

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 240

HOUSE BILL 2198

AN ACT

AMENDING SECTIONS 11-952.01, 15-213, 15-382 AND 41-621.01, ARIZONA REVISED
STATUTES; RELATING TO SCHOOL DISTRICT INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)



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

2 Section 1. Section 11-952.01, Arizona Revised Statutes, is amended to
3 read:

4 11-952.01. Public agency pooling of property, liability,
5 workers' compensation, life, health, accident and
6 disability coverage; exemptions; board of
7 trustees; contract; termination; audit;
8 insolvency; definition

9 A. In addition to other authority granted pursuant to this title, two
10 or more public agencies may enter into contracts or agreements pursuant to
11 this article for the joint purchasing of insurance or to pool retention of
12 their risks for property and liability losses and to provide for the payment
13 of such property loss or claim of liability made against any member of the
14 pool on a cooperative or contract basis with one another or may jointly form
15 a nonprofit corporation or enter into a trust agreement to carry out the
16 provisions of this section in their behalf directly or by contract with a
17 private party.

18 B. In addition to other authority granted pursuant to this title, two
19 or more public agencies may enter into contracts or agreements pursuant to
20 this article to establish a separate workers' compensation pool to provide
21 for the payment of workers' compensation claims pursuant to title 23, chapter
22 6 on a cooperative or contract basis with one another or may jointly form a
23 nonprofit corporation or enter into a trust agreement to carry out the
24 provisions of this section in their behalf directly or by contract with a
25 private party. A workers' compensation pool established pursuant to this
26 subsection may only provide coverage for workers' compensation, employers'
27 liability and occupational disease claims. A workers' compensation pool is
28 ~~a separate entity~~ which is subject to approval as a self-insurer by the
29 industrial commission pursuant to section 23-961, subsection A, paragraph 2
30 and is subject to title 23, chapter 6 and rules adopted pursuant to that
31 chapter in addition to the requirements of this section. THE INDUSTRIAL
32 COMMISSION MAY, BY RULE, RESOLUTION OR ORDER, ADOPT REQUIREMENTS FOR THE
33 ADMINISTRATION OF A WORKERS' COMPENSATION POOL UNDER THIS SUBSECTION,
34 INCLUDING SEPARATION OR COMMINGLING OF FUNDS, ACCOUNTING, AUDITING,
35 REPORTING, ACTUARIAL STANDARDS AND PROCEDURES.

36 C. In addition to other authority granted pursuant to this title, two
37 or more public agencies may enter into contracts or agreements for the joint
38 purchase of life insurance, DISABILITY INSURANCE, ACCIDENT INSURANCE, or
39 health benefits plan insurance, ~~to~~ OR MAY pool retention of their risks OF
40 LOSS for life, ~~insurance~~ or DISABILITY, health OR ACCIDENT claims made
41 against any public agency member of the pool or to jointly provide the health
42 and medical services authorized in section 36-2907. Public agencies may
43 establish pools for the purposes of this subsection by any of the following
44 methods:

- 1 1. On a cooperative or contract basis.
- 2 2. By the formation of a nonprofit corporation.
- 3 3. By contracts or intergovernmental agreements with the Arizona
- 4 health care cost containment system administration.
- 5 4. By the execution of a trust agreement directly by the agencies or
- 6 by contracting with a third party.

7 D. In addition to other authority granted pursuant to this title, two
8 or more public agencies may enter into contracts or agreements pursuant to
9 this article for the joint purchasing of insurance FOR PROPERTY, LIABILITY
10 OR WORKERS' COMPENSATION LOSSES or to pool retention of their risks for
11 ~~a series of insurance policies issued~~ PROPERTY AND LIABILITY LOSS to cover
12 ~~the school district governing board, the school district~~ PUBLIC AGENCY, IT'S
13 ELECTED OFFICIALS AND EMPLOYEES and the contractor and subcontractor of every
14 tier engaged in the performance of a construction project of FOR the school
15 district PUBLIC AGENCY. Public agencies may establish pools for the purpose
16 of this subsection by any of the following methods:

- 17 1. On a cooperative or contract basis.
- 18 2. By the formation of a nonprofit corporation.
- 19 3. By the execution of a trust agreement directly by the agencies or
- 20 by contracting with a third party.

