

Senate Engrossed House Bill

~~law enforcement video recordings; redactions~~  
(now: risk management; liability; state agencies)

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

**CHAPTER 239**  
**HOUSE BILL 2081**

AN ACT

AMENDING SECTIONS 12-820.03, 41-621, 41-621.01, 41-622 AND 41-622.01,  
ARIZONA REVISED STATUTES; RELATING TO STATE GOVERNMENT LIABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-820.03, Arizona Revised Statutes, is amended  
3 to read:

4 12-820.03. Affirmative defense; resolution by trial

5 A. A public entity or a public employee is not liable for an injury  
6 arising out of a plan or design for construction or maintenance of or  
7 improvement to transportation facilities, including highways, roads,  
8 streets, bridges or rights-of-way, if the plan or design is prepared in  
9 conformance with generally accepted engineering or design standards in  
10 effect at the time of the preparation of the plan or design and the public  
11 entity or public employee gives to the public a reasonably adequate  
12 warning of any unreasonably dangerous ~~hazards which would allow the public~~  
13 ~~to take suitable precautions~~ **CONDITION.**

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

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

20 41-621. Purchase of insurance; coverage; limitations;  
21 exclusions

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

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

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

33 3. This state and its departments, agencies, boards and commissions  
34 and all officers, ~~agents~~ and employees thereof and such others as may be  
35 necessary to accomplish the functions or business of the state and its  
36 departments, agencies, boards and commissions against liability for acts  
37 or omissions of any nature while acting in authorized governmental or  
38 proprietary capacities and in the course and scope of employment or  
39 authorization except as prescribed by this chapter.

40 4. All personal property reported to the department of  
41 administration, including vehicles and aircraft owned by the state and its  
42 departments, agencies, boards and commissions and all nonowned personal  
43 property that is under the clear responsibility of this state because of  
44 written leases or other written agreements.

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

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

5           7. Design and construction of buildings, roads, environmental  
6 remediations and other construction projects.

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

11           B. To the extent it is determined necessary and in the best  
12 interests of this state, the department of administration shall obtain  
13 insurance or provide for state self-insurance against property damage  
14 caused by clients and liability coverage resulting from the direct or  
15 incidental care of clients participating in programs of this state and its  
16 departments, agencies, boards or commissions relating to custodial care.  
17 The insurable programs shall include foster care, programs for persons  
18 with developmental disabilities, an independent living program pursuant to  
19 section 8-521, A TRANSITIONAL INDEPENDENT LIVING PROGRAM PURSUANT TO  
20 SECTION 8-521.01, AN EXTENDED FOSTER CARE PROGRAM PURSUANT TO SECTION  
21 8-521.02 and respite-sitter service programs. The department shall obtain  
22 insurance or provide for state self-insurance pursuant to this subsection  
23 to protect the clients participating in these programs and individual  
24 providers of these program services on behalf of this state and its  
25 departments, agencies, boards or commissions. THE STATE SELF-INSURANCE  
26 CLAIMS OR OTHER INSURANCE THAT IS PROVIDED OR OBTAINED PURSUANT TO THIS  
27 SUBSECTION MAY NOT BE MORE THAN \$1,000,000 PER CLAIM, INCLUDING RELATED  
28 CLAIMS, AND \$2,000,000 IN THE AGGREGATE PER YEAR. THE LIMITS MAY BE  
29 ADJUSTED PURSUANT TO RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION.  
30 INSURANCE AND STATE SELF-INSURANCE AS PRESCRIBED IN THIS SECTION DO NOT  
31 APPLY TO PROVIDERS WHO ARE CONTRACTUALLY REQUIRED TO INDEMNIFY THIS STATE  
32 OR A STATE DEPARTMENT OR AGENCY FOR SOME OR ALL OF THE LIABILITY OF THIS  
33 STATE OR A DEPARTMENT OR AGENCY OF THIS STATE. The insurance provided  
34 under this subsection does not include medical or workers' compensation  
35 coverage for providers. The department may include in its annual budget  
36 request pursuant to section 41-622, subsection D a charge for the  
37 insurance or self-insurance provided in this subsection. To assist in  
38 carrying out this subsection, the department shall establish a  
39 seven-member advisory board in accordance with the following provisions:

40           1. The board shall consist of three members appointed by the  
41 director of the department of administration, at least one of whom shall  
42 be a foster parent, one member appointed by the director of the department  
43 of economic security, one member appointed by the director of the  
44 department of child safety, one member appointed by the director of the

1 state department of corrections, and one member appointed by the  
2 administrative director of the courts.

