

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

[R05-80]

PREAMBLE

- 1. Sections Affected**
R20-6-2002
- Rulemaking Action**
Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 20-167(H)
Implementing statutes: A.R.S. §§ 20-167(H), 20-1098, 20-1098.01(G), 20-1098.05, 20-1098.06, and 20-1098.07
- 3. List all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 2947, July 23, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 2988, July 30, 2004
Notice of Supplemental Proposed Rulemaking: 11 A.A.R. 441, January 21, 2005
Notice of Termination of Rulemaking: 11 A.A.R. 1055, March 11, 2005
Notice of Rulemaking Docket Opening: 11 A.A.R. 1063, March 11, 2005
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Margaret McClelland
Address: Department of Insurance
2910 N. 44th St., 2nd Fl.
Phoenix, AZ 85018
Telephone: (602) 912-8456
Fax: (602) 912-8452
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
Laws 2001, Ch. 327 established a captive insurance program in Arizona. Effective July 1, 2002, A.R.S. § 20-1098.01(J) required the Director of the Department of Insurance to establish fees for the issuance and renewal of a captive insurer license under A.R.S. § 20-167(H). In 2002, the Department promulgated rules to establish such fees for captive insurers in R20-6-2002. In 2003, the Arizona legislature, in HB 2152, amended the captive insurance law to allow the creation of protected cell captive insurers. The existing R20-6-2002 does not specify fees for protected cell captive insurers, a subset of captive insurers. The existing rule also does not specify fees for an amendment to the certificate of authority for a captive insurer.

Currently, all other states that have captive statutes have the ability to collect revenues via premium taxes from the protected cell captive insurer for each protected cell. Arizona is a fee-based state, and under the current rule, the Department can collect only \$1,000 for the initial license and \$5,500 for the annual renewal license from the protected cell captive insurer, regardless of the number of protected cells.

The work that the Department performs in reviewing, approving, and processing a protected cell applicant for certificate of authority is similar to that for reviewing, approving, and processing a regular captive insurer application for certificate of authority. Also, the work that the Department performs in reviewing, approving, and processing an application for issuance of an amended certificate of authority is similar to the work the Department performs in reviewing, approving, and processing an application for an initial certificate of authority for a captive insurer. ADOI

Notices of Proposed Rulemaking

is incurring additional costs when reviewing, approving, and processing a protected cell application for certificate of authority and for issuance of an amended certificate of authority, but is not being compensated for the work for either. This rulemaking will provide for the Department to be compensated for the work.

6. A reference to any study that the agency relied on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

There will be economic impacts to protected cell captive insurers and captive insurers as a result of this rulemaking due to the fees imposed. Because protected cell captive insurers are typically established only by large enterprises that would otherwise be capable of self-insuring their risks, and are not subject to any premium taxes as are regular insurers, the economic impact is estimated to be minimal to moderate.

There will be a minimal economic impact on the Department, the Secretary of State, and the Governor's Regulatory Review Council for costs associated with the rulemaking process.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Margaret McClelland

Address: Department of Insurance
2910 N. 44th St., 2nd Fl.
Phoenix, AZ 85018

Telephone: (602) 912-8456

Fax: (602) 912-8452

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: Monday, April 11, 2005

Time: 9:00 a.m.

Location: Department of Insurance
2910 N. 44th St.
Phoenix, AZ 85018
Third floor conference room

Nature: Oral proceeding to receive oral or written comments

Close of record: 5:00 p.m. on Monday, April 11, 2005, or the Department will accept written comments postmarked by April 11, 2005

ADOI is committed to complying with the Americans with Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADOI at least 72 hours before the hearing.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rule:

Not applicable

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 20. CAPTIVE INSURERS

Section

R20-6-2002. Fees; Examination Costs

ARTICLE 20. CAPTIVE INSURERS

R20-6-2002. Fees; Examination Costs

- A. A corporation applying for a license to do business as a captive insurer, as defined in A.R.S. § ~~20-1098(4)~~ 20-1098(5), shall pay a nonrefundable fee of \$1,000.00 to the Department for issuance of the license. A protected cell captive insurer, as defined in A.R.S. § 20-1098(14), also shall pay to the Department a nonrefundable fee of \$1,000.00 for issuance of each license for each protected cell. The fee is payable in full at the time the applicant submits the application for license to the Department under A.R.S. § 20-1098.01.
- B. A captive insurer shall pay a nonrefundable annual renewal fee of \$5,500.00 to the Department at the time of filing its annual report under A.R.S. § 20-1098.01(G). A protected cell captive insurer also shall pay to the Department a nonrefundable annual renewal fee of \$2,500.00 for each protected cell at the time of filing its annual report under A.R.S. § 20-1098.05(B)(6).
- C. A captive insurer shall pay a nonrefundable fee of \$200.00 to the Department at the time of filing for issuance of an amended certificate of authority.
- ~~E~~D. In addition to the fees prescribed in subsections (A) and (B), an applicant for a captive insurer license or a licensed captive insurer shall pay the costs of any examination conducted by the Director, in accordance with A.R.S. § 20-1098.06.