21 E. Section 10-11301 does not apply to nonprofit corporations formed
22 pursuant to this section.

23 F. Title 41, chapter 23 does not apply to the procurement of insurance
24 OR REINSURANCE, or to the procurement of the services provided for in
25 subsection J- K, paragraph 8 of this section, by any pool established
26 pursuant to this section.

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

30 H. Each pool shall be operated by a board of trustees consisting of
31 at least three persons who are elected officials or employees of public
32 entities within this state. The board of trustees shall notify the director
33 of the department of insurance of the existence of the pool and shall file
34 with the director and with the attorney general a copy of the
35 intergovernmental agreement or contract. The attorney general shall file a
36 copy of the agreement or contract with the secretary of state as required by
37 section 11-952. The board of trustees of each group shall do all of the
38 following:

- 39 1. Establish terms and conditions of coverage within the pool
- 40 including exclusions of coverage.
- 41 2. Ensure that all claims are paid promptly.
- 42 3. Take all necessary precautions to safeguard the assets of the
- 43 group.
- 44 4. Maintain minutes of its meetings.

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

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

7 I. IF THE POOL INCLUDES PRIVATE, NONPROFIT EDUCATIONAL INSTITUTIONS,
8 EACH PRIVATE, NONPROFIT EDUCATIONAL INSTITUTION SHALL POST A BOND, CASH
9 DEPOSIT OR OTHER COMPARABLE FINANCIAL SECURITY IN AN AMOUNT THAT IS EQUAL TO
10 AT LEAST ONE AND ONE-HALF TIMES THE AMOUNT OF THE PRIVATE, NONPROFIT
11 EDUCATIONAL INSTITUTION'S ANNUAL PREMIUM TO ENSURE PAYMENT OF THE
12 INSTITUTION'S LEGAL LIABILITIES AND OTHER OBLIGATIONS IF THE POOL IS
13 DETERMINED TO BE INSOLVENT OR IS OTHERWISE FOUND TO BE UNABLE TO DISCHARGE
14 THE POOL'S LEGAL LIABILITIES AND OTHER OBLIGATIONS PURSUANT TO SUBSECTION N
15 OF THIS SECTION.

16 ~~I.~~ J. The board of trustees shall not:

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

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

21 ~~J.~~ K. In addition to the requirements of section 11-952, a contract
22 or agreement made pursuant to subsection A of this section shall contain the
23 following:

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

25 2. A provision for termination of membership including either:

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

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

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

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

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

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

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

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

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

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

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

5 ~~K.~~ L. A pool or a terminating member shall provide at least ninety
6 days' written notice of the termination or cancellation. A workers'
7 compensation pool shall notify the industrial commission of the termination
8 or cancellation of a member thirty days before the termination or
9 cancellation of the member.

10 ~~L.~~ M. The pool shall be audited annually at the expense of the pool
11 by a certified public accountant, with a copy of the report submitted to the
12 governing body or chief executive officer of each member of the pool and to
13 the director of the department of insurance. The board of trustees of the
14 pool shall obtain an appropriate actuarial evaluation of the claim reserves
15 of the pool including an estimate of the incurred but not reported
16 claims. The department of insurance shall examine each public agency pool
17 once every three years. The director of the department of insurance may
18 examine a public agency pool sooner than three years from the preceding
19 examination if the director has reason to believe that the pool is
20 insolvent. The costs of any examination shall be paid by the pool subject
21 to the examination.

