

House Engrossed

cybersecurity risk; insurance

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

HOUSE BILL 2690

AN ACT

AMENDING SECTIONS 41-621 AND 41-622, ARIZONA REVISED STATUTES; RELATING TO INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 **41-621. Purchase of insurance; coverage; limitations;**
5 exclusions; definitions

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

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

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

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

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

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

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

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

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

39 9. **ACTUAL OR SUSPECTED DATA BREACHES, SECURITY SYSTEM BREACHES OR**
40 **SECURITY INCIDENTS FOR SELECT AGENCIES, BOARDS AND COMMISSIONS.**

41 B. To the extent it is determined necessary and in the best
42 interests of this state, the department of administration shall obtain
43 insurance or provide for state self-insurance against property damage
44 caused by clients and liability coverage resulting from the direct or
45 incidental care of clients participating in programs of this state and its

1 departments, agencies, boards or commissions relating to custodial care.
2 The insurable programs shall include foster care, programs for persons
3 with developmental disabilities, an independent living program pursuant to
4 section 8-521 and respite-sitter service programs. The department shall
5 obtain insurance or provide for state self-insurance pursuant to this
6 subsection to protect the clients participating in these programs and
7 individual providers of these program services on behalf of this state and
8 its departments, agencies, boards or commissions. The insurance provided
9 under this subsection does not include medical or workers' compensation
10 coverage for providers. The department may include in its annual budget
11 request pursuant to section 41-622, subsection D a charge for the
12 insurance or self-insurance provided in this subsection. To assist in
13 carrying out this subsection, the department shall establish a
14 seven-member advisory board in accordance with the following provisions:

15 1. The board shall consist of three members appointed by the
16 director of the department of administration, at least one of whom shall
17 be a foster parent, one member appointed by the director of the department
18 of economic security, one member appointed by the director of the
19 department of child safety, one member appointed by the director of the
20 state department of corrections, and one member appointed by the
21 administrative director of the courts.

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

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

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

26 5. Board members are not eligible to receive compensation but are
27 eligible for reimbursement of expenses pursuant to title 38, chapter 4,
28 article 2.

29 6. The board shall provide advice to the department regarding
30 coverage and administration of this subsection and shall assist the
31 department in coordinating its activities pursuant to this subsection with
32 state departments, agencies, boards and commissions.

33 C. The department of administration may obtain insurance against
34 loss, to the extent it is determined necessary and in the best interests
35 of this state as provided in subsection F of this section for the
36 professional liability of individual physicians and psychiatrists who
37 provide services under a contract with the state department of
38 corrections. Coverage is limited to acts and omissions committed inside a
39 state department of corrections facility while in the performance of the
40 contract and to individual physicians and psychiatrists who demonstrate to
41 the satisfaction of the state department of corrections that they cannot
42 otherwise obtain professional liability coverage for the services required
43 by the contract. The director of the department of administration may
44 impose on the state department of corrections a deductible for each loss
45 that arises out of a professional liability claim pursuant to this

1 subsection. Any changes in deductible amounts established by the director
2 shall be subject to review by the joint legislative budget committee.

3 D. The department of administration may obtain property, liability,
4 disability or workers' compensation insurance, self-insure or develop risk
5 retention pools to provide for payment of property loss or casualty claims
6 or disability insurance claims against contractors of this state with the
7 approval of the joint legislative budget committee. With respect to
8 insurance, self-insurance or risk retention pools for contractors licensed
9 and contracted to do work for this state, the coverage afforded applies
10 with respect to the conduct of the business entity of that contractor.
11 The pool is available to all contractors regardless of the amount that the
12 state-contracted work bears in relation to the amount of nonstate
13 contracted work. The contractor shall be terminated from the pool if the
14 contractor ceases to be a state contractor.

