

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 70

HOUSE BILL 2120

AN ACT

AMENDING SECTION 11-451, ARIZONA REVISED STATUTES; REPEALING SECTIONS 11-453 AND 38-252, ARIZONA REVISED STATUTES; AMENDING SECTIONS 11-542, 11-601, 11-952.01, 11-981 AND 38-291, ARIZONA REVISED STATUTES; RELATING TO SURETY BONDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 11-451, Arizona Revised Statutes, is amended to
3 read:

4 11-451. Proceedings upon failure to pay over money

5 A. If a sheriff or deputy fails to pay over to the county, according
6 to law, any money collected or received by him THE SHERIFF OR DEPUTY for the
7 county, or fails to pay over to the person entitled thereto any money
8 collected or received by him THE SHERIFF OR DEPUTY by virtue of his THE
9 SHERIFF'S OR DEPUTY'S office, the county attorney of the county, or such
10 person entitled thereto, may proceed against the sheriff or deputy in the
11 superior court, by an order to show cause why he THE SHERIFF OR DEPUTY should
12 not pay over the money. Upon the hearing, the court may order the sheriff
13 or deputy to pay to the county or person the amount found due, with not to
14 exceed twenty-five per cent thereof as damages for the failure, together with
15 the costs of the proceeding. Upon failure to comply with the order the
16 sheriff or deputy may be committed to jail as for contempt. When the sheriff
17 is so committed, and remains committed for sixty days, his THE SHERIFF'S
18 office is vacant.

19 ~~B. The person injured may also maintain an action against the sheriff
20 upon his official bond.~~

21 Sec. 2. Repeal

22 Section 11-453, Arizona Revised Statutes, is repealed.

23 Sec. 3. Section 11-542, Arizona Revised Statutes, is amended to read:

24 11-542. County assessor; oath

25 A. ~~The assessor, before entering upon the duties of his office, shall
26 execute a surety company bond to the state in such penal sum as the board of
27 supervisors of the county fixes, conditioned upon his true and faithful
28 performance and execution of the duties of his office as required by law,
29 without fear or favor, fraud, deceit or oppression, and his payment over of
30 all money which may come into his hands as assessor.~~

31 B. The assessor and his THE ASSESSOR'S deputies shall take and
32 subscribe the following oath or affirmation:

33 "I do solemnly swear (or affirm) that I will well and truly discharge
34 the duties of assessor of the county of _____, and will, to the best of
35 my knowledge and ability, truly and fairly determine the valuation, without
36 favor or partiality, of all the taxable property in said county at its full
37 cash value."

38 Sec. 4. Section 11-601, Arizona Revised Statutes, is amended to read:

39 11-601. County charges

40 County charges are:

41 1. Charges against the county incurred by virtue of any provision of
42 this title.

43 2. Salaries of county and precinct officers, deputies and employees
44 and necessary expenses incurred in the conduct of their offices.

1 3. Expenses necessarily incurred in the support of persons charged
2 with or convicted of crime and committed therefor to the county jail.

3 4. Sums required by law to be paid to grand and trial jurors and
4 indigent witnesses in criminal actions.

5 5. Compensation of interpreters in the prosecution or defense of
6 criminal actions who have been appointed by the presiding judge of the
7 superior court as official interpreters for justice courts and courts of
8 record of their county. Such interpreters shall be paid such salaries as the
9 board of supervisors may determine.

10 6. Necessary expenses for the support of county hospitals and indigent
11 sick whose support is chargeable to the county.

12 7. Compensation of physicians for making examinations in insanity
13 cases upon the request or order of the superior court.

14 8. Contingent expenses necessarily incurred for the use and benefit
15 of the county.

16 ~~9. Premiums for official bonds required by law to be given by public
17 officers, deputies or clerks.~~

18 ~~10. 9. Every other sum directed by law to be raised for a county
19 purpose or declared to be a county charge.~~

20 Sec. 5. Section 11-952.01, Arizona Revised Statutes, is amended to
21 read:

22 11-952.01. Public agency pooling of property, liability,
23 workers' compensation, life, health, accident and
24 disability coverage; exemptions; board of
25 trustees; contract; termination; audit;
26 insolvency; definition

27 A. In addition to other authority granted pursuant to this title, two
28 or more public agencies may enter into contracts or agreements pursuant to
29 this article for the joint purchasing of insurance or to pool retention of
30 their risks for property and liability losses and to provide for the payment
31 of such property loss or claim of liability made against any member of the
32 pool, INCLUDING ANY ELECTED OR APPOINTED OFFICIAL, OFFICER OR EMPLOYEE
33 COVERED BY THE POOL, on a cooperative or contract basis with one another or
34 may jointly form a nonprofit corporation or enter into a trust agreement to
35 carry out the provisions of this section in their behalf directly or by
36 contract with a private party.