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

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

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

7 5. Board members are not eligible to receive compensation but are  
8 eligible for reimbursement of expenses pursuant to title 38, chapter 4,  
9 article 2.

10 6. The board shall provide advice to the department regarding  
11 coverage and administration of this subsection and shall assist the  
12 department in coordinating its activities pursuant to this subsection with  
13 state departments, agencies, boards and commissions.

14 C. TO THE EXTENT IT IS DETERMINED NECESSARY AND IN THE BEST  
15 INTERESTS OF THIS STATE, THE DEPARTMENT OF ADMINISTRATION MAY OBTAIN  
16 INSURANCE OR PROVIDE FOR STATE SELF-INSURANCE AGAINST LOSSES FOR ANY  
17 AGENTS OF THIS STATE OR ITS DEPARTMENTS, AGENCIES, BOARDS OR COMMISSIONS  
18 THAT ARE NOT INSURED PURSUANT TO SUBSECTION A OF THIS SECTION. THE  
19 COVERAGE SHALL BE LIMITED TO LIABILITY FOR ACTS OR OMISSIONS WHILE ACTING  
20 IN THE COURSE AND SCOPE OF EMPLOYMENT OR AUTHORIZATION BY THIS STATE OR  
21 ITS DEPARTMENTS, AGENCIES, BOARDS OR COMMISSIONS AND SUBJECT TO ANY OTHER  
22 TERMS AND CONDITIONS THAT THE DEPARTMENT OF ADMINISTRATION DETERMINES ARE  
23 IN THE BEST INTERESTS OF THIS STATE.

24 ~~C.~~ D. The department of administration may obtain insurance  
25 against loss, to the extent it is determined necessary and in the best  
26 interests of this state as provided in subsection ~~F~~ G of this section for  
27 the professional liability of individual physicians and psychiatrists who  
28 provide services under a contract with the state department of  
29 corrections. Coverage is limited to acts and omissions committed inside a  
30 state department of corrections facility while in the performance of the  
31 contract and to individual physicians and psychiatrists who demonstrate to  
32 the satisfaction of the state department of corrections that they cannot  
33 otherwise obtain professional liability coverage for the services required  
34 by the contract. The director of the department of administration may  
35 impose on the state department of corrections a deductible for each loss  
36 that arises out of a professional liability claim pursuant to this  
37 subsection. Any changes in deductible amounts established by the director  
38 shall be subject to review by the joint legislative budget committee.

39 ~~D.~~ E. The department of administration may obtain property,  
40 liability, disability or workers' compensation insurance, self-insure or  
41 develop risk retention pools to provide for payment of property loss or  
42 casualty claims or disability insurance claims against contractors of this  
43 state with the approval of the joint legislative budget committee. With  
44 respect to insurance, self-insurance or risk retention pools for  
45 contractors licensed and contracted to do work for this state, the

1 coverage afforded applies with respect to the conduct of the business  
2 entity of that contractor. The pool is available to all contractors  
3 regardless of the amount that the state-contracted work bears in relation  
4 to the amount of nonstate contracted work. The contractor shall be  
5 terminated from the pool if the contractor ceases to be a state  
6 contractor.

