATING IN A CUSTODIAL CARE PROGRAM,

1 INCLUDING FOSTER CARE, A PROGRAM FOR PERSONS WITH DEVELOPMENTAL
2 DISABILITIES, AN INDEPENDENT LIVING PROGRAM PURSUANT TO SECTION 8-521 AND
3 A RESPITE-SITTER SERVICE PROGRAM.

4 14. AN INJURY RESULTING FROM ACTS OR OMISSIONS INVOLVING THE
5 CONSTRUCTION, IMPROVEMENT, MAINTENANCE OR OPERATION OF TRANSPORTATION
6 FACILITIES, ROADS, STREETS, BRIDGES OR RIGHTS-OF-WAY.

7 B. The qualified immunity provided in this section applies to a
8 public entity or public employee if the injury or damage was caused by a
9 contractor's employee or a contractor of a public entity acting within the
10 scope of the contract. The qualified immunity provided in this section
11 does not apply to the contractor or the contractor's employee.

12 Sec. 2. Section 12-820.02, Arizona Revised Statutes, as amended by
13 Laws 2021, chapter 390, section 3, is amended to read:

14 12-820.02. Qualified immunity

15 A. Unless a public employee acting within the scope of the public
16 employee's employment intended to cause injury or was grossly negligent,
17 neither a public entity nor a public employee is liable for:

18 1. The failure to make an arrest or the failure to retain an
19 arrested person in custody.

20 2. An injury caused by an escaping or escaped prisoner or a youth
21 committed to the department of juvenile corrections.

22 3. An injury resulting from the probation, community supervision or
23 discharge of a prisoner or a youth committed to the department of juvenile
24 corrections, from the terms and conditions of the prisoner's or youth's
25 probation or community supervision or from the revocation of the
26 prisoner's or youth's probation, community supervision or conditional
27 release under the jurisdiction of the superior court.

28 4. An injury caused by a prisoner to any other prisoner or an
29 injury caused by a youth committed to the department of juvenile
30 corrections to any other committed youth.

31 5. The issuance of or failure to revoke or suspend any permit,
32 license, certificate, approval, order or similar authorization for which
33 absolute immunity is not provided pursuant to section 12-820.01.

34 6. The failure to discover violations of any provision of law when
35 inspections are done of property other than property owned by the public
36 entity in question.

37 7. An injury to the driver of a motor vehicle that is attributable
38 to the violation by the driver of section 28-693, 28-1381 or 28-1382.

39 8. The failure to prevent the sale or transfer of a handgun to a
40 person whose receipt or possession of the handgun is unlawful under any
41 federal law or any law of this state.

42 9. Preventing the sale or transfer of a handgun to a person who may
43 lawfully receive or possess a handgun.

1 10. The failure to detain a juvenile taken into temporary custody
2 or arrested for a criminal offense or delinquent or incorrigible act in
3 the appropriate detention facility, jail or lockup described in section
4 8-305.

5 11. An injury caused by a peace officer if the injury was caused by
6 any act or omission while rendering emergency care at the scene of an
7 emergency occurrence.

8 12. AN INJURY RESULTING FROM THE INVESTIGATION, THE FAILURE TO
9 INVESTIGATE OR THE LACK OF INVESTIGATION REPORTS OR EVIDENCE OF ABUSE OR
10 NEGLECT OF CHILDREN OR VULNERABLE ADULTS.

11 13. AN INJURY RESULTING FROM THE CARE THAT IS PROVIDED OR WILL BE
12 PROVIDED BY THIS STATE AND ITS DEPARTMENTS, AGENCIES, BOARDS OR
13 COMMISSIONS TO AN INDIVIDUAL PARTICIPATING IN A CUSTODIAL CARE PROGRAM,
14 INCLUDING FOSTER CARE, A PROGRAM FOR PERSONS WITH DEVELOPMENTAL
15 DISABILITIES, AN INDEPENDENT LIVING PROGRAM PURSUANT TO SECTION 8-521 AND
16 A RESPITE-SITTER SERVICE PROGRAM.

17 14. AN INJURY RESULTING FROM ACTS OR OMISSIONS INVOLVING THE
18 CONSTRUCTION, IMPROVEMENT, MAINTENANCE OR OPERATION OF TRANSPORTATION
19 FACILITIES, ROADS, STREETS, BRIDGES OR RIGHTS-OF-WAY.

20 B. The qualified immunity provided in this section applies to a
21 public entity or public employee if the injury or damage was caused by a
22 contractor's employee or a contractor of a public entity acting within the
23 scope of the contract. The qualified immunity provided in this section
24 does not apply to the contractor or the contractor's employee.

25 Sec. 3. Section 12-820.03, Arizona Revised Statutes, is amended to
26 read:

27 12-820.03. Affirmative defense; resolution by trial

28 A. A public entity or a public employee is not liable for an injury
29 arising out of a plan or design for construction or maintenance of or
30 improvement to transportation facilities, including highways, roads,
31 streets, bridges or rights-of-way, if the plan or design is prepared in
32 conformance with generally accepted engineering or design standards in
33 effect at the time of the preparation of the plan or design and the public
34 entity or public employee gives to the public a reasonably adequate
35 warning of any unreasonably dangerous ~~hazards which would allow the public~~
36 ~~to take suitable precautions~~ **CONDITION.**

37 B. If a genuine issue of material fact exists as to whether the
38 public entity or public employee has met the requirements of subsection A
39 of this section, the issue shall be resolved by a trial before and
40 separate and apart from a trial on damages.