15 E. The department of administration may determine, in the best
16 interests of this state, that state self-insurance is necessary or
17 desirable and, if that decision is made, shall provide for state
18 self-insurance for losses arising out of state property, liability or
19 workers' compensation claims **OR FOR LOSSES ARISING OUT OF ACTUAL OR
20 SUSPECTED DATA BREACHES, SECURITY SYSTEM BREACHES OR SECURITY INCIDENTS**
21 prescribed by subsection A of this section. If the department of
22 administration provides state self-insurance, such coverage shall be
23 excess over any other valid and collectible insurance. The director of
24 the department of administration may impose on state departments,
25 agencies, boards and commissions a deductible for each loss that arises
26 out of a property, liability or workers' compensation ~~LOSS~~ CLAIM, ACTUAL
27 **OR SUSPECTED DATA BREACH, SECURITY SYSTEM BREACH OR SECURITY INCIDENT**
28 pursuant to this subsection. Any changes in deductible amounts
29 established by the director shall be subject to review by the joint
30 legislative budget committee.

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

1 the department of administration is not subject to title 20, chapter 2,
2 article 5.

3 G. A successful bidder for risk management services pursuant to
4 this section is not entitled to receive directly or indirectly any sales
5 commission, contingent commission, excess profit commission, or other
6 commissions, or anything of value, as payment for the risk management
7 services except those amounts received directly from this state as payment
8 for the risk management services.

9 H. The department of administration shall pay for purchased risk
10 management services, premiums for insurance on state property and state
11 liability and workers' compensation pursuant to this chapter.

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

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

25 K. This state and its departments, agencies, boards and commissions
26 are immune from liability for losses arising out of a judgment for wilful
27 and wanton conduct resulting in punitive or exemplary damages.

28 L. The following exclusions shall apply to subsections A, B and E
29 of this section:

30 1. Losses against this state and its departments, agencies, boards
31 and commissions that arise out of and are directly attributable to an act
32 or omission determined by a court to be a felony by a person who is
33 provided coverage pursuant to this article unless the state knew of the
34 person's propensity for that action, except those acts arising out of the
35 operation or use of a motor vehicle.

36 2. Losses arising out of contractual breaches.

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

1 are insured by the department of administration shall cooperate fully with
2 the attorney general and department of administration in the defense of
3 claims arising pursuant to this chapter.

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

29 0. Neither the authority provided by this section to insure, nor
30 the exercise of such authority, shall:

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

34 2. Impair any defense this state or the departments, agencies,
35 boards and commissions or any officers, agents and employees of this state
36 otherwise may have.

37 P. The department of administration shall pay, on behalf of any
38 state officer, agent or employee, any damages, excluding punitive damages,
39 for which the officer, agent or employee becomes legally responsible if
40 the acts or omissions resulting in liability were within the officer's,
41 agent's or employee's course and scope of employment. The department of
42 administration may pay for all damages however designated that the
43 officer, agent or employee becomes legally responsible for if the acts or
44 omissions resulting in liability are determined by the director of the

1 department of administration to be within the person's course and scope of
2 employment.

3 Q. The department of administration shall adopt such rules as are
4 deemed necessary to carry out, implement and limit this chapter.

5 R. For the purposes of determining whether a state officer, agent
6 or employee is entitled to coverage under this chapter, "within the course
7 and scope of employment or authorization" means:

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

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

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

15 S. To the extent it is determined necessary and in the best
16 interest of this state, the department of administration may obtain design
17 and construction insurance or provide for self-insurance against property
18 damage caused by this state, its departments, agencies, boards and
19 commissions and all officers and employees of this state in connection
20 with the construction of public works projects. Workers' compensation
21 liability insurance may be purchased to cover both general contractors and
22 subcontractors doing work on a specific contracted worksite. The
23 department may include in its annual budget request, pursuant to section
24 41-622, subsection D, the cost of the insurance purchased or provided. In
25 connection with the construction of public works projects, the department
26 of administration may also use an owner-controlled or wrap-up insurance
27 program if all of the following conditions are met:

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

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

33 3. Bid specifications clearly specify for all bidders the insurance
34 coverage provided under the program and the minimum safety requirements
35 that shall be met.