7 ~~F.~~ F. The department of administration may determine, in the best  
8 interests of this state, that state self-insurance is necessary or  
9 desirable and, if that decision is made, shall provide for state  
10 self-insurance for losses arising out of state property, liability or  
11 workers' compensation claims prescribed by ~~subsection~~ SUBSECTIONS A, C, D  
12 AND E of this section. If the department of administration provides state  
13 self-insurance AS PRESCRIBED IN THIS SECTION, such coverage shall be  
14 excess over any other valid and collectible insurance, NOTWITHSTANDING ANY  
15 OTHER INSURANCE CLAUSE PROVIDED IN THE POLICY OF THE OTHER VALID AND  
16 COLLECTIBLE INSURANCE. IF STATE SELF-INSURANCE AND ANY OTHER VALID AND  
17 COLLECTIBLE INSURANCE ARE DETERMINED TO BE PRIMARY INSURANCE, THE  
18 DEPARTMENT OF ADMINISTRATION AND OTHER INSURERS SHALL CONTRIBUTE EQUAL  
19 AMOUNTS UNTIL THE APPLICABLE LIMIT OF INSURANCE HAS BEEN PAID OR NONE OF  
20 THE LOSS REMAINS, WHICHEVER OCCURS SOONER. The director of the department  
21 of administration may impose on state departments, agencies, boards and  
22 commissions a deductible for each loss that arises out of a property,  
23 liability or workers' compensation loss pursuant to this subsection. Any  
24 changes in deductible amounts established by the director shall be subject  
25 to review by the joint legislative budget committee.

26 ~~F.~~ G. In carrying out this chapter, the department of  
27 administration shall establish and provide the state with some or all of  
28 the necessary risk management services, or shall contract for risk  
29 management services pursuant to chapter 23 of this title, as the director  
30 of the department of administration deems necessary in the best interest  
31 of the state, and in addition to other specifications of such coverage as  
32 deemed necessary, may determine self-insurance to be established. Chapter  
33 23 of this title does not apply to the department of administration's  
34 procurement of insurance to cover losses arising out of state property or  
35 liability claims prescribed in ~~subsections A and D of~~ this section or  
36 excess loss insurance for the state's workers' compensation liability for  
37 individual or aggregate claims, or both, in such amounts and at such  
38 primary retention levels as the department of administration deems in the  
39 best interest of this state. In purchasing insurance to cover losses  
40 arising out of ~~state~~ property or liability claims prescribed by ~~subsection~~  
41 ~~A of~~ this section, the department of administration is not subject to  
42 title 20, chapter 2, article 5.

43 ~~G.~~ H. A successful bidder for risk management services pursuant to  
44 this section is not entitled to receive directly or indirectly any sales  
45 commission, contingent commission, excess profit commission, or other

1 commissions, or anything of value, as payment for the risk management  
2 services except those amounts received directly from this state as payment  
3 for the risk management services.

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

7 ~~I.~~ J. A state officer, agent or employee acting in good faith,  
8 without wanton disregard of statutory duties and under the authority of an  
9 enactment that is subsequently declared to be unconstitutional, invalid or  
10 inapplicable, is not personally liable for an injury or damage caused  
11 thereby except to the extent that the officer, agent or employee would  
12 have been personally liable had the enactment been constitutional, valid  
13 and applicable.

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

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

23 ~~L.~~ M. The following exclusions shall apply to subsections A, B and  
24 ~~F~~ F of this section:

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

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

34 3. INJURY OR DAMAGES EXPECTED OR INTENDED FROM THE STANDPOINT OF  
35 THE PERSON INSURED PURSUANT TO THIS CHAPTER. THIS EXCLUSION DOES NOT  
36 APPLY TO LAW ENFORCEMENT ACTIVITIES OR OPERATIONS, CORRECTIONAL ACTIVITIES  
37 OR OPERATIONS OR INJURY OR DAMAGES RESULTING FROM THE USE OF REASONABLE  
38 FORCE TO PROTECT AN INDIVIDUAL OR PROPERTY.

39 ~~M.~~ N. If self-insurance coverage is determined to exist, the  
40 attorney general, with funds provided by the department of administration,  
41 shall provide for the defense, either through the attorney general's  
42 office or by appointment of outside legal counsel, of this state and its  
43 departments, agencies, boards and commissions and all officers, agents and  
44 employees thereof and such others as are insured by the department of  
45 administration for or on account of their acts or omissions covered

1 pursuant to this chapter. All state departments, agencies, boards and  
2 commissions, all officers, agents and employees thereof and such others as  
3 are insured by the department of administration shall cooperate fully with  
4 the attorney general and department of administration in the defense of  
5 claims arising pursuant to this chapter.