1 Sec. 4. Section 41-621, Arizona Revised Statutes, is amended to
2 read:

3 41-621. Purchase of insurance; coverage; limitations;
4 exclusions

5 A. The department of administration shall obtain insurance against
6 loss, to the extent it is determined necessary and in the best interests
7 of this state as provided in subsection ~~F~~ G of this section, on the
8 following:

9 1. All state-owned buildings, including those of the universities,
10 excluding buildings of community colleges, whether financed in whole or in
11 part by state monies or buildings in which the state has an insurable
12 interest as determined by the department of administration.

13 2. Contents in any buildings owned, leased or rented, in whole or
14 in part, by or to this state, excluding buildings of community colleges,
15 and reported to the department of administration.

16 3. This state and its departments, agencies, boards and commissions
17 and all officers, ~~agents~~ and employees thereof and such others as may be
18 necessary to accomplish the functions or business of the state and its
19 departments, agencies, boards and commissions against liability for acts
20 or omissions of any nature while acting in authorized governmental or
21 proprietary capacities and in the course and scope of employment or
22 authorization except as prescribed by this chapter.

23 4. All personal property reported to the department of
24 administration, including vehicles and aircraft owned by the state and its
25 departments, agencies, boards and commissions and all nonowned personal
26 property that is under the clear responsibility of this state because of
27 written leases or other written agreements.

28 5. This state and its departments, agencies, boards and commissions
29 against casualty, use and occupancy and liability losses of every nature
30 except as prescribed by this chapter.

31 6. Workers' compensation and employers' liability insurance.

32 7. Design and construction of buildings, roads, environmental
33 remediations and other construction projects.

34 8. Other exposures to loss where insurance may be required to
35 protect this state and its departments, agencies, boards and commissions
36 and all officers, ~~agents~~ and employees acting in the course and scope of
37 employment or authorization except as prescribed by this chapter.

38 B. To the extent it is determined necessary and in the best
39 interests of this state, the department of administration shall obtain
40 insurance or provide for state self-insurance against property damage
41 caused by clients and liability coverage resulting from the direct or
42 incidental care of clients participating in programs of this state and its
43 departments, agencies, boards or commissions relating to custodial care.
44 The insurable programs shall include foster care, programs for persons
45 with developmental disabilities, an independent living program pursuant to

1 section 8-521 and respite-sitter service programs. The department shall
2 obtain insurance or provide for state self-insurance pursuant to this
3 subsection to protect the clients participating in these programs and
4 individual providers of these program services on behalf of this state and
5 its departments, agencies, boards or commissions. STATE SELF-INSURANCE
6 CLAIMS OR OTHER INSURANCE CLAIMS THAT ARE PROVIDED OR OBTAINED PURSUANT TO
7 THIS SUBSECTION MAY NOT BE MORE THAN \$1,000,000 PER CLAIM, INCLUDING
8 RELATED CLAIMS, AND \$2,000,000 IN THE AGGREGATE. THE LIMITS MAY BE
9 ADJUSTED PURSUANT TO RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION.
10 INSURANCE AND STATE SELF-INSURANCE DOES NOT APPLY TO PROVIDERS WHO ARE
11 CONTRACTUALLY REQUIRED TO INDEMNIFY THIS STATE OR A STATE DEPARTMENT OR
12 AGENCY FOR SOME OR ALL OF THE LIABILITY OF THIS STATE OR A DEPARTMENT OR
13 AGENCY OF THIS STATE. The insurance provided under this subsection does
14 not include medical or workers' compensation coverage for providers. The
15 department may include in its annual budget request pursuant to section
16 41-622, subsection D a charge for the insurance or self-insurance provided
17 in this subsection. To assist in carrying out this subsection, the
18 department shall establish a seven-member advisory board in accordance
19 with the following provisions:

20 1. The board shall consist of three members appointed by the
21 director of the department of administration, at least one of whom shall
22 be a foster parent, one member appointed by the director of the department
23 of economic security, one member appointed by the director of the
24 department of child safety, one member appointed by the director of the
25 state department of corrections, and one member appointed by the
26 administrative director of the courts.

27 2. The board shall elect a chairman from among its members.

28 3. The board shall hold at least two meetings a year or shall meet
29 at the call of the chairman.

30 4. Board members shall serve for three-year terms.

31 5. Board members are not eligible to receive compensation but are
32 eligible for reimbursement of expenses pursuant to title 38, chapter 4,
33 article 2.

34 6. The board shall provide advice to the department regarding
35 coverage and administration of this subsection and shall assist the
36 department in coordinating its activities pursuant to this subsection with
37 state departments, agencies, boards and commissions.