22 ~~M.~~ N. If, as a result of the annual audit or an examination by the
23 director of the department of insurance, it appears that the assets of the
24 pool are insufficient to enable the pool to discharge its legal liabilities
25 and other obligations, the director of the department of insurance shall
26 notify the administrator and the board of trustees of the pool of the
27 deficiency and the director's list of recommendations to abate the
28 deficiency, including a recommendation not to add any new members until the
29 deficiency is abated. If the pool fails to comply with the recommendations
30 within sixty days after the date of the notice, the director shall notify the
31 chief executive officer or the governing bodies, if any, of the members of
32 the pool, the governor, the president of the senate and the speaker of the
33 house of representatives that the pool has failed to comply with the
34 recommendations of the director.

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

42 ~~O.~~ P. A pool established pursuant to this section may make available
43 programs providing for insurance coverages described in subsections A, B and
44 C of this section to those charter schools governed by section 15-183,

1 subsection M AND, EXCEPT FOR A WORKERS' COMPENSATION POOL, TO PRIVATE,
2 NONPROFIT EDUCATIONAL INSTITUTIONS.

3 P. Q. For THE purposes of this section, "health benefits plan" means
4 a hospital or medical service corporation policy or certificate, a health
5 care services corporation contract, a multiple employer welfare arrangement
6 or any other arrangement under which health and medical benefits and services
7 are provided to two or more persons.

8 Sec. 2. Section 15-213, Arizona Revised Statutes, is amended to read:
9 15-213. Procurement practices of school districts; definitions

10 A. The state board of education shall adopt rules prescribing
11 procurement practices for all school districts in this state as follows:

12 1. The state board shall submit to the auditor general proposed rules
13 consistent with the procurement practices prescribed in title 41, chapter 23,
14 modifying the provisions for public notice of invitation for bids, requests
15 for proposals and requests for qualifications to allow a governing board to
16 give public notice of the invitation for bids, requests for proposals and
17 requests for qualifications by publication in the official newspaper of the
18 county as defined in section 11-255, modifying the provisions relating to
19 disposal of materials to comply with section 15-342, paragraph 18, providing
20 for governing board delegation of procurement authority and modifying as
21 necessary other provisions which the state board determines are not
22 appropriate for school districts, for procurement of construction,
23 construction services, materials or services when the total procurement
24 exceeds thirty thousand dollars in total cost. The rules shall include
25 provisions specifying that school districts are not required to engage in
26 competitive bidding in order to make the decision to participate in programs
27 pursuant to section 15-382 and that a program authorized by section 15-382
28 is not required to engage in competitive bidding for other than the joint-THE
29 SERVICES NECESSARY TO ADMINISTER THE PROGRAM OR FOR purchase of insurance or
30 reinsurance. The rules for procurement of construction projects shall
31 include provisions specifying that surety bonds furnished as bid security and
32 performance and payment bonds shall be executed and furnished as required by
33 title 34, chapter 2 or 6, as applicable.

34 2. The state board of education shall adopt rules for procurements
35 involving construction not exceeding one hundred fifty thousand dollars which
36 shall be known as the simplified school construction procurement program. At
37 a minimum, the rules for a simplified construction procurement program shall
38 require that:

39 (a) A list be maintained by each county school superintendent of
40 persons who desire to receive solicitations to bid on construction projects
41 to which additions shall be permitted throughout the year.

42 (b) The list of persons be available for public inspection.

1 (c) A performance bond and a payment bond as required by this section
2 be provided for contracts for construction by contractors.

3 (d) All bids for construction be opened at a public opening and the
4 bids shall remain confidential until the public opening.

5 (e) All persons desiring to submit bids be treated equitably and the
6 information related to each project be available to all eligible persons.

7 (f) Competition for construction projects under the simplified school
8 construction procurement program be encouraged to the maximum extent
9 possible. At a minimum, a school district shall submit information on each
10 project to all persons listed with the county school superintendent by any
11 school district within that county.

12 (g) A provision, covenant, clause or understanding in, collateral to
13 or affecting a construction contract that makes the contract subject to the
14 laws of another state or that requires any litigation, arbitration or other
15 dispute resolution proceeding arising from the contract to be conducted in
16 another state is against this state's public policy and is void and
17 unenforceable.

18 3. The auditor general shall review the proposed rules to determine
19 whether the rules are consistent with the procurement practices prescribed
20 in title 41, chapter 23 and any modifications are required to adapt the
21 procedures for school districts.

