

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 327

HOUSE BILL 2116

AN ACT

AMENDING SECTIONS 20-167, 20-306 AND 20-485.12, ARIZONA REVISED STATUTES; AMENDING SECTION 20-1003, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 339, SECTION 1; AMENDING SECTION 20-1004, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 339, SECTION 2; AMENDING SECTIONS 20-1095.03, 20-1095.06, 20-1096.04 AND 20-1096.05, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 14; AMENDING SECTIONS 20-1802 AND 20-1807, ARIZONA REVISED STATUTES; MAKING APPROPRIATIONS; RELATING TO CAPTIVE INSURERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
 2 Section 1. Section 20-167, Arizona Revised Statutes, is amended to
 3 read:

4 20-167. Fees

5 A. The director shall collect in advance the following fees, which
 6 THAT, subsequent to issuance of a receipt evidencing any payment, shall not
 7 be refunded by the director:

	Not Less Than:	Not More Than:
8		
9 1. For filing charter documents:		
10 (a) Original charter documents,		
11 articles of incorporation,		
12 bylaws, or record of organization		
13 of insurers, or certified copies		
14 thereof, required to be filed with		
15 the director and not also subject		
16 to filing in the office of the		
17 corporation commission	\$ 25.00	\$ 75.00
18 (b) Amended charter documents	10.00	30.00
19 (c) No charge or fee shall be required		
20 for filing with the director any		
21 of such documents also required		
22 by law to be filed in the office		
23 of the corporation commission.		
24 2. Certificate of authority:		
25 (a) Issuance:		
26 Fraternal benefit societies	\$ 10.00	\$ 30.00
27 Medical or hospital service		
28 corporations, or domestic		
29 benefit insurers	25.00	75.00
30 All other insurers	65.00	195.00
31 (b) Renewal:		
32 Fraternal benefit societies,		
33 or domestic benefit insurers	10.00	30.00
34 Medical or hospital service		
35 corporations	25.00	75.00
36 Domestic stock life and disability		
37 insurers only or either	500.00	1,500.00
38 DOMESTIC LIFE REINSURERS, DOMESTIC		
39 DISABILITY REINSURERS OR domestic		
40 life and disability reinsurer only		
41 or either REINSURERS	\$1,500.00	\$4,500.00
42 All other insurers	45.00	135.00
43 3. Filing annual statement	100.00	300.00

1	4. Licenses and examinations:		
2	(a) Licenses:		
3	Surplus lines broker's license,		
4	biennially	200.00	600.00
5	All other licenses, biennially	20.00	60.00
6	(b) Examinations for license, agents		
7	and brokers:		
8	Examination on laws and one kind		
9	of insurance	5.00	15.00
10	Examination on laws and two or		
11	more kinds of insurance	10.00	30.00
12	5. Miscellaneous:		
13	Fee accompanying service of		
14	process upon director	\$ 5.00	\$ 15.00
15	Certificate of director, under seal	1.00	3.00
16	Copy of document filed in director's		
17	office, per page	0.50	1.50

18 B. The director shall deposit, pursuant to sections 35-146 and 35-147,
 19 all fees for licenses so collected PURSUANT TO THIS SECTION in the state
 20 general fund. No refund shall be allowed for any unused portion of a fee nor
 21 shall fees be prorated, except that the fee for an initial license if applied
 22 for in the second half of the biennial term shall not exceed one-half of the
 23 license fee.

24 C. The license fees prescribed by this section shall be payment in
 25 full of all demands for any and all state, county, district and municipal
 26 license fees, license taxes, business privilege taxes and business privilege
 27 fees and charges of every kind.

28 D. Each domestic stock life and OR disability insurer ~~only or either,~~
 29 which THAT pays the renewal fee required under the provisions of subsection
 30 A of this section, shall be IS entitled to a credit in the amount of four
 31 hundred fifty-five dollars to apply to the premium tax THE INSURER then owed
 32 by such company OWES pursuant to the provisions of section 20-224, but such
 33 THE credit shall not be cumulative.