6 ~~N.~~ O. A claim for liability damages made pursuant to this chapter  
7 may be settled and payment made up to the amount of ~~\$25,000~~ \$100,000 or  
8 such higher limit as may be established by the joint legislative budget  
9 committee with the approval of the director of the department of  
10 administration. A claim MAY BE SETTLED AND PAYMENT MADE over the amount  
11 of ~~\$25,000~~ \$100,000 up to ~~\$50,000~~ \$250,000 or such higher limit as may be  
12 established by the joint legislative budget committee ~~may be settled and~~  
13 ~~payment made~~ with the approval of the director of the department of  
14 administration and the attorney general. Any claim MAY BE SETTLED AND  
15 PAYMENT MADE over the amount of ~~\$50,000~~ \$250,000 or such higher limit as  
16 may be established by the joint legislative budget committee ~~may be~~  
17 ~~settled and payment made~~ with the approval of the director of the  
18 department of administration, the attorney general and the joint  
19 legislative budget committee. If it is in the best interest of this  
20 state, the joint legislative budget committee may establish higher  
21 settlement limits. Any settlements involving amounts in excess of ~~\$50,000~~  
22 \$250,000 or such higher limit as may be established by the joint  
23 legislative budget committee shall be approved by the department of  
24 administration, the attorney general and the joint legislative budget  
25 committee pursuant to the authority granted. The settlement of liability  
26 claims shall be solely the authority of the department of administration,  
27 the attorney general and the joint legislative budget committee. No state  
28 department, agency, board or commission or any officer, agent or employee  
29 of this state may voluntarily make any payment, assume any obligation,  
30 incur any expense or maintain the individual right of consent for  
31 liability claims made pursuant to this chapter except as provided by this  
32 section.

33 ~~O.~~ P. Neither the authority provided by this section to insure,  
34 nor the exercise of such authority, shall:

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

38 2. Impair any defense this state or the departments, agencies,  
39 boards and commissions or any officers, agents and employees of this state  
40 otherwise may have.

41 ~~P.~~ Q. EXCEPT AS OTHERWISE PRESCRIBED BY THIS CHAPTER AND SUBJECT  
42 TO ANY LIMIT OF STATE SELF-INSURANCE AND THE TERMS OF ANY INSURANCE  
43 OBTAINED BY THE DEPARTMENT OF ADMINISTRATION, the department of  
44 administration shall pay, on behalf of any state officer, ~~agent or~~  
45 employee OR PERSON WHO IS PROVIDED STATE SELF-INSURANCE PURSUANT TO THIS

1 SECTION, any damages, excluding punitive damages, for which the ~~officer,~~  
2 ~~agent or employee~~ INDIVIDUAL becomes legally responsible if the acts or  
3 omissions resulting in liability were within the ~~officer's, agent's or~~  
4 ~~employee's~~ INDIVIDUAL'S course and scope of employment. The department of  
5 administration may pay for all damages however designated that the  
6 officer, agent or employee becomes legally responsible for if the acts or  
7 omissions resulting in liability are determined by the director of the  
8 department of administration to be within the person's course and scope of  
9 employment.

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

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

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

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

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

22 ~~T.~~ T. To the extent it is determined necessary and in the best  
23 interest of this state, the department of administration may obtain design  
24 and construction insurance or provide for self-insurance against property  
25 damage caused by this state, its departments, agencies, boards and  
26 commissions and all officers and employees of this state in connection  
27 with the construction of public works projects. Workers' compensation  
28 liability insurance may be purchased to cover both general contractors and  
29 subcontractors doing work on a specific contracted worksite. The  
30 department may include in its annual budget request, pursuant to section  
31 41-622, subsection D, the cost of the insurance purchased or provided. In  
32 connection with the construction of public works projects, the department  
33 of administration may also use an owner-controlled or wrap-up insurance  
34 program if all of the following conditions are met:

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

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

40 3. Bid specifications clearly specify for all bidders the insurance  
41 coverage provided under the program and the minimum safety requirements  
42 that shall be met.