38 C. TO THE EXTENT IT IS DETERMINED NECESSARY AND IN THE BEST
39 INTERESTS OF THIS STATE, THE DEPARTMENT OF ADMINISTRATION MAY OBTAIN
40 INSURANCE OR PROVIDE FOR STATE SELF-INSURANCE AGAINST LOSSES FOR ANY
41 AGENTS OF THIS STATE OR ITS DEPARTMENTS, AGENCIES, BOARDS OR COMMISSIONS
42 THAT ARE NOT INSURED PURSUANT TO SUBSECTION A OF THIS SECTION. THE
43 COVERAGE SHALL BE LIMITED TO LIABILITY FOR ACTS OR OMISSIONS WHILE ACTING
44 IN THE COURSE AND SCOPE OF EMPLOYMENT OR AUTHORIZATION BY THIS STATE OR
45 ITS DEPARTMENTS, AGENCIES, BOARDS OR COMMISSIONS AND SUBJECT TO ANY OTHER

1 TERMS AND CONDITIONS THAT THE DEPARTMENT OF ADMINISTRATION DETERMINES ARE
2 IN THE BEST INTERESTS OF THIS STATE.

3 ~~C.~~ D. The department of administration may obtain insurance
4 against loss, to the extent it is determined necessary and in the best
5 interests of this state as provided in subsection ~~F~~ G of this section for
6 the professional liability of individual physicians and psychiatrists who
7 provide services under a contract with the state department of
8 corrections. Coverage is limited to acts and omissions committed inside a
9 state department of corrections facility while in the performance of the
10 contract and to individual physicians and psychiatrists who demonstrate to
11 the satisfaction of the state department of corrections that they cannot
12 otherwise obtain professional liability coverage for the services required
13 by the contract. The director of the department of administration may
14 impose on the state department of corrections a deductible for each loss
15 that arises out of a professional liability claim pursuant to this
16 subsection. Any changes in deductible amounts established by the director
17 shall be subject to review by the joint legislative budget committee.

18 ~~D.~~ E. The department of administration may obtain property,
19 liability, disability or workers' compensation insurance, self-insure or
20 develop risk retention pools to provide for payment of property loss or
21 casualty claims or disability insurance claims against contractors of this
22 state with the approval of the joint legislative budget committee. With
23 respect to insurance, self-insurance or risk retention pools for
24 contractors licensed and contracted to do work for this state, the
25 coverage afforded applies with respect to the conduct of the business
26 entity of that contractor. The pool is available to all contractors
27 regardless of the amount that the state-contracted work bears in relation
28 to the amount of nonstate contracted work. The contractor shall be
29 terminated from the pool if the contractor ceases to be a state
30 contractor.

31 ~~E.~~ F. The department of administration may determine, in the best
32 interests of this state, that state self-insurance is necessary or
33 desirable and, if that decision is made, shall provide for state
34 self-insurance for losses arising out of state property, liability or
35 workers' compensation claims prescribed by ~~subsection~~ SUBSECTIONS A, C, D
36 AND E of this section. If the department of administration provides state
37 self-insurance AS PRESCRIBED IN THIS SECTION, such coverage shall be
38 excess over any other valid and collectible insurance, NOTWITHSTANDING ANY
39 OTHER CLAUSE PROVIDED IN THE POLICY OF THE OTHER VALID AND COLLECTIBLE
40 INSURANCE, IF STATE SELF-INSURANCE AND ANY OTHER VALID AND COLLECTIBLE
41 INSURANCE ARE DETERMINED TO BE PRIMARY INSURANCE, THE DEPARTMENT OF
42 ADMINISTRATION AND OTHER INSURERS SHALL CONTRIBUTE EQUAL AMOUNTS UNTIL THE
43 APPLICABLE LIMIT OF INSURANCE HAS BEEN PAID OR NONE OF THE LOSS REMAINS,
44 WHICHEVER OCCURS SOONER. The director of the department of administration
45 may impose on state departments, agencies, boards and commissions a

1 deductible for each loss that arises out of a property, liability or
2 workers' compensation loss pursuant to this subsection. Any changes in
3 deductible amounts established by the director shall be subject to review
4 by the joint legislative budget committee.

5 ~~F.~~ G. In carrying out this chapter, the department of
6 administration shall establish and provide the state with some or all of
7 the necessary risk management services, or shall contract for risk
8 management services pursuant to chapter 23 of this title, as the director
9 of the department of administration deems necessary in the best interest
10 of the state, and in addition to other specifications of such coverage as
11 deemed necessary, may determine self-insurance to be established. Chapter
12 23 of this title does not apply to the department of administration's
13 procurement of insurance to cover losses arising out of state property or
14 liability claims prescribed in ~~subsections A and D of~~ this section or
15 excess loss insurance for the state's workers' compensation liability for
16 individual or aggregate claims, or both, in such amounts and at such
17 primary retention levels as the department of administration deems in the
18 best interest of this state. In purchasing insurance to cover losses
19 arising out of ~~state~~ property or liability claims prescribed by ~~subsection~~
20 ~~A of~~ this section, the department of administration is not subject to
21 title 20, chapter 2, article 5.

22 ~~G.~~ H. A successful bidder for risk management services pursuant to
23 this section is not entitled to receive directly or indirectly any sales
24 commission, contingent commission, excess profit commission, or other
25 commissions, or anything of value, as payment for the risk management
26 services except those amounts received directly from this state as payment
27 for the risk management services.