34 E. ~~Each domestic life and disability reinsurer only or either, which~~
 35 ~~pays the renewal fee required under the provisions of subsection A of this~~
 36 ~~section, shall be entitled to a credit in the amount of fourteen hundred~~
 37 ~~fifty-five dollars to apply to the premium tax then owed by such company~~
 38 ~~pursuant to the provisions of section 20-224, but such credit shall not be~~
 39 ~~cumulative.~~

40 F. E. The director may contract for the examination for the licensing
 41 of adjusters, agents, brokers and surplus lines brokers. When the director
 42 does so, the fee for examinations for licenses pursuant to this section shall
 43 be payable directly to the contractor by the applicant for examination. The
 44 director may agree to a reasonable examination fee to be charged by the

1 contractor. Such fee may exceed the amounts prescribed in subsection A,
2 paragraph 4, subdivision (b) of this section.

3 ~~G.~~ F. Beginning July 1, 1986 and every year thereafter, if the
4 revenue collected from fees for the prior calendar year is less than
5 ninety-five per cent or more than one hundred ten per cent of the
6 appropriated budget for the beginning fiscal year, the director shall revise
7 the fees within the limits prescribed by subsection SUBSECTIONS A AND H of
8 this section on a uniform percentage basis among all fee categories and shall
9 adjust the credits prescribed by subsections D and E of this section as
10 necessary in order to retain any required uniformity. Fees shall be revised
11 in such a manner that the revenue derived from the fees equals at least
12 ninety-five per cent but not more than one hundred ten per cent of the
13 appropriated budget for the beginning fiscal year, and such revised fee
14 schedule shall be effective July 1 of the subsequent year. FOR THE PURPOSES
15 OF THIS SUBSECTION, "APPROPRIATED BUDGET" DOES NOT INCLUDE ANY APPROPRIATION
16 FOR THE OPERATION OF THE CAPTIVE INSURANCE PROGRAM ESTABLISHED UNDER CHAPTER
17 4, ARTICLE 14 OF THIS TITLE. ANY FEES COLLECTED FROM CAPTIVE INSURERS
18 PURSUANT TO SUBSECTION H OF THIS SECTION SHALL NOT BE COUNTED FOR THE PURPOSE
19 OF MEETING THE REQUIREMENT OF THIS SECTION TO RECOVER AT LEAST NINETY-FIVE
20 BUT NO MORE THAN ONE HUNDRED TEN PER CENT OF THE DEPARTMENT'S APPROPRIATED
21 BUDGET.

22 ~~H.~~ G. The director may contract with a voluntary domestic
23 organization of surplus lines brokers to perform any transaction prescribed
24 in chapter 2, article 5 of this title, including the acceptance or
25 maintenance of the reports required by section 20-408. The director may
26 allow the contractor to charge a stamping fee. The surplus lines broker
27 shall pay the stamping fee established pursuant to this section directly to
28 the contractor.

29 H. CAPTIVE INSURERS SHALL PAY CERTIFICATE OF AUTHORITY ISSUANCE AND
30 RENEWAL FEES AS PRESCRIBED BY THE DIRECTOR.

31 I. For the purposes of subsection ~~H~~ G of this section, "stamping fee"
32 means a reasonable filing fee charged by a contractor for any transaction
33 prescribed in chapter 2, article 5 of this title, including the acceptance
34 or maintenance of the reports required by section 20-408.

35 Sec. 2. Section 20-306, Arizona Revised Statutes, is amended to read:

36 20-306. Insurance vending machines

37 A. Only a licensed resident agent so authorized by the director may
38 solicit applications for and issue policies by means of mechanical vending
39 machines. Each such machine shall be supervised by the agent so licensed and
40 shall issue policies only of insurers authorized to transact business in
41 Arizona. A policy shall not be so solicited and issued should the director
42 find that the kind of insurance and form of policy to be so sold are not
43 reasonably suited for sale and issuance through vending machines, that use
44 of such machines therefor would not be of convenience to the public, or that

1 the type of vending machine to be used is not reasonably suitable and
2 practical for the purpose.

3 B. The agent shall display on or about each vending machine evidence
4 of his authority to so solicit applications and issue policies. This shall
5 be in such manner and on such form as the director may reasonably
6 require. Such evidence of authority shall specify the name and address of
7 the insurer and agent, the kind of insurance and type of policy to be so
8 sold, the place where the machine is to be in operation and its
9 identification number. The authority shall be renewable biennially in
10 odd-numbered years on or before the last day in the same month two years
11 after the license was issued or renewed upon payment of the authority renewal
12 fee for each vending machine, in an amount of not less than twenty dollars
13 nor more than sixty dollars which fee shall be adjusted within the limits
14 prescribed by this section at the same time and in the same manner prescribed
15 by section 20-167, subsection G- F, and shall be suspended, revoked or
16 otherwise terminated, coincidentally with that of the agent.