43 4. The program does not prohibit a contractor or subcontractor from  
44 purchasing any additional insurance coverage that a contractor believes is  
45 necessary for protection from any liability arising out of the contract.



1 The cost of the additional insurance shall not be passed through to this  
2 state on a contract bid.

3 5. The program does not include surety insurance.

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

7 V. Notwithstanding any other statute the department of  
8 administration may:

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

11 2. Allow the person to disclaim incidental or consequential  
12 damages.

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

14 W. THE DEPARTMENT OF ADMINISTRATION MAY INTERVENE IN A LAWSUIT  
15 AGAINST A PERSON INSURED PURSUANT TO THIS SECTION TO ASSERT A DEFENSE ON  
16 BEHALF OF THE PERSON THAT THE CLAIMANT FAILED TO COMPLY WITH SECTION  
17 12-821.01 OR THAT A PORTION OR ALL OF THE ACTION IS BARRED BY SECTION  
18 12-821. THE DEPARTMENT IS NOT REQUIRED TO EXERCISE ITS RIGHT TO INTERVENE  
19 TO CLAIM THAT A PORTION OR ALL OF AN INSURED PERSON'S LIABILITY IS NOT FOR  
20 ACTS OR OMISSIONS FOR WHICH THE PERSON IS AFFORDED COVERAGE PURSUANT TO  
21 THIS SECTION.

22 ~~H~~ X. For the purposes of subsections ~~S~~ T and ~~F~~ U of this  
23 section:

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

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

33 Sec. 3. Section 41-621.01, Arizona Revised Statutes, is amended to  
34 read:

35 41-621.01. Contractors or subcontractors; pooling of  
36 property, liability and workers' compensation  
37 coverage; exemptions; board of trustees;  
38 contract; termination; audit; insolvency

39 A. Pursuant to section 41-621, subsection ~~H~~ E and section  
40 41-622.01 two or more contractors or subcontractors licensed to do work  
41 for this state or any political subdivision of this state may with the  
42 approval of the department of administration enter into contracts or  
43 agreements pursuant to this section for the joint purchase of insurance,  
44 to pool retention of their risks for property and liability losses and to  
45 provide for the payment of the property loss or claim of liability made

1 against any member of the pool on a cooperative or contract basis with one  
2 another or may jointly form a nonprofit corporation or enter into a trust  
3 agreement to carry out this section in their behalf directly or by  
4 contract with a private party, if the department of administration has  
5 determined to sanction such a pool. Two or more contractors may also  
6 enter into contracts or agreements pursuant to this section to establish a  
7 workers' compensation pool to provide for the payment of workers'  
8 compensation claims pursuant to title 23, chapter 6 on a cooperative or  
9 contract basis with one another or may jointly form a nonprofit  
10 corporation or enter into a trust agreement to carry out this section in  
11 their behalf directly or by contract with a private party. A workers'  
12 compensation pool established pursuant to this subsection may provide  
13 coverage for workers' compensation, employers' liability and occupational  
14 disease claims. A workers' compensation pool is subject to approval as a  
15 self-insurer by the industrial commission of Arizona pursuant to section  
16 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6  
17 and rules adopted pursuant to that chapter in addition to the requirements  
18 of this section. The industrial commission of Arizona, by rule,  
19 resolution or order, may adopt requirements for the administration of a  
20 workers' compensation pool under this subsection, including separation or  
21 commingling of funds, accounting, auditing, reporting, actuarial standards  
22 and procedures.