28 ~~H.~~ I. The department of administration shall pay for purchased
29 risk management services, premiums for insurance on state property and
30 state liability and workers' compensation pursuant to this chapter.

31 ~~I.~~ J. A state officer, agent or employee acting in good faith,
32 without wanton disregard of statutory duties and under the authority of an
33 enactment that is subsequently declared to be unconstitutional, invalid or
34 inapplicable, is not personally liable for an injury or damage caused
35 thereby except to the extent that the officer, agent or employee would
36 have been personally liable had the enactment been constitutional, valid
37 and applicable.

38 ~~J.~~ K. A state officer, agent or employee, except as otherwise
39 provided by statute, is not personally liable for an injury or damage
40 resulting from an act or omission in a public official capacity where the
41 act or omission was the result of the exercise of the discretion vested in
42 the officer, agent or employee and if the exercise of the discretion was
43 done in good faith without wanton disregard of statutory duties.

1 ~~K.~~ L. This state and its departments, agencies, boards and
2 commissions are immune from liability for losses arising out of a judgment
3 for wilful and wanton conduct resulting in punitive or exemplary damages.

4 ~~L.~~ M. The following exclusions shall apply to subsections A, B and
5 ~~E-F~~ F of this section:

6 1. Losses against ~~this state and its departments, agencies, boards~~
7 ~~and commissions that arise out of and are directly attributable to an act~~
8 ~~or omission determined by a court to be a felony by~~ AND LIABILITIES OF a
9 person who is provided INSURANCE coverage pursuant to this ~~article unless~~
10 ~~the state knew of the person's propensity for that action, except those~~
11 ~~acts arising out of the operation or use of a motor vehicle~~ CHAPTER THAT
12 ARISE OUT OF AN ACT OR OMISSION BY THE PERSON THAT A COURT DETERMINES TO
13 BE A FELONY.

14 2. Losses AND LIABILITIES arising out of contractual breaches.

15 3. LOSSES AGAINST AND LIABILITIES OF A PERSON WHO IS INSURED
16 PURSUANT TO THIS CHAPTER THAT ARISE OUT OF SEXUAL ABUSE, SEXUAL ASSAULT,
17 MOLESTATION OR PHYSICAL ABUSE BY THE PERSON OR BY ANYONE ACTING IN
18 CONCERT, AS DEFINED IN SECTION 12-2506, WITH THE PERSON.

19 4. INJURY OR DAMAGES EXPECTED OR INTENDED FROM THE STANDPOINT OF
20 THE PERSON INSURED PURSUANT TO THIS CHAPTER. THIS EXCLUSION DOES NOT
21 APPLY TO LAW ENFORCEMENT ACTIVITIES OR OPERATIONS, CORRECTIONAL ACTIVITIES
22 OR OPERATIONS OR INJURY OR DAMAGES RESULTING FROM THE USE OF REASONABLE
23 FORCE TO PROTECT AN INDIVIDUAL OR PROPERTY.

24 ~~M.~~ N. If self-insurance coverage is determined to exist, the
25 attorney general, with funds provided by the department of administration,
26 shall provide for the defense, either through the attorney general's
27 office or by appointment of outside legal counsel, of this state and its
28 departments, agencies, boards and commissions and all officers, agents and
29 employees thereof and such others as are insured by the department of
30 administration for or on account of their acts or omissions covered
31 pursuant to this chapter. All state departments, agencies, boards and
32 commissions, all officers, agents and employees thereof and such others as
33 are insured by the department of administration shall cooperate fully with
34 the attorney general and department of administration in the defense of
35 claims arising pursuant to this chapter.

36 ~~N.~~ O. A claim for liability damages made pursuant to this chapter
37 may be settled and payment made up to the amount of ~~\$25,000~~ \$200,000 or
38 such higher limit as may be established by the joint legislative budget
39 committee with the approval of the director of the department of
40 administration. A claim over the amount of ~~\$25,000~~ \$200,000 up to ~~\$50,000~~
41 \$500,000 or such higher limit as may be established by the joint
42 legislative budget committee may be settled and payment made with the
43 approval of the director of the department of administration and the
44 attorney general. Any claim over the amount of ~~\$50,000~~ \$500,000 or such
45 higher limit as may be established by the joint legislative budget

1 committee may be settled and payment made with the approval of the
 2 director of the department of administration, the attorney general and the
 3 joint legislative budget committee. If it is in the best interest of this
 4 state, the joint legislative budget committee may establish higher
 5 settlement limits. Any settlements involving amounts in excess of ~~\$50,000~~
 6 \$500,000 or such higher limit as may be established by the joint
 7 legislative budget committee shall be approved by the department of
 8 administration, the attorney general and the joint legislative budget
 9 committee pursuant to the authority granted. The settlement of liability
 10 claims shall be solely the authority of the department of administration,
 11 the attorney general and the joint legislative budget committee. No state
 12 department, agency, board or commission or any officer, agent or employee
 13 of this state may voluntarily make any payment, assume any obligation,
 14 incur any expense or maintain the individual right of consent for
 15 liability claims made pursuant to this chapter except as provided by this
 16 section.

17 ~~P.~~ P. Neither the authority provided by this section to insure,
 18 nor the exercise of such authority, shall:

19 1. Impose any liability on this state or the departments, agencies,
 20 boards and commissions or any officers, agents and employees of this state
 21 unless such liability otherwise exists.