22 4. If the auditor general approves the proposed rules, the auditor
23 general shall notify the state board in writing and the state board shall
24 adopt such rules.

25 5. If the auditor general objects to the proposed rules, the auditor
26 general shall notify the state board of the objections in writing and the
27 state board, in adopting the rules, shall conform the proposed rules to meet
28 the objections of the auditor general or revise the proposed rules to which
29 an objection has been made and submit the revisions to the auditor general
30 for approval.

31 B. After the bids submitted in response to an invitation for bids are
32 opened and the award is made or after the proposals or qualifications are
33 submitted in response to a request for proposals or a request for
34 qualifications and the award is made, the governing board shall make
35 available for public inspection all information, all bids, proposals and
36 qualifications submitted and all findings and other information considered
37 in determining whose bid conforms to the invitation for bids and will be the
38 most advantageous with respect to price, conformity to the specifications and
39 other factors or whose proposal or qualifications are to be selected for the
40 award. The invitation for bids, request for proposals or request for
41 qualifications shall include a notice that all information and bids,
42 proposals and qualifications submitted will be made available for public
43 inspection. The rules adopted by the state board shall prohibit the use in

1 connection with procurement of specifications in any way proprietary to one
2 supplier unless the specification includes all of the following:

3 1. A statement of the reasons why no other specification is
4 practicable.

5 2. A description of the essential characteristics of the specified
6 product.

7 3. A statement specifically permitting an acceptable alternative
8 product to be supplied.

9 C. No project or purchase may be divided or sequenced into separate
10 projects or purchases in order to avoid the limits prescribed by the state
11 board under subsection A of this section.

12 D. A contract for the procurement of construction or construction
13 services shall include a provision which provides for negotiations between
14 the school district and the contractor for the recovery of damages related
15 to expenses incurred by the contractor for a delay for which the school
16 district is responsible, which is unreasonable under the circumstances and
17 which was not within the contemplation of the parties to the contract. This
18 section SUBSECTION shall not be construed to void any provision in the
19 contract which requires notice of delays, provides for arbitration or other
20 procedure for settlement or provides for liquidated damages.

21 E. The auditor general may conduct discretionary reviews,
22 investigations and audits of the financial and operational procurement
23 activities of school districts, nonexempt charter schools and school
24 purchasing cooperatives. The auditor general has final review and approval
25 authority over all school district, nonexempt charter school and school
26 purchasing cooperative audit contracts and any audit reports issued in
27 accordance with this section.

28 F. In addition to the requirements of sections 15-914 and 15-914.01,
29 school districts, nonexempt charter schools and school purchasing
30 cooperatives, in connection with any audit conducted by a certified public
31 accountant, shall contract for a systematic review of purchasing practices
32 using methodology consistent with sampling guidelines established by the
33 auditor general. The auditor general shall consider cost when establishing
34 guidelines pursuant to this subsection and to the extent possible shall
35 attempt to minimize the cost of the review. The purpose of the review is to
36 determine whether the school district, nonexempt charter school or school
37 purchasing cooperative is in compliance with the procurement laws and
38 applicable procurement rules of this state. A copy of the review shall be
39 submitted upon completion to the auditor general. The auditor general may
40 conduct discretionary reviews of school districts, nonexempt charter schools
41 and school purchasing cooperatives not required to contract for independent
42 audits.

1 G. The attorney general or county attorney has jurisdiction to enforce
2 this section. The attorney general or county attorney may seek relief for
3 any violation of this section through an appropriate civil or criminal action
4 in superior court including an action to enjoin a threatened or pending
5 violation of this section and including an action to enforce compliance with
6 any request for documents made by the auditor general pursuant to this
7 section.

8 H. The department of education shall enact policies and procedures for
9 the acceptance and disposition of complaints from the public regarding school
10 procurement practices and shall forward all school procurement complaints to
11 the attorney general.

