

A.R.S. § 41-621

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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 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 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 and employees acting in the course and scope of employment or authorization except as prescribed by this chapter.
9. Actual or suspected data breaches, security system breaches or security incidents for select agencies, boards and commissions.

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.

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 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.

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.

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 or for losses arising out of actual or suspected data breaches, security system breaches or security incidents prescribed by 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 claim, actual or suspected data breach, security system breach or security incident pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

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 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 property or liability claims prescribed by this section, the department of administration is not subject to title 20, chapter 2, article 5.

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.

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.

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.

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.

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.

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

1. Losses against and liabilities of a person who is provided insurance coverage pursuant to this 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.

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.

O. A claim for liability damages made pursuant to this chapter may be settled and payment made up to the amount of \$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 \$100,000 up to \$250,000 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 and the attorney general. Any claim may be settled and payment made over the amount of \$250,000 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, 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 \$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.

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.

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, employee or person who is provided state self-insurance pursuant to this section, any damages, excluding punitive damages, for which the individual becomes legally responsible if the acts or omissions resulting in liability were within the 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.

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

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.

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.
- 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.
- X. For the purposes of subsections T and 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.
- Y. For the purposes of this section, "breach", "security system breach" and "security incident" have the same meanings prescribed in section 18-551.

History

Laws 1991, 1st Reg. Sess., Ch. 197, §§ 1, 2; Laws 1992, 2nd Reg. Sess., Ch. 25, §§ 1, 2; Laws 1993, 1st Reg. Sess., Ch. 71, §§ 1, 2, 3, 4; Laws 1993, 1st Reg. Sess., Ch. 96, § 8; Laws 1994, 2nd Reg. Sess., Ch. 114, §§ 1, 2; Laws 1994, 2nd Reg. Sess., Ch. 231, § 1; Laws 1996, 2nd Reg. Sess., Ch. 256, § 7; Laws 2002, Ch. 328, § 12; Laws 2003, Ch. 2, § 2; Laws 2003, Ch. 210, § 1; Laws 2011, 1st Reg. Sess., Ch. 83, § 33; Laws 2014, 2nd Sp. Sess., Ch. 1, § 125, effective May 29, 2014; Laws 2014, 2nd Reg. Sess., Ch. 215, § 182; 2020 2nd Reg. Sess. Ch. 37, § 161, effective August 25, 2020; 2022 2nd Reg. Sess. Ch. 239, § 2, effective September 24, 2022; 2022 2nd Reg. Sess. Ch. 308, § 1, effective September 24, 2022.

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