22 2. Impair any defense this state or the departments, agencies,
 23 boards and commissions or any officers, agents and employees of this state
 24 otherwise may have.

25 ~~P.~~ Q. EXCEPT AS OTHERWISE PRESCRIBED BY THIS CHAPTER AND SUBJECT
 26 TO ANY LIMIT OF STATE SELF-INSURANCE AND THE TERMS OF ANY INSURANCE
 27 OBTAINED BY THE DEPARTMENT OF ADMINISTRATION, the department of
 28 administration shall pay, on behalf of any state officer, ~~agent or~~
 29 employee OR PERSON WHO IS PROVIDED STATE SELF-INSURANCE PURSUANT TO THIS
 30 SECTION, any damages, excluding punitive damages, for which the ~~officer,~~
 31 ~~agent or employee~~ INDIVIDUAL becomes legally responsible if the acts or
 32 omissions resulting in liability were within the officer's, agent's or
 33 employee's course and scope of employment. The department of
 34 administration may pay for all damages however designated that the
 35 officer, agent or employee becomes legally responsible for if the acts or
 36 omissions resulting in liability are determined by the director of the
 37 department of administration to be within the person's course and scope of
 38 employment.

39 ~~R.~~ R. The department of administration shall adopt such rules as
 40 are deemed necessary to carry out, implement and limit this chapter.

41 ~~R.~~ S. For the purposes of determining whether a state officer,
 42 agent or employee is entitled to coverage under this chapter, "within the
 43 course and scope of employment or authorization" means:

44 1. The acts or omissions that the state officer, agent or employee
 45 is employed or authorized to perform.

1 2. The acts or omissions of the state officer, agent or employee
2 occur substantially within the authorized time and space limit.

3 3. The acts or omissions are activated at least in part by a
4 purpose to serve this state or its departments, agencies, boards or
5 commissions.

6 ~~S.~~ T. To the extent it is determined necessary and in the best
7 interest of this state, the department of administration may obtain design
8 and construction insurance or provide for self-insurance against property
9 damage caused by this state, its departments, agencies, boards and
10 commissions and all officers and employees of this state in connection
11 with the construction of public works projects. Workers' compensation
12 liability insurance may be purchased to cover both general contractors and
13 subcontractors doing work on a specific contracted worksite. The
14 department may include in its annual budget request, pursuant to section
15 41-622, subsection D, the cost of the insurance purchased or provided. In
16 connection with the construction of public works projects, the department
17 of administration may also use an owner-controlled or wrap-up insurance
18 program if all of the following conditions are met:

19 1. The total cost of the project is over \$50,000,000.

20 2. The program maintains completed operations coverage for a term
21 during which coverage is reasonably commercially available as determined
22 by the director of the department of insurance and financial institutions,
23 but in no event for less than three years.

24 3. Bid specifications clearly specify for all bidders the insurance
25 coverage provided under the program and the minimum safety requirements
26 that shall be met.

27 4. The program does not prohibit a contractor or subcontractor from
28 purchasing any additional insurance coverage that a contractor believes is
29 necessary for protection from any liability arising out of the contract.
30 The cost of the additional insurance shall not be passed through to this
31 state on a contract bid.

32 5. The program does not include surety insurance.

33 ~~T.~~ U. The state may purchase an owner-controlled or wrap-up policy
34 that has a deductible or self-insured retention as long as the deductible
35 or self-insured retention does not exceed \$1,000,000.

36 V. Notwithstanding any other statute the department of
37 administration may:

38 1. Limit the liability of a person who contracts to provide goods,
39 software or other services to this state.

40 2. Allow the person to disclaim incidental or consequential
41 damages.

42 3. Indemnify or hold harmless any party to the contract.

43 W. THE DEPARTMENT OF ADMINISTRATION MAY INTERVENE IN A LAWSUIT
44 AGAINST A PERSON INSURED PURSUANT TO THIS SECTION TO ASSERT A DEFENSE ON
45 BEHALF OF THE PERSON THAT THE CLAIMANT FAILED TO COMPLY WITH SECTION

1 12-821.01 OR THAT A PORTION OR ALL OF THE ACTION IS BARRED BY SECTION
2 12-821. THE DEPARTMENT IS NOT REQUIRED TO EXERCISE ITS RIGHT TO INTERVENE
3 TO CLAIM THAT A PORTION OR ALL OF AN INSURED PERSON'S LIABILITY IS NOT FOR
4 ACTS OR OMISSIONS FOR WHICH THE PERSON IS AFFORDED COVERAGE PURSUANT TO
5 THIS SECTION.

6 ~~§~~ X. For the purposes of subsections ~~§~~ T and ~~§~~ U of this
7 section:

8 1. "Owner-controlled or wrap-up insurance" means a series of
9 insurance policies issued to cover this state and all of the contractors,
10 subcontractors, architects and engineers on a specified contracted
11 worksite for purposes of general liability, property damage and workers'
12 compensation.

13 2. "Specific contracted worksite" means construction being
14 performed at one site or a series of contiguous sites separated only by a
15 street, roadway, waterway or railroad right-of-way, or along a continuous
16 system for the provision of water and power.