37 B. In addition to other authority granted pursuant to this title, two
38 or more public agencies may enter into contracts or agreements pursuant to
39 this article to establish a workers' compensation pool to provide for the
40 payment of workers' compensation claims pursuant to title 23, chapter 6 on
41 a cooperative or contract basis with one another or may jointly form a
42 nonprofit corporation or enter into a trust agreement to carry out the
43 provisions of this section in their behalf directly or by contract with a
44 private party. A workers' compensation pool established pursuant to this
45 subsection may provide coverage for workers' compensation, employers'

1 liability and occupational disease claims. A workers' compensation pool is
2 subject to approval as a self-insurer by the industrial commission pursuant
3 to section 23-961, subsection A, paragraph 2 and is subject to title 23,
4 chapter 6 and rules adopted pursuant to that chapter in addition to the
5 requirements of this section. The industrial commission, by rule, resolution
6 or order, may adopt requirements for the administration of a workers'
7 compensation pool under this subsection, including separation or commingling
8 of funds, accounting, auditing, reporting, actuarial standards and
9 procedures.

10 C. In addition to other authority granted pursuant to this title, two
11 or more public agencies may enter into contracts or agreements for the joint
12 purchase of life insurance, disability insurance, accident insurance, or
13 health benefits plan insurance or may pool retention of their risks of loss
14 for life, disability, health or accident claims made against any public
15 agency member of the pool or to jointly provide the health and medical
16 services authorized in section 36-2907. Public agencies may establish pools
17 for the purposes of this subsection by any of the following methods:

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

24 D. In addition to other authority granted pursuant to this title, two
25 or more public agencies may enter into contracts or agreements pursuant to
26 this article for the joint purchasing of insurance for property, liability
27 or workers' compensation losses or to pool retention of their risks for
28 property and liability loss to cover the public agency, its elected officials
29 and employees and the contractor and subcontractor of every tier engaged in
30 the performance of a construction project for the public agency. Public
31 agencies may establish pools for the purpose of this subsection by any of the
32 following methods:

- 33 1. On a cooperative or contract basis.
- 34 2. By the formation of a nonprofit corporation.
- 35 3. By the execution of a trust agreement directly by the agencies or
36 by contracting with a third party.

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

39 F. Title 41, chapter 23 does not apply to the procurement of insurance
40 or reinsurance, or to the procurement of the services provided for in
41 subsection K, paragraph 8 of this section, by any pool established pursuant
42 to this section.

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

1 H. Each pool shall be operated by a board of trustees consisting of
2 at least three persons who are elected officials or employees of public
3 entities within this state. The board of trustees shall notify the director
4 of the department of insurance of the existence of the pool and shall file
5 with the director and with the attorney general a copy of the
6 intergovernmental agreement or contract. The attorney general shall file a
7 copy of the agreement or contract with the secretary of state as required by
8 section 11-952. The board of trustees of each group shall do all of the
9 following:

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

12 2. Ensure that all claims are paid promptly.

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

15 4. Maintain minutes of its meetings.

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

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

22 I. If the pool includes private, nonprofit educational institutions,
23 each private, nonprofit educational institution shall post a bond, cash
24 deposit or other comparable financial security in an amount that is equal to
25 at least one and one-half times the amount of the private, nonprofit
26 educational institution's annual premium to ensure payment of the school's
27 or institution's legal liabilities and other obligations if the pool is
28 determined to be insolvent or is otherwise found to be unable to discharge
29 the pool's legal liabilities and other obligations pursuant to subsection N
30 of this section.

31 J. The board of trustees shall not:

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

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

36 K. In addition to the requirements of section 11-952, a contract or
37 agreement made pursuant to subsection A of this section shall contain the
38 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

19 L. A pool or a terminating member shall provide at least ninety days'
20 written notice of the termination or cancellation. A workers' compensation
21 pool shall notify the industrial commission of the termination or
22 cancellation of a member thirty days before the termination or cancellation
23 of the member.

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

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

1 the pool, the governor, the president of the senate and the speaker of the
2 house of representatives that the pool has failed to comply with the
3 recommendations of the director.

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

11 P. A pool established pursuant to this section may make available
12 programs providing for insurance coverages described in subsections A, B and
13 C of this section to those charter schools governed by section 15-183,
14 subsection M and, except for a workers' compensation pool, to private,
15 nonprofit educational institutions.

16 Q. For the purposes of this section, "health benefits plan" means a
17 hospital or medical service corporation policy or certificate, a health care
18 services corporation contract, a multiple employer welfare arrangement or any
19 other arrangement under which health and medical benefits and services are
20 provided to two or more persons.

21 Sec. 6. Section 11-981, Arizona Revised Statutes, is amended to read:
22 11-981. Payment of benefits, losses and claims; establishment

23 of trust funds

24 A. In addition to authority granted pursuant to other provisions of
25 law or city charter, any city, town or county may procure insurance from any
26 insurer authorized by the director of the department of insurance or may
27 establish a self-insurance program for the management and administration of
28 a system for direct payment of benefits, losses or claims or any combination
29 of insurance and direct payments, and including risk management consultation,
30 to provide:

31 1. Health, accident, life or disability benefits for employees and
32 officers of the city, town or county and their dependents.

