



## ARIZONA STATE SENATE

### *Fifty-Fifth Legislature, Second Regular Session*

#### AMENDED FACT SHEET FOR H.B. 2081

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

##### Purpose

Modifies requirements relating to state self-insurance.

##### Background

Unless a public employee acting within the scope of the public employee's employment intended to cause injury or was grossly negligent, neither a public entity nor a public employee is liable for certain actions, including: 1) the failure to make an arrest or the failure to retain an arrested person in custody; 2) an injury caused by an escaping or escaped prisoner or a youth committed to the Arizona Department of Juvenile Corrections; 3) the issuance of or failure to revoke or suspend any permit, license, certificate, approval, order or similar authorization for which absolute immunity is not provided; 4) the failure to discover violations of any provisions of law when inspections are done of property other than property owned by the public entity in question; 5) an injury to the driver of a motor vehicle that is attributable to the driver committing specified violations; 6) the failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under any federal or Arizona law; and 7) an injury caused by a peace officer if the injury was caused by an act or omission while rendering emergency care at the scene of an emergency occurrence ([A.R.S. § 12-820.02](#)).

The Arizona Department of Administration (ADOA) must obtain insurance against loss, to the extent it is determined necessary and in the best interests of the state, for all of the following: 1) all state-owned buildings, including university buildings but excluding community college buildings; 2) contents in any buildings owned, leased or rented in whole or in part by Arizona; 3) the state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as may be necessary to accomplish the functions or business of those entities for any acts or omissions of any nature while acting in authorized governmental capacities; 4) all personal property reported to ADOA, including vehicles and aircraft owned by the state and its department, agencies and subdivisions; 5) the state and its departments, agencies, boards and commissions against casualty, use and occupancy and liability losses of every nature; 6) workers' compensation and employers' liability insurance; 7) design and construction of buildings, roads, environmental remediations and other construction projects; and 8) other exposures to loss where insurance may be required to protect Arizona ([A.R.S. § 41-621](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Caps, at \$1,000,000 per claim or \$2,000,000 in the aggregate per year, state self-insurance claims or other insurance that is provided or obtained for property damage caused by clients and liability resulting from the direct or incidental care of clients participating in programs relating to custodial care.
2. Allows the caps to be adjusted pursuant to rules adopted by ADOA.
3. States that insurance and state self-insurance as prescribed do not apply to providers who are contractually required to indemnify the state or a state department or agency for some or all of the liability of the state or a department or agency of the state.
4. Allows ADOA, to the extent it is determined necessary and in the best interests of the state, to obtain insurance or provide for state self-insurance against losses for any agents of Arizona or its departments, agencies, boards or commissions that are not already insured.
5. Specifies that programs that may be insured by ADOA include transitional independent living programs and extended foster care programs.
6. Limits the coverage obtained for agents of Arizona or other entities to liability for acts or omissions while acting in the course and scope of employment or authorization by Arizona or its departments, agencies, boards or commissions, subject to any other terms and conditions that ADOA determines are in the best interests of the state.
7. Specifies that state self-insurance is required to be excess over any other valid and collectible insurance, notwithstanding any other clause provided in the policy of the other valid and collectible insurance.
8. Requires ADOA and other insurers, if state self-insurance and any other valid and collectible insurance are determined to be primary insurance, to contribute equal amounts until the applicable limit of insurance has been paid or none of the loss remains, whichever occurs sooner.
9. Excludes, from specified state self-insurance coverage:
  - a) losses against and liabilities of a person who is provided insurance coverage that arise out of an act or omission by the person that a court determines to be a felony, irrespective of whether the state knew of the person's propensity of the action or whether the acts arose out of the operation of a motor vehicle;
  - b) liabilities arising out of contractual breaches; and
  - c) injury or damages expected or intended from the standpoint of the person insured, except that this exclusion does not apply to law enforcement activities or operations, correctional activities or operations or injury or damages resulting from the use of reasonable force to protect an individual or property.
10. Allows the Director of ADOA (Director) to approve a settlement for a claim for liability damages in an amount up to \$100,000, rather than \$25,000.

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11. Allows the Director and the Attorney General (AG) to approve a settlement for a claim for liability damages in an amount between \$100,000 and \$250,000, rather than between \$25,000 and \$50,000.
12. Allows the Director, the AG and the Joint Legislative Budget Committee (JLBC) to approve a settlement for a claim of liability damages in an amount over \$250,000, rather than \$50,000.
13. Allows ADOA to intervene in a lawsuit against an insured person to assert a defense on behalf of the person that the claimant failed to comply with qualified immunity statute or that a portion or all of the action is barred.
14. Requires ADOA to pay, on behalf of a person who is provided state self-insurance, any applicable qualified damages for which an individual is legally responsible, except as otherwise prescribed and subject to any limit of state self-insurance and the terms of any insurance obtained by ADOA.
15. Specifies that, in addition to other requirements, a public warning of any unreasonably dangerous condition indemnifies a public entity or employee for injury arising out of a plan or design for transportation facilities, irrespective of whether the warning allows the public to take suitable precautions.
16. Makes technical and conforming changes.
17. Becomes effective on the general effective date.

Amendments Adopted by Committee

- Adopted the strike-everything amendment.

Senate Action

JUD            3/24/22    W/D  
APPROP       3/29/22    DPA/SE   10-0-0

Prepared by Senate Research

April 13, 2022

ZD/sr