17 Sec. 5. Section 41-621.01, Arizona Revised Statutes, is amended to
18 read:

19 41-621.01. Contractors or subcontractors; pooling of
20 property, liability and workers' compensation
21 coverage; exemptions; board of trustees;
22 contract; termination; audit; insolvency

23 A. Pursuant to section 41-621, subsection ~~§~~ E and section
24 41-622.01 two or more contractors or subcontractors licensed to do work
25 for this state or any political subdivision of this state may with the
26 approval of the department of administration enter into contracts or
27 agreements pursuant to this section for the joint purchase of insurance,
28 to pool retention of their risks for property and liability losses and to
29 provide for the payment of the property loss or claim of liability made
30 against any member of the pool on a cooperative or contract basis with one
31 another or may jointly form a nonprofit corporation or enter into a trust
32 agreement to carry out this section in their behalf directly or by
33 contract with a private party, if the department of administration has
34 determined to sanction such a pool. Two or more contractors may also
35 enter into contracts or agreements pursuant to this section to establish a
36 workers' compensation pool to provide for the payment of workers'
37 compensation claims pursuant to title 23, chapter 6 on a cooperative or
38 contract basis with one another or may jointly form a nonprofit
39 corporation or enter into a trust agreement to carry out this section in
40 their behalf directly or by contract with a private party. A workers'
41 compensation pool established pursuant to this subsection may provide
42 coverage for workers' compensation, employers' liability and occupational
43 disease claims. A workers' compensation pool is subject to approval as a
44 self-insurer by the industrial commission of Arizona pursuant to section
45 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6

1 and rules adopted pursuant to that chapter in addition to the requirements
2 of this section. The industrial commission of Arizona, by rule,
3 resolution or order, may adopt requirements for the administration of a
4 workers' compensation pool under this subsection, including separation or
5 commingling of funds, accounting, auditing, reporting, actuarial standards
6 and procedures.

7 B. In addition to other authority granted pursuant to this title,
8 two or more contractors or subcontractors licensed to do work for this
9 state or any political subdivision of this state may enter into contracts
10 or agreements for the joint purchase of life insurance, disability
11 insurance, accident insurance or health benefits plan insurance, to pool
12 retention of their risks of loss for life, disability, health or accident
13 claims made against any contractor or subcontractor member of the pool or
14 to jointly provide the health and medical services authorized in section
15 36-2907. Contractors and subcontractors may establish pools for the
16 purposes of this subsection by any of the following methods:

- 17 1. On a cooperative or contract basis.
- 18 2. By the formation of a nonprofit corporation.
- 19 3. By a contract or intergovernmental agreement with the Arizona
20 health care cost containment system administration.
- 21 4. By the execution of a trust agreement directly by the
22 contractors and subcontractors or by contracting with a third party.

23 C. Contractors or subcontractors of a political subdivision of this
24 state that is a member of a risk retention pool authorized under title 11
25 may obtain life insurance, disability insurance, accident insurance or
26 health benefits plan insurance coverage directly from that political
27 subdivision if coverage is available and as authorized by section
28 11-952.01, subsection C.

29 D. Section 10-11301 does not apply to nonprofit corporations formed
30 pursuant to this section.

31 E. Chapter 23 of this title does not apply to the procurement of
32 insurance or to the procurement of the services provided for in subsection
33 I, paragraph 8 of this section by any pool established pursuant to this
34 section.

35 F. Title 43 does not apply to any pool established pursuant to this
36 section. Any pool established pursuant to this section is exempt from
37 taxation under title 43.

38 G. Each pool shall be operated by a board of trustees consisting of
39 at least five members. The board of trustees of each group shall do all
40 of the following:

- 41 1. Establish terms and conditions of coverage within the pool
42 including exclusions of coverage.
- 43 2. Ensure that all claims are paid promptly.
- 44 3. Take all necessary precautions to safeguard the assets of the
45 group.

- 1 4. Maintain minutes of its meetings.
- 2 5. Designate an administrator to carry out the policies established
- 3 by the board of trustees and to provide day to day management of the group
- 4 and delineate in the written minutes of its meetings the areas of
- 5 authority it delegates to the administrator.
- 6 6. Notify the director of the department of insurance and financial
- 7 institutions of the existence of the pool and file a copy of the agreement
- 8 with the director and with the attorney general.
- 9 7. If the pool is a workers' compensation pool, file a copy of the
- 10 agreement with the director of the industrial commission of Arizona.
- 11 H. The board of trustees shall not:
- 12 1. Extend credit to individual members for payment of a premium
- 13 except pursuant to payment plans established by the board.
- 14 2. Borrow any monies from the group or in the name of the group
- 15 except in the ordinary course of business.
- 16 I. A contract or agreement made pursuant to subsection A of this
- 17 section shall contain the following:
- 18 1. A provision for a system or program of loss control.
- 19 2. A provision for termination of membership including either:
- 20 (a) Cancellation of individual members of the pool by the pool.
- 21 (b) Election by an individual member of the pool to terminate its
- 22 participation.
- 23 3. A provision requiring the pool to pay all claims for which each
- 24 member incurs liability during each member's period of membership.
- 25 4. A provision stating that each member is not relieved of its
- 26 liability incurred during the member's period of membership except through
- 27 the payment of losses by the pool or by the member.
- 28 5. A provision for the maintenance of claims reserves equal to
- 29 known incurred losses and an estimate of incurred but not reported claims.
- 30 6. A provision for a final accounting and settlement of the
- 31 obligations of or refunds to a terminating member to occur when all
- 32 incurred claims are concluded, settled or paid.
- 33 7. A provision that the pool may establish offices where necessary
- 34 in this state and employ necessary staff to carry out the purposes of the
- 35 pool.
- 36 8. A provision that the pool may retain legal counsel, actuaries,
- 37 auditors, engineers, private consultants and advisors.
- 38 9. A provision that the pool may make and alter bylaws and rules
- 39 pertaining to the exercise of its purpose and powers.
- 40 10. A provision that the pool may purchase, lease or rent real and
- 41 personal property it deems necessary.
- 42 11. A provision that the pool shall enter into a financial services
- 43 agreement with banks and that it may issue checks in its own name.

