Senate Engrossed

risk management; state agency liability

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

SENATE BILL 1498

AN ACT

AMENDING SECTIONS 12-820.03, 41-621, 41-621.01, 41-622 AND 41-622.01, ARIZONA REVISED STATUTES; RELATING TO RISK MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

12-820.03. Affirmative defense; resolution by trial

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

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

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

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

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

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

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

3. This 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 the state and its departments, agencies, boards and commissions against liability for acts or omissions of any nature while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization except as prescribed by this chapter.

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

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

6. Workers' compensation and employers' liability insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Losses AND LIABILITIES arising out of contractual breaches.

3. INJURY OR DAMAGES EXPECTED OR INTENDED FROM THE STANDPOINT OF THE PERSON INSURED PURSUANT TO THIS CHAPTER. 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.

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

~~N.~~ O. A claim for liability damages made pursuant to this chapter may be settled and payment made up to the amount of ~~$25,000~~ $100,000 or such higher limit as may be established by the joint legislative budget committee with the approval of the director of the department of administration. A claim MAY BE SETTLED AND PAYMENT MADE over the amount of ~~$25,000~~ $100,000 up to ~~$50,000~~ $250,000 or such higher limit as may be established by the joint legislative budget committee ~~may be settled and payment made~~ with the approval of the director of the department of administration and the attorney general. Any claim MAY BE SETTLED AND PAYMENT MADE over the amount of ~~$50,000~~ $250,000 or such higher limit as may be established by the joint legislative budget committee ~~may be settled and payment made~~ with the approval of the director of the department of administration, the attorney general and the joint legislative budget committee. If it is in the best interest of this state, the joint legislative budget committee may establish higher settlement limits. Any settlements involving amounts in excess of ~~$50,000~~ $250,000 or such higher limit as may be established by the joint legislative budget committee shall be approved by the department of administration, the attorney general and the joint legislative budget committee pursuant to the authority granted. The settlement of liability claims shall be solely the authority of the department of administration, the attorney general and the joint legislative budget committee. No state department, agency, board or commission or any officer, agent or employee of this state may voluntarily make any payment, assume any obligation, incur any expense or maintain the individual right of consent for liability claims made pursuant to this chapter except as provided by this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. The program does not include surety insurance.

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

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

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

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

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

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

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

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

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

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

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

A. Pursuant to section 41-621, subsection ~~D~~ E and section 41-622.01 two or more contractors or subcontractors licensed to do work for this state or any political subdivision of this state may with the approval of the department of administration enter into contracts or agreements pursuant to this section for the joint purchase of insurance, to pool retention of their risks for property and liability losses and to provide for the payment of the property loss or claim of liability made against any member of the pool on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party, if the department of administration has determined to sanction such a pool. Two or more contractors may also enter into contracts or agreements pursuant to this section to establish a workers' compensation pool to provide for the payment of workers' compensation claims pursuant to title 23, chapter 6 on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party. A workers' compensation pool established pursuant to this subsection may provide coverage for workers' compensation, employers' liability and occupational disease claims. A workers' compensation pool is subject to approval as a self-insurer by the industrial commission of Arizona pursuant to section 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6 and rules adopted pursuant to that chapter in addition to the requirements of this section. The industrial commission of Arizona, by rule, resolution or order, may adopt requirements for the administration of a workers' compensation pool under this subsection, including separation or commingling of funds, accounting, auditing, reporting, actuarial standards and procedures.

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

1. On a cooperative or contract basis.

2. By the formation of a nonprofit corporation.

3. By a contract or intergovernmental agreement with the Arizona health care cost containment system administration.

4. By the execution of a trust agreement directly by the contractors and subcontractors or by contracting with a third party.

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

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

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

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

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

1. Establish terms and conditions of coverage within the pool including exclusions of coverage.

2. Ensure that all claims are paid promptly.

3. Take all necessary precautions to safeguard the assets of the group.

4. Maintain minutes of its meetings.

5. Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the group and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.

6. Notify the director of the department of insurance and financial institutions of the existence of the pool and file a copy of the agreement with the director and with the attorney general.

7. If the pool is a workers' compensation pool, file a copy of the agreement with the director of the industrial commission of Arizona.

H. The board of trustees shall not:

1. Extend credit to individual members for payment of a premium except pursuant to payment plans established by the board.

2. Borrow any monies from the group or in the name of the group except in the ordinary course of business.

I. A contract or agreement made pursuant to subsection A of this section shall contain the following:

1. A provision for a system or program of loss control.

2. A provision for termination of membership including either:

(a) Cancellation of individual members of the pool by the pool.

(b) Election by an individual member of the pool to terminate its participation.

3. A provision requiring the pool to pay all claims for which each member incurs liability during each member's period of membership.

4. A provision stating that each member is not relieved of its liability incurred during the member's period of membership except through the payment of losses by the pool or by the member.

5. A provision for the maintenance of claims reserves equal to known incurred losses and an estimate of incurred but not reported claims.

6. A provision for a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled or paid.

7. A provision that the pool may establish offices where necessary in this state and employ necessary staff to carry out the purposes of the pool.

8. A provision that the pool may retain legal counsel, actuaries, auditors, engineers, private consultants and advisors.

9. A provision that the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers.

10. A provision that the pool may purchase, lease or rent real and personal property it deems necessary.

11. A provision that the pool shall enter into a financial services agreement with banks and that it may issue checks in its own name.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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