23 B. In addition to other authority granted pursuant to this title,  
24 two or more contractors or subcontractors licensed to do work for this  
25 state or any political subdivision of this state may enter into contracts  
26 or agreements for the joint purchase of life insurance, disability  
27 insurance, accident insurance or health benefits plan insurance, to pool  
28 retention of their risks of loss for life, disability, health or accident  
29 claims made against any contractor or subcontractor member of the pool or  
30 to jointly provide the health and medical services authorized in section  
31 36-2907. Contractors and subcontractors may establish pools for the  
32 purposes of this subsection by any of the following methods:

- 33 1. On a cooperative or contract basis.
- 34 2. By the formation of a nonprofit corporation.
- 35 3. By a contract or intergovernmental agreement with the Arizona  
36 health care cost containment system administration.
- 37 4. By the execution of a trust agreement directly by the  
38 contractors and subcontractors or by contracting with a third party.

39 C. Contractors or subcontractors of a political subdivision of this  
40 state that is a member of a risk retention pool authorized under title 11  
41 may obtain life insurance, disability insurance, accident insurance or  
42 health benefits plan insurance coverage directly from that political  
43 subdivision if coverage is available and as authorized by section  
44 11-952.01, subsection C.

- 1 D. Section 10-11301 does not apply to nonprofit corporations formed  
2 pursuant to this section.
- 3 E. Chapter 23 of this title does not apply to the procurement of  
4 insurance or to the procurement of the services provided for in subsection  
5 I, paragraph 8 of this section by any pool established pursuant to this  
6 section.
- 7 F. Title 43 does not apply to any pool established pursuant to this  
8 section. Any pool established pursuant to this section is exempt from  
9 taxation under title 43.
- 10 G. Each pool shall be operated by a board of trustees consisting of  
11 at least five members. The board of trustees of each group shall do all  
12 of the following:
- 13 1. Establish terms and conditions of coverage within the pool  
14 including exclusions of coverage.
  - 15 2. Ensure that all claims are paid promptly.
  - 16 3. Take all necessary precautions to safeguard the assets of the  
17 group.
  - 18 4. Maintain minutes of its meetings.
  - 19 5. Designate an administrator to carry out the policies established  
20 by the board of trustees and to provide day to day management of the group  
21 and delineate in the written minutes of its meetings the areas of  
22 authority it delegates to the administrator.
  - 23 6. Notify the director of the department of insurance and financial  
24 institutions of the existence of the pool and file a copy of the agreement  
25 with the director and with the attorney general.
  - 26 7. If the pool is a workers' compensation pool, file a copy of the  
27 agreement with the director of the industrial commission of Arizona.
- 28 H. The board of trustees shall not:
- 29 1. Extend credit to individual members for payment of a premium  
30 except pursuant to payment plans established by the board.
  - 31 2. Borrow any monies from the group or in the name of the group  
32 except in the ordinary course of business.
- 33 I. A contract or agreement made pursuant to subsection A of this  
34 section shall contain the following:
- 35 1. A provision for a system or program of loss control.
  - 36 2. A provision for termination of membership including either:  
37 (a) Cancellation of individual members of the pool by the pool.  
38 (b) Election by an individual member of the pool to terminate its  
39 participation.
  - 40 3. A provision requiring the pool to pay all claims for which each  
41 member incurs liability during each member's period of membership.
  - 42 4. A provision stating that each member is not relieved of its  
43 liability incurred during the member's period of membership except through  
44 the payment of losses by the pool or by the member.