12 I. The state board of education shall adjust the total cost provided
13 for in subsection A, paragraph 1 of this section by the annual percentage
14 change in the GDP price deflator as defined in section 41-563.

15 J. The state board of education and the auditor general shall adopt
16 rules authorizing school districts to procure construction services by
17 construction-manager-at-risk, design-build and job-order-contracting methods
18 of project delivery. The rules adopted shall require each school district
19 that uses construction-manager-at-risk, design-build or job-order-contracting
20 to procure construction services to submit, on or before January 15 of each
21 year, a report to the secretary of state on the benefits associated with the
22 use of such procurement methods. The report shall include the number of
23 projects completed in the preceding calendar year using that procurement
24 method, the cost and description of each project and an estimate of any cost
25 savings or other benefits realized through the use of that procurement
26 method.

27 ~~K. Until the rules prescribed in subsection J of this section are~~
28 ~~adopted, school districts may procure construction services by the~~
29 ~~construction-manager-at-risk, design-build and job-order-contracting methods~~
30 ~~of project delivery as provided in title 41, chapter 23, except that the~~
31 ~~rules adopted by the director of the department of administration do not~~
32 ~~apply. Any procurement commenced pursuant to this subsection may be~~
33 ~~completed pursuant to this subsection regardless of the adoption of rules by~~
34 ~~the state board of education and the auditor general.~~

35 ~~t.~~ K. The dollar amount of each job order under any
36 job-order-contracting construction services program shall not be more than
37 the dollar amount determined pursuant to section 41-2578, subsection J,
38 paragraph 1.

39 M. L. For the purposes of this section:

40 1. "Nonexempt charter school" means a charter school that is not
41 exempted from procurement laws pursuant to section 15-183, subsection E,
42 paragraph 6.

1 2. "School purchasing cooperative" means an entity engaged in
2 cooperative purchasing as defined in section 41-2631.

3 3. "Total cost" means the cost of all materials and services,
4 including the cost of labor performed by employees of the school district,
5 for all construction as provided in subsection A of this section.

6 Sec. 3. Section 15-382, Arizona Revised Statutes, is amended to read:

7 15-382. Authorization to self-insure; pooling agreements; joint
8 agreements; trustees; liability coverage and pool
9 requirements; remedies; definition

10 A. The school district governing board may determine that
11 self-insurance is necessary or desirable in the best interest of the district
12 and may provide for a self-insurance program or programs for the district
13 including risk management consultation. Any risk management consultant or
14 insurance administrator employed by a school district governing board must
15 be licensed under title 20, chapter 2, article 3 or 9, and such license shall
16 be verified by the school district governing board prior to employment.

17 B. The school district governing board may:

18 1. Enter into intergovernmental agreements or contracts pursuant to
19 section 11-952.01 for participation in programs offered by public agency
20 pools. These programs may include the joint purchasing of health benefits
21 plan, LIFE OR DISABILITY insurance or the joint providing POOLING OF THE
22 RETENTION OF LOSSES FOR HEALTH, ACCIDENT, LIFE OR DISABILITY CLAIMS OR THE
23 PROVISION of the health and medical services enumerated in section 36-2907.

24 2. Separately contract with a trustee or board of trustees which
25 provides a common self-insurance program or programs with pooled funds and
26 risks to more than one district or an association of school districts within
27 this state that is funded by member school districts pursuant to section
28 15-342, paragraph 8.

29 3. Enter into cooperative procurement agreements with other districts
30 pursuant to rules adopted pursuant to section 15-213 to participate in
31 programs for either self-insurance or the joint purchase of insurance.

32 4. Separately establish a self-insurance program solely for its
33 district.