1 J. A pool or a terminating member shall provide at least ninety
2 days' written notice of the termination or cancellation. A workers'
3 compensation pool shall notify the industrial commission of Arizona of the
4 termination or cancellation of a member thirty days before the termination
5 or cancellation of the member.

6 K. The pool shall be audited annually at the expense of the pool by
7 a certified public accountant, with a copy of the report submitted to the
8 governing body or chief executive officer of each member of the pool and
9 to the director of the department of insurance and financial institutions.
10 The board of trustees of the pool shall obtain an appropriate actuarial
11 evaluation of the claim reserves of the pool including an estimate of the
12 incurred but not reported claims. The department of insurance and
13 financial institutions shall examine each contractor pool once every five
14 years. The director of the department of insurance and financial
15 institutions may examine a contractor pool sooner than five years from the
16 preceding examination if the director has reason to believe that the pool
17 is insolvent. The costs of any examination shall be paid by the pool
18 subject to the examination.

19 L. If, as a result of the annual audit or an examination by the
20 director of the department of insurance and financial institutions, it
21 appears that the assets of the pool are insufficient to enable the pool to
22 discharge its legal liabilities and other obligations, the director of the
23 department of insurance and financial institutions shall notify the
24 administrator and the board of trustees of the pool of the deficiency and
25 provide the director's list of recommendations to abate the deficiency,
26 including a recommendation not to add any new members until the deficiency
27 is abated. If the pool fails to comply with the recommendations within
28 sixty days after the date of the notice, the director shall notify the
29 chief executive officer or the governing bodies, if any, of the members of
30 the pool, the governor, the president of the senate and the speaker of the
31 house of representatives that the pool has failed to comply with the
32 recommendations of the director.

33 M. If a pool is determined to be insolvent or is otherwise found to
34 be unable to discharge its legal liabilities and other obligations, each
35 agreement or contract shall provide that the members of the pool shall be
36 assessed on a pro rata basis as calculated by the amount of each member's
37 annual contribution in order to satisfy the amount of deficiency. The
38 assessment shall not exceed the amount of each member's annual
39 contribution to the pool.

40 N. If a workers' compensation pool fails to comply with title 23,
41 chapter 6 or rules adopted pursuant to that chapter, the director of the
42 industrial commission of Arizona shall immediately notify the director of
43 the department of administration and the director of the department of
44 insurance and financial institutions.

1 Sec. 6. Section 41-622, Arizona Revised Statutes, is amended to
2 read:

3 41-622. Risk management revolving fund; construction
4 insurance fund; self-insured losses and
5 administrative costs; budget requests

6 A. ~~A~~ THE risk management revolving fund and ~~a~~ THE construction
7 insurance fund are established in the department of administration for the
8 purchase of insurance, risk management services including loss prevention
9 services, payment of self-insured losses pursuant to section 41-621,
10 subsections A, B, C, D, ~~and~~ E AND F and administrative costs necessary to
11 carry out risk management services prescribed by section 41-621. The
12 department of administration shall pay for claims processing costs,
13 including adjusting costs, legal defense costs and attorney fees, for any
14 portion of claims falling within state self-insurance coverage pursuant to
15 ~~the provisions of~~ this chapter.

16 B. The risk management revolving fund in the department of
17 administration shall exclude any property loss arising from damage due to
18 mechanical or electrical breakdown, ordinary wear and tear or
19 obsolescence, nonserviceability, mysterious disappearance or inventory
20 shortage. Mysterious disappearance ~~shall~~ DOES not ~~be construed to~~ include
21 a loss if there is a reasonable presumption of theft. The department of
22 administration, subject to chapter 23 of this title, may advance or
23 disburse monies to contractors who rebuild state property as a result of
24 self-insured losses or to persons who supply goods or services in
25 replacing self-insured losses. The department of administration shall pay
26 for claims processing costs, including adjusting costs, legal defense
27 costs and attorney fees, for any portion of claims falling within state
28 self-insurance coverage pursuant to ~~the provisions of~~ this chapter.

29 C. To qualify for payment for loss by theft or burglary of
30 state-owned personal property, an agency, department, board or commission
31 must show evidence of forcible entry or that threat of violence was used
32 in the taking of the property or there must be a reasonable presumption of
33 theft.