- 1           5. A provision for the maintenance of claims reserves equal to  
2 known incurred losses and an estimate of incurred but not reported claims.
- 3           6. A provision for a final accounting and settlement of the  
4 obligations of or refunds to a terminating member to occur when all  
5 incurred claims are concluded, settled or paid.
- 6           7. A provision that the pool may establish offices where necessary  
7 in this state and employ necessary staff to carry out the purposes of the  
8 pool.
- 9           8. A provision that the pool may retain legal counsel, actuaries,  
10 auditors, engineers, private consultants and advisors.
- 11           9. A provision that the pool may make and alter bylaws and rules  
12 pertaining to the exercise of its purpose and powers.
- 13           10. A provision that the pool may purchase, lease or rent real and  
14 personal property it deems necessary.
- 15           11. A provision that the pool shall enter into a financial services  
16 agreement with banks and that it may issue checks in its own name.
- 17           J. A pool or a terminating member shall provide at least ninety  
18 days' written notice of the termination or cancellation. A workers'  
19 compensation pool shall notify the industrial commission of Arizona of the  
20 termination or cancellation of a member thirty days before the termination  
21 or cancellation of the member.
- 22           K. The pool shall be audited annually at the expense of the pool by  
23 a certified public accountant, with a copy of the report submitted to the  
24 governing body or chief executive officer of each member of the pool and  
25 to the director of the department of insurance and financial institutions.  
26 The board of trustees of the pool shall obtain an appropriate actuarial  
27 evaluation of the claim reserves of the pool including an estimate of the  
28 incurred but not reported claims. The department of insurance and  
29 financial institutions shall examine each contractor pool once every five  
30 years. The director of the department of insurance and financial  
31 institutions may examine a contractor pool sooner than five years from the  
32 preceding examination if the director has reason to believe that the pool  
33 is insolvent. The costs of any examination shall be paid by the pool  
34 subject to the examination.
- 35           L. If, as a result of the annual audit or an examination by the  
36 director of the department of insurance and financial institutions, it  
37 appears that the assets of the pool are insufficient to enable the pool to  
38 discharge its legal liabilities and other obligations, the director of the  
39 department of insurance and financial institutions shall notify the  
40 administrator and the board of trustees of the pool of the deficiency and  
41 provide the director's list of recommendations to abate the deficiency,  
42 including a recommendation not to add any new members until the deficiency  
43 is abated. If the pool fails to comply with the recommendations within  
44 sixty days after the date of the notice, the director shall notify the  
45 chief executive officer or the governing bodies, if any, of the members of

1 the pool, the governor, the president of the senate and the speaker of the  
2 house of representatives that the pool has failed to comply with the  
3 recommendations of the director.

4 M. If a pool is determined to be insolvent or is otherwise found to  
5 be unable to discharge its legal liabilities and other obligations, each  
6 agreement or contract shall provide that the members of the pool shall be  
7 assessed on a pro rata basis as calculated by the amount of each member's  
8 annual contribution in order to satisfy the amount of deficiency. The  
9 assessment shall not exceed the amount of each member's annual  
10 contribution to the pool.

11 N. If a workers' compensation pool fails to comply with title 23,  
12 chapter 6 or rules adopted pursuant to that chapter, the director of the  
13 industrial commission of Arizona shall immediately notify the director of  
14 the department of administration and the director of the department of  
15 insurance and financial institutions.

16 Sec. 4. Section 41-622, Arizona Revised Statutes, is amended to  
17 read:

18 41-622. Risk management revolving fund; construction  
19 insurance fund; self-insured losses and  
20 administrative costs; budget requests

21 A. ~~THE~~ risk management revolving fund and ~~a~~ THE construction  
22 insurance fund are established in the department of administration for the  
23 purchase of insurance, risk management services including loss prevention  
24 services, payment of self-insured losses pursuant to section 41-621,  
25 subsections A, B, C, D, ~~and~~ E AND F and administrative costs necessary to  
26 carry out risk management services prescribed by section 41-621. The  
27 department of administration shall pay for claims processing costs,  
28 including adjusting costs, legal defense costs and attorney fees, for any  
29 portion of claims falling within state self-insurance coverage pursuant to  
30 ~~the provisions of~~ this chapter.

31 B. The risk management revolving fund in the department of  
32 administration shall exclude any property loss arising from damage due to  
33 mechanical or electrical breakdown, ordinary wear and tear or  
34 obsolescence, nonserviceability, mysterious disappearance or inventory  
35 shortage. Mysterious disappearance ~~shall~~ DOES not ~~be construed to~~ include  
36 a loss if there is a reasonable presumption of theft. The department of  
37 administration, subject to chapter 23 of this title, may advance or  
38 disburse monies to contractors who rebuild state property as a result of  
39 self-insured losses or to persons who supply goods or services in  
40 replacing self-insured losses. The department of administration shall pay  
41 for claims processing costs, including adjusting costs, legal defense  
42 costs and attorney fees, for any portion of claims falling within state  
43 self-insurance coverage pursuant to ~~the provisions of~~ this chapter.