34 C. If the school district governing board, either alone or in
35 combination with another school district or an association of school
36 districts in this state that is funded by member school districts pursuant
37 to section 15-342, paragraph 8, establishes a self-insurance program, the
38 governing board or an association of school districts shall place all funds
39 into a trust to be used for payment of uninsured losses, claims, defense
40 costs, costs of training designed to reduce losses and claims, the cost of
41 related employee benefits including wellness programs, life, disability and
42 other fully and partially insured group insurance plans, programs that allow
43 for participation in a cafeteria plan that meets the requirements of the
44 United States internal revenue code of 1986, costs of administration and

1 other related expenses. If a member of the governing board or employee of
2 the school district is acting as a trustee, the trust shall be administered
3 by at least five joint trustees, of whom no more than one may be a member of
4 the governing board and no more than one may be an employee of the school
5 district. Funds budgeted for self-insurance programs shall be subject to
6 district budgetary requirements, including but not limited to the
7 requirements that the funds be budgeted within the maintenance and operation
8 section and the budget limitation on increases as prescribed in section
9 15-905. The funds, upon being placed in the trust, shall not lapse at the
10 close of the fiscal year, except that any cash balance remaining after
11 termination of the program and settlement of all outstanding claims shall be
12 used for reduction of school district taxes for the budget year. The
13 trustees of the trust must be bonded, a stop-loss provision must be
14 incorporated in the trust agreement, and an annual audit must be performed
15 by a certified public accountant and a copy of the report kept on file in the
16 district office for a period of not less than five years.

17 D. If the self-insurance is for liability losses, excess liability
18 coverage must be obtained as follows:

19 1. For a single school district, the coverage may include an annual
20 aggregate limit of no more than three million dollars and the maximum
21 retention per occurrence shall be one-half of one per cent of the district's
22 maintenance and operation budget.

23 2. For a pool, the coverage may include an annual aggregate limit set
24 by the pool and the maximum retention per occurrence shall not exceed
25 one-half of one per cent of the combined maintenance and operation budgets
26 of the districts in the pool.

27 E. "Self-insurance program" as used in this section means programs
28 established and wholly or partially funded by the school district governing
29 board. Self-insurance programs shall not include a decision by the governing
30 board not to carry insurance upon a particular risk or risks.

31 Sec. 4. Section 41-621.01, Arizona Revised Statutes, is amended to
32 read:

33 41-621.01. Contractors or subcontractors; pooling of property,
34 liability and workers' compensation coverage;
35 exemptions; board of trustees; contract;
36 termination; audit; insolvency

37 A. Pursuant to section 41-621, subsection D and section 41-622.01 two
38 or more contractors or subcontractors licensed to do work for this state or
39 any political subdivision of this state may with the approval of the
40 department of administration enter into contracts or agreements pursuant to
41 this section for the joint purchase of insurance, to pool retention of their
42 risks for property and liability losses and to provide for the payment of the
43 property loss or claim of liability made against any member of the pool on
44 a cooperative or contract basis with one another or may jointly form a

1 nonprofit corporation or enter into a trust agreement to carry out the
2 provisions of this section in their behalf directly or by contract with a
3 private party, if the department of administration has determined to sanction
4 such a pool. Two or more contractors may ALSO enter into contracts or
5 agreements pursuant to this section to establish a separate workers'
6 compensation pool to provide for the payment of workers' compensation claims
7 pursuant to title 23, chapter 6 on a cooperative or contract basis with one
8 another or may jointly form a nonprofit corporation or enter into a trust
9 agreement to carry out the provisions of this section in their behalf
10 directly or by contract with a private party. A workers' compensation pool
11 established pursuant to this subsection may only provide coverage for
12 workers' compensation, employers' liability and occupational disease
13 claims. A workers' compensation pool is a separate entity which is subject
14 to approval as a self-insurer by the industrial commission pursuant to
15 section 23-961, subsection A, paragraph 2 and is subject to title 23, chapter
16 6 and rules adopted pursuant to that chapter in addition to the requirements
17 of this section. THE INDUSTRIAL COMMISSION MAY, BY RULE, RESOLUTION OR
18 ORDER, ADOPT REQUIREMENTS FOR THE ADMINISTRATION OF A WORKERS' COMPENSATION
19 POOL UNDER THIS SUBSECTION, INCLUDING SEPARATION OR COMMINGLING OF FUNDS,
20 ACCOUNTING, AUDITING, REPORTING, ACTUARIAL STANDARDS AND PROCEDURES.

