

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

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.