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

6 D. The department of administration shall present to the  
7 legislature not later than September 1 of each year, in accordance with  
8 ~~the provisions of~~ section 35-113, a budget request based on the actuarial  
9 needs for liability losses, workers' compensation liability losses,  
10 property losses and risk management administrative costs. The budget  
11 request shall be broken down to reflect the amount of monies to be charged  
12 to each of the state departments, agencies, boards and commissions and any  
13 others insured under this chapter. Any state department, agency, board or  
14 commission that has an amount for insurance included in its appropriation,  
15 whether specifically stated or not, and any state department, agency,  
16 board or commission or others insured under this chapter that receive  
17 funds other than those appropriated shall be billed for the proportionate  
18 share of the charges for insurance or self-insurance by the department of  
19 administration. In collecting the agency billings for risk management  
20 charges, the director of the department of administration may transfer the  
21 entire amount of the billing for appropriated insurance from the agency  
22 account into the fund designated in subsection A of this section at the  
23 start of the fiscal year or in periodic payments during the fiscal year if  
24 necessitated by cash flow restrictions. Those entities or persons insured  
25 under ~~the provisions of~~ this chapter that are not state agencies,  
26 departments, boards, commissions or employees or that do not receive  
27 funding from state sources shall pay annually the amount required by risk  
28 management to the risk management revolving fund or construction insurance  
29 fund before the coverage continues for existing claims or begins for new  
30 claims made. The construction insurance fund shall receive monies  
31 necessary to pay the cost of purchasing insurance, providing  
32 self-insurance or administering the fund as authorized by section 41-621,  
33 subsection ~~S~~ T from each capital construction project budget at rates  
34 established by the department of administration and reviewed by the joint  
35 committee on capital review. These amounts shall be included in the  
36 budget request. All monies received from all billings shall be deposited  
37 in the funds as identified in subsection A of this section.

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

1 F. If a revolving fund is projected to be exhausted while the  
2 legislature is in session, a special appropriation may be requested by the  
3 department of administration for monies to meet the needs of the funds.  
4 If the funds are exhausted at a time when the legislature is not in  
5 session, any final judgment shall accrue interest and shall be payable  
6 ~~upon~~ ON appropriation in the next succeeding regular session of the  
7 legislature. Interest on any judgment against this state paid for out of  
8 the risk management revolving fund shall accrue at the average yield  
9 offered by United States treasury bills during the course of the appeal  
10 and shall be paid in accordance with this section. If the appeal is lost  
11 by this state, the judgment amount plus interest at the rate prescribed in  
12 this subsection shall be paid.

13 G. All monies deposited in the risk management revolving fund are  
14 subject to annual legislative appropriation to the department of  
15 administration for use pursuant to this section. Monies in the  
16 construction insurance fund are continuously appropriated for the fund  
17 purposes. The funds established by subsection A of this section are  
18 exempt from the provisions of section 35-190 relating to lapsing of  
19 appropriations.

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

27 Sec. 5. Section 41-622.01, Arizona Revised Statutes, is amended to  
28 read:

29 41-622.01. Revolving fund for joint insurance purchase  
30 retention pools

31 A. A permanent special risk revolving fund is established in the  
32 department of administration for the purpose of administering joint  
33 insurance purchase, self-insurance or pooled retention plans for  
34 contractors of this state prescribed by section 41-621, subsection ~~E~~ E.  
35 The fund shall be administered pursuant to section 41-621.01. Except if  
36 otherwise provided by law, this state shall not appropriate any monies  
37 from its general fund in the administration of pools within the special  
38 risk revolving fund.

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

42 C. If the revolving fund is projected to be exhausted the board of  
43 trustees shall make a special assessment on all members of a respective  
44 pool for monies to meet the needs of the fund. If the monies in the fund  
45 are exhausted a final claim settlement of judgment shall accrue interest

1 at the legal rate and is payable on receipt of allocated income from  
2 members of the pool.

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

APPROVED BY THE GOVERNOR MAY 20, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2022.