36 4. The program does not prohibit a contractor or subcontractor from
37 purchasing any additional insurance coverage that a contractor believes is
38 necessary for protection from any liability arising out of the contract.
39 The cost of the additional insurance shall not be passed through to this
40 state on a contract bid.

41 5. The program does not include surety insurance.

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

1 ~~U.~~ Notwithstanding any other statute the department of
2 administration may:

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

5 2. Allow the person to disclaim incidental or consequential
6 damages.

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

8 ~~U.~~ ~~V.~~ For the purposes of subsections S and T of this section:

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

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

18 W. FOR THE PURPOSES OF THIS SECTION, "BREACH", "SECURITY SYSTEM
19 BREACH" AND "SECURITY INCIDENT" HAVE THE SAME MEANINGS PRESCRIBED IN
20 SECTION 18-551.

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

23 41-622. Risk management revolving fund: construction
24 insurance fund; cyber risk insurance fund;
25 self-insured losses and administrative costs;
26 budget requests

27 A. ~~A~~ THE risk management revolving fund, ~~and~~ THE construction
28 insurance fund ~~AND THE CYBER RISK INSURANCE FUND~~ are established in the
29 department of administration for the purchase of insurance, risk
30 management services including loss prevention services, payment of
31 self-insured losses pursuant to section 41-621, subsections A, B, C, D and
32 E and administrative costs necessary to carry out risk management services
33 prescribed by section 41-621. The department of administration shall pay
34 for claims processing costs, including adjusting costs, legal defense
35 costs and attorney fees, for any portion of claims falling within state
36 self-insurance coverage pursuant to ~~the provisions of~~ this chapter.

37 B. The risk management revolving fund in the department of
38 administration shall exclude any property loss arising from damage due to
39 mechanical or electrical breakdown, ordinary wear and tear or
40 obsolescence, nonserviceability, mysterious disappearance or inventory
41 shortage. Mysterious disappearance ~~shall~~ ~~DOES~~ not ~~be construed to~~ include
42 a loss if there is a reasonable presumption of theft. The department of
43 administration, subject to chapter 23 of this title, may advance or
44 disburse monies to contractors who rebuild state property as a result of
45 self-insured losses or to persons who supply goods or services in

1 replacing self-insured losses. The department of administration shall pay
2 for claims processing costs, including adjusting costs, legal defense
3 costs and attorney fees, for any portion of claims falling within state
4 self-insurance coverage pursuant to ~~the provisions of~~ this chapter.

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

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

43 E. All monies recovered by the state pursuant to litigation,
44 recovery, salvage value of damaged property, proportionate share monies
45 from any other existing state funds, or otherwise, for damages relating to

1 either a liability, property or workers' compensation loss for which
2 monies from the risk management revolving fund or construction insurance
3 fund have been or will be paid shall be deposited in the respective fund.

4 F. If a revolving fund is projected to be exhausted while the
5 legislature is in session, a special appropriation may be requested by the
6 department of administration for monies to meet the needs of the funds.
7 If the funds are exhausted at a time when the legislature is not in
8 session, any final judgment shall accrue interest and shall be payable
9 ~~upon~~ ON appropriation in the next succeeding regular session of the
10 legislature. Interest on any judgment against this state paid for out of
11 the risk management revolving fund OR THE CYBER RISK INSURANCE FUND,
12 REGARDLESS OF WHETHER THE FUNDS ARE SELF-INSURED OR FUNDED BY EXCESS
13 INSURANCE, shall accrue at the average yield offered by United States
14 treasury bills during the course of the appeal and shall be paid in
15 accordance with this section. If the appeal is lost by this state, the
16 judgment amount plus interest at the rate prescribed in this subsection
17 shall be paid.

18 G. All monies deposited in the risk management revolving fund are
19 subject to annual legislative appropriation to the department of
20 administration for use pursuant to this section. Monies in the
21 construction insurance fund AND THE CYBER RISK INSURANCE FUND are
22 continuously appropriated for the fund purposes. The funds established by
23 subsection A of this section are exempt from the provisions of section
24 35-190 relating to lapsing of appropriations.

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