34 D. The department of administration shall present to the
35 legislature not later than September 1 of each year, in accordance with
36 ~~the provisions of~~ section 35-113, a budget request based on the actuarial
37 needs for liability losses, workers' compensation liability losses,
38 property losses and risk management administrative costs. The budget
39 request shall be broken down to reflect the amount of monies to be charged
40 to each of the state departments, agencies, boards and commissions and any
41 others insured under this chapter. Any state department, agency, board or
42 commission that has an amount for insurance included in its appropriation,
43 whether specifically stated or not, and any state department, agency,
44 board or commission or others insured under this chapter that receive
45 funds other than those appropriated shall be billed for the proportionate

1 share of the charges for insurance or self-insurance by the department of
2 administration. In collecting the agency billings for risk management
3 charges, the director of the department of administration may transfer the
4 entire amount of the billing for appropriated insurance from the agency
5 account into the fund designated in subsection A of this section at the
6 start of the fiscal year or in periodic payments during the fiscal year if
7 necessitated by cash flow restrictions. Those entities or persons insured
8 under ~~the provisions of~~ this chapter that are not state agencies,
9 departments, boards, commissions or employees or that do not receive
10 funding from state sources shall pay annually the amount required by risk
11 management to the risk management revolving fund or construction insurance
12 fund before the coverage continues for existing claims or begins for new
13 claims made. The construction insurance fund shall receive monies
14 necessary to pay the cost of purchasing insurance, providing
15 self-insurance or administering the fund as authorized by section 41-621,
16 subsection ~~S~~ T from each capital construction project budget at rates
17 established by the department of administration and reviewed by the joint
18 committee on capital review. These amounts shall be included in the
19 budget request. All monies received from all billings shall be deposited
20 in the funds as identified in subsection A of this section.

21 E. All monies recovered by the state pursuant to litigation,
22 recovery, salvage value of damaged property, proportionate share monies
23 from any other existing state funds, or otherwise, for damages relating to
24 either a liability, property or workers' compensation loss for which
25 monies from the risk management revolving fund or construction insurance
26 fund have been or will be paid shall be deposited in the respective fund.

27 F. If a revolving fund is projected to be exhausted while the
28 legislature is in session, a special appropriation may be requested by the
29 department of administration for monies to meet the needs of the funds.
30 If the funds are exhausted at a time when the legislature is not in
31 session, any final judgment shall accrue interest and shall be payable
32 ~~upon~~ ON appropriation in the next succeeding regular session of the
33 legislature. Interest on any judgment against this state paid for out of
34 the risk management revolving fund shall accrue at the average yield
35 offered by United States treasury bills during the course of the appeal
36 and shall be paid in accordance with this section. If the appeal is lost
37 by this state, the judgment amount plus interest at the rate prescribed in
38 this subsection shall be paid.

39 G. All monies deposited in the risk management revolving fund are
40 subject to annual legislative appropriation to the department of
41 administration for use pursuant to this section. Monies in the
42 construction insurance fund are continuously appropriated for the fund
43 purposes. The funds established by subsection A of this section are
44 exempt from the provisions of section 35-190 relating to lapsing of
45 appropriations.

1 H. A ~~ten thousand dollar~~ \$10,000 death benefit shall be paid from
2 the risk management revolving fund to the estate of a deceased volunteer,
3 who is registered as a volunteer by the agency, board or commission, or to
4 an employee who is not subject to ~~the provisions of~~ section 38-651.02,
5 ~~upon~~ ON proof of death while in the course and scope of duties as
6 prescribed in section 41-621, subsection ~~P~~ Q for any state agency, board
7 or commission.

8 Sec. 7. Section 41-622.01, Arizona Revised Statutes, is amended to
9 read:

10 41-622.01. Revolving fund for joint insurance purchase
11 retention pools

12 A. A permanent special risk revolving fund is established in the
13 department of administration for the purpose of administering joint
14 insurance purchase, self-insurance or pooled retention plans for
15 contractors of this state prescribed by section 41-621, subsection ~~E~~ E.
16 The fund shall be administered pursuant to section 41-621.01. Except if
17 otherwise provided by law, this state shall not appropriate any monies
18 from its general fund in the administration of pools within the special
19 risk revolving fund.

20 B. The monies in the revolving ~~funds~~ FUND may be invested pursuant
21 to section 35-313. Interest earnings on the revolving ~~funds~~ FUND shall be
22 credited to the respective pools within the revolving fund.

23 C. If the revolving fund is projected to be exhausted the board of
24 trustees shall make a special assessment on all members of a respective
25 pool for monies to meet the needs of the fund. If the monies in the fund
26 are exhausted a final claim settlement of judgment shall accrue interest
27 at the legal rate and is payable on receipt of allocated income from
28 members of the pool.

29 D. All monies deposited in the ~~funds~~ FUND identified in
30 subsection A of this section are appropriated to the department of
31 administration for use pursuant to this section and are exempt from
32 section 35-190, relating to lapsing of appropriations.

33 Sec. 8. Effective date

34 Section 12-820.02, Arizona Revised Statutes, as amended by Laws
35 2021, chapter 390, section 3 and this act, is effective from and after
36 June 30, 2023.