33 2. Payment of any property loss sustained or lawful claim of liability
34 or fortuitous loss made against the city, town or county or its ELECTED OR
35 APPOINTED OFFICIALS, employees or officers if such ELECTED OR APPOINTED
36 OFFICIALS, employees or officers are acting within the scope of employment
37 or authority.

38 B. If any city, town or county establishes a self-insurance program
39 for the management and administration of a system for direct payment of
40 benefits, losses or claims pursuant to subsection A, the governing body of
41 such city, town or county shall place all funds into a trust fund for the
42 purposes of this section in amounts as determined appropriate by the
43 governing body of the city, town or county, except that any city, town or
44 county establishing such a trust fund shall:

1 1. Designate a risk management consultant or insurance administrator
2 licensed pursuant to title 20, chapter 2, articles ARTICLE 3 or 9, and such
3 license shall be verified by the governing body of the city, town or county.

4 2. The trust shall be administered by at least five joint trustees,
5 of whom no more than one may be a member of the governing body of the city,
6 town or county and no more than one may be an employee of the city, town or
7 county.

8 3. The trustees of the trust must be bonded, a stop-loss provision
9 must be incorporated in the trust agreement, and an annual audit must be
10 performed by an external auditor and a copy of the report kept on file in the
11 offices of the governing body of the city, town or county for a period of not
12 less than five years.

13 4. Not make any expenditure from the trust fund for any purpose not
14 specified in this article.

15 C. Expenditures during the fiscal year from the trust fund and monies
16 in the trust fund at the close of the fiscal year shall not be subject to the
17 provisions of title 42, chapter 17, article 3.

18 D. In the event that such a trust fund is no longer used by the city,
19 town or county for the purposes herein set forth, it shall revert during that
20 fiscal year to the general fund of such city, town or county.

21 E. The authority granted to a city, town or county by this section is
22 not subject to the provisions of title 20, except that any health, life,
23 accident or disability benefit plan shall conform to the benefits required
24 by the provisions of title 20.

25 F. This section shall not be construed to authorize any city, town or
26 county to procure insurance from any insurer not authorized by the director
27 of the department of insurance.

28 Sec. 7. Repeal

29 Section 38-252, Arizona Revised Statutes, is repealed.

30 Sec. 8. Section 38-291, Arizona Revised Statutes, is amended to read:

31 38-291. Vacancy defined

32 An office shall be deemed vacant from and after the occurrence of any
33 of the following events before the expiration of a term of office:

34 1. Death of the person holding the office.

35 2. Insanity of the person holding the office, when judicially
36 determined.

37 3. Resignation of the person holding the office and the lawful
38 acceptance of the resignation.

39 4. Removal from office of the person holding the office.

40 5. If the office is elective, the person holding the office ceasing
41 to be a resident of the state, or, if the office is local, or from a
42 legislative or congressional district, the person holding the office ceasing
43 to be a resident of the district, county, city, town or precinct for which
44 he was elected, or within which the duties of his office are required to be
45 discharged.

1 6. Absence from the state by the person holding the office, without
2 permission of the legislature, beyond the period of three consecutive months.

3 7. The person holding the office ceasing to discharge the duties of
4 office for the period of three consecutive months.

5 8. Conviction of the person holding the office of a felony or an
6 offense involving a violation of his official duties.

7 9. Failure of the person elected or appointed to such office to file
8 his official oath ~~or bond~~ within the time prescribed by law.

9 10. A decision of a competent tribunal declaring void the election or
10 appointment of the person elected or appointed to the office.

11 11. Failure of a person to be elected or appointed to the office.

12 12. A violation of section 38-296 by the person holding the office.

13 Sec. 9. Retroactivity

14 This act is effective retroactively to from and after December 31, 2000
15 except if a person had a claim against the bond in a county that had a bond
16 on the effective date of this act, then that action may proceed against the
17 bond until any statute of repose or limitation bars the action.

18 Sec. 10. Emergency

19 This act is an emergency measure that is necessary to preserve the public
20 peace, health or safety and is operative immediately as provided by law.

APPROVED BY THE GOVERNOR APRIL 17, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2003.

Passed the House March 5, 2003

Passed the Senate April 10, 2003

by the following vote: 59 Ayes,

by the following vote: 28 Ayes,

0 Nays, 1 Not Voting
with emergency

Jake Flake
Speaker of the House
Sproman L. Moore
Chief Clerk of the House

0 Nays, 2 Not Voting
with emergency

John Blumenthal
President of the Senate
Charmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
14 day of April, 2003

at 3:11 o'clock P. M.
Sandra Gomez
Secretary to the Governor

Approved this ~~April~~ 17 day of
April, 2003,

at 4:00 o'clock P. M.
Jon R. Arpa
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 18 day of April, 2003

at 11:18 o'clock A. M.
James K. Brewer
Secretary of State