21 B. IN ADDITION TO OTHER AUTHORITY GRANTED PURSUANT TO THIS TITLE, TWO
22 OR MORE CONTRACTORS OR SUBCONTRACTORS LICENSED TO DO WORK FOR THIS STATE OR
23 ANY POLITICAL SUBDIVISION OF THIS STATE MAY ENTER INTO CONTRACTS OR
24 AGREEMENTS FOR THE JOINT PURCHASE OF LIFE INSURANCE, DISABILITY INSURANCE,
25 ACCIDENT INSURANCE OR HEALTH BENEFITS PLAN INSURANCE, TO POOL RETENTION OF
26 THEIR RISKS OF LOSS FOR LIFE, DISABILITY, HEALTH OR ACCIDENT CLAIMS MADE
27 AGAINST ANY CONTRACTOR OR SUBCONTRACTOR MEMBER OF THE POOL OR TO JOINTLY
28 PROVIDE THE HEALTH AND MEDICAL SERVICES AUTHORIZED IN SECTION
29 36-2907. CONTRACTORS AND SUBCONTRACTORS MAY ESTABLISH POOLS FOR THE PURPOSES
30 OF THIS SUBSECTION BY ANY OF THE FOLLOWING METHODS:

- 31 1. ON A COOPERATIVE OR CONTRACT BASIS.
- 32 2. BY THE FORMATION OF A NONPROFIT CORPORATION.
- 33 3. BY A CONTRACT OR INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA
34 HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION.
- 35 4. BY THE EXECUTION OF A TRUST AGREEMENT DIRECTLY BY THE CONTRACTORS
36 AND SUBCONTRACTORS OR BY CONTRACTING WITH A THIRD PARTY.

37 C. CONTRACTORS OR SUBCONTRACTORS OF A POLITICAL SUBDIVISION OF THIS
38 STATE THAT IS A MEMBER OF A RISK RETENTION POOL AUTHORIZED UNDER TITLE 11 MAY
39 OBTAIN LIFE INSURANCE, DISABILITY INSURANCE, ACCIDENT INSURANCE OR HEALTH
40 BENEFITS PLAN INSURANCE COVERAGE DIRECTLY FROM THAT POLITICAL SUBDIVISION IF
41 COVERAGE IS AVAILABLE AND AS AUTHORIZED BY SECTION 11-952.01, SUBSECTION C.

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

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

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

8 ~~G.~~ G. Each pool shall be operated by a board of trustees consisting
9 of at least five members, the majority of whom shall be elected officials or
10 employees of the state. The board of trustees of each group shall do all of
11 the following:

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

14 2. Ensure that all claims are paid promptly.

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

17 4. Maintain minutes of its meetings.

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

22 6. Notify the director of the department of insurance of the existence
23 of the pool and file a copy of the agreement with him and with the attorney
24 general.

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

27 ~~H.~~ H. The board of trustees shall not:

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

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

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

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

35 2. A provision for termination of membership including either:

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

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

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

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

1 5. A provision for the maintenance of claims reserves equal to known
2 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 incurred
5 claims are concluded, settled or paid.

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

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

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

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

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

16 ~~H.~~ J. A pool or a terminating member shall provide at least ninety
17 days' written notice of the termination or cancellation. A workers'
18 compensation pool shall notify the industrial commission of the termination
19 or cancellation of a member thirty days before the termination or
20 cancellation of the member.

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

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

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

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

APPROVED BY THE GOVERNOR MAY 20, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2002.



Passed the House March 21, 2002,

Passed the Senate April 22, 2002,

by the following vote: 56 Ayes,

by the following vote: 25 Ayes,

0 Nays, 4 Not Voting

1 Nays, 4 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

H.B. 2198

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 16, 2002,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16 day of May, 2002

at 3:00 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 20th day of

May, 2002,

at 10: o'clock A M.

[Signature]
Governor of Arizona

H.B. 2198

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2002,

at 3:54 o'clock P M.

[Signature]
Secretary of State