17 C. Policies so sold need not be countersigned.

18 Sec. 3. Section 20-485.12, Arizona Revised Statutes, is amended to
19 read:

20 20-485.12. Certificate of registration; fees; expiration;
21 revocation; civil penalties; violation;
22 classification; injunctive relief; exemption

23 A. No person may claim to be an administrator in this state unless
24 the person holds a valid certificate of registration as an administrator
25 issued by the director.

26 B. An application for a certificate of registration and an
27 application to renew a certificate shall be in the form prescribed by the
28 director and shall be accompanied by a fee of not less than sixty-five
29 dollars nor more than one hundred ninety-five dollars, and the fee is not
30 refundable if the application or renewal application is denied. Each
31 application for a certificate shall include the following information and
32 documents:

33 1. A financial statement that is certified by an officer of the
34 applicant on a form acceptable to the director and that includes current
35 financial information covering the ninety days immediately preceding the date
36 that the application is filed with the director. The financial statement
37 shall include the following:

38 (a) A disclosure of the total amount of Arizona funds projected to be
39 handled for the next calendar year.

40 (b) An income statement and a balance sheet prepared in accordance
41 with generally accepted accounting principles for the two years immediately
42 preceding the date that the application is filed. The applicant shall not
43 submit consolidated income statements or balance sheets.

44 2. All of the administrator's basic organization documents and
45 amendments to these documents, including any articles of incorporation,

1 articles of association, partnership agreement, trade name certificate, trust
2 agreement, shareholder agreement and other applicable document.

3 3. An organizational chart that identifies each member of the holding
4 company system that directly or indirectly controls the administrator and
5 every affiliate the administrator directly or indirectly controls.

6 4. The bylaws, rules, regulations or similar documents that
7 regulate the administrator's internal affairs.

8 5. Biographical affidavits to be completed by the individuals
9 responsible for the administrator's affairs, including affidavits for all
10 members of the board of directors, the board of trustees, the executive
11 committee or any other governing board or committee, the principal officers
12 of the corporation or the partners or members of the partnership or
13 association, shareholders that directly or indirectly hold at least ten per
14 cent of the voting securities of the administrator and any other person who
15 exercises control or influence over the affairs of the administrator. The
16 biographical affidavits shall include information concerning the personal
17 history, business record, insurance experience and other pertinent facts as
18 the director may require, including whether the affiant has been the subject
19 of an investigation by any regulatory authority or has had any license of any
20 type denied, suspended or revoked in any jurisdiction.

21 6. The administrator's complete name and address for all offices in
22 each jurisdiction.

23 7. A declaration that states whether the administrator has:

24 (a) Been previously licensed to transact any kind of insurance in
25 this state or any other jurisdiction and whether that license has been
26 refused, suspended or revoked.

27 (b) Been indebted to any person, including all of the relevant
28 details.

29 (c) Had an administrative agreement canceled, including all of the
30 relevant details.

31 8. The details about the administrator's capacity to collect premiums
32 or administer claims on behalf of the insurer in this state.

33 9. The written notice, approved by the insurer, that the
34 administrator will provide to insured individuals and that advises the
35 insured individuals of the administrator's identity and the relationship
36 between the administrator and the insurer for each executed insurance
37 administrative agreement filed in this state.

38 10. An affidavit signed by an officer of the administrator who is
39 authorized by the administrator to verify the facts stated in the
40 application.

41 C. The director shall issue the certificate of registration unless
42 the director finds that the applicant is not competent, trustworthy,
43 financially responsible or of good personal and business reputation, has had
44 an insurance license denied for cause by any state or has failed to comply
45 with any requirement of this article. The certificate remains in effect

1 until the director suspends or revokes the certificate or until the director
2 accepts the voluntary termination of the certificate. On revocation or
3 termination, the administrator shall immediately deliver the certificate to
4 the director.

5 D. Unless the certificate of registration is surrendered, suspended
6 or revoked, a certificate of registration issued pursuant to this section to
7 an administrator remains in effect for as long as the administrator continues
8 in business in this state and the administrator remains in compliance with
9 all of the requirements applicable to administrators prescribed by this
10 title.

11 E. On or before March 1 of each year, each administrator that has an
12 effective certificate of registration shall file a renewal application with
13 the director, on a form approved by the director, that consists of a
14 financial statement of the administrator's current financial condition,
15 transactions and affairs as of December 31 of the preceding calendar year.
16 The annual financial statement shall include a disclosure of the total amount
17 of Arizona funds handled for the preceding year, including the income
18 statement and balance sheet required by subsection B of this section and any
19 additional information that the director may require. At least two officers
20 of the administrator shall verify the annual financial statement. The
21 administrator shall include with the annual financial statement the filing
22 fee prescribed by subsection B of this section. The director may permit an
23 administrator that has failed to file its annual financial statement or pay
24 its fees on time to file the statement and pay the fees if the administrator
25 pays an additional fee to be determined by the director of not more than
26 twenty-five dollars for each day of delinquency.

27 F. The director may request further information from the
28 administrator at any time regarding a previously filed application or the
29 annual financial statement prescribed by subsection E of this section.

30 G. Within thirty days after the change becomes effective, the
31 administrator shall provide the director with written notice of any change
32 in the application on which the certificate of registration was issued and
33 of any change in the administrator's ownership or control.

34 H. After notice and a hearing, the director may either suspend or
35 revoke a certificate of registration for any reason for which the issuance
36 of a certificate could be denied or for any of the following reasons:

37 1. The administrator is in an unsound financial condition or in a
38 condition that renders further administrative services in this state by the
39 administrator hazardous to policyholders, claimants, beneficiaries or any
40 other person.

41 2. The administrator knowingly failed to comply with any lawful order
42 of the director.

43 3. The administrator violated any provision or requirement of this
44 title or any rule adopted by the director pursuant to this title.

1 I. In lieu of or in addition to suspension or revocation, if the
2 director finds grounds pursuant to subsection H of this section to suspend
3 or revoke an administrator's certificate of registration, the director may
4 impose a civil penalty of at least one thousand dollars and not more than ten
5 thousand dollars. The civil penalty is in addition to any other penalties
6 which may be imposed for violations of this title or other laws of this
7 state.

8 J. Any civil penalties imposed pursuant to this section shall be
9 deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

10 K. The fees prescribed by this section shall be adjusted within the
11 limits prescribed by this section at the same time and in the same manner
12 prescribed by section 20-167, subsection G- F.

13 L. Any person who violates any provision of this article other than
14 subsection A of this section is guilty of a class 3 misdemeanor. A person
15 who violates subsection A of this section is guilty of a class 5 felony.

16 M. If the director believes from evidence satisfactory to the
17 director that a person is violating or is about to violate subsection A of
18 this section, the director may order the person to cease and desist and,
19 through the attorney general, may file a complaint in the superior court in
20 the county in which the person transacts insurance business to enjoin or
21 restrain the person from continuing or engaging in the violation or doing any
22 act in furtherance of the violation. If the director orders the person to
23 cease and desist, the person may request a hearing pursuant to title 41,
24 chapter 6, article 10. If a complaint is filed in superior court, the court
25 has jurisdiction over the proceedings and may enter an order or judgment
26 awarding appropriate relief.

27 Sec. 4. Section 20-1003, Arizona Revised Statutes, as amended by Laws
28 2000, chapter 339, section 1, is amended to read:

29 20-1003. Application for certificate of authority

30 A. An application for a certificate of authority to operate as a
31 prepaid dental plan organization shall be filed with the director in a form
32 prescribed by the director, shall be verified by an officer or authorized
33 representative of the applicant and shall set forth, or be accompanied by,
34 the following:

35 1. A copy of any basic organizational document of the applicant such
36 as the articles of incorporation, articles of association, partnership
37 agreement, trust agreement or other applicable documents and all amendments
38 to such documents.

39 2. A copy of any bylaws, rules and regulations or similar document
40 regulating the conduct of the internal affairs of the applicant.

41 3. A list of the names, addresses and official positions of the
42 persons who are responsible for the conduct of the affairs of the applicant,
43 including all members of the board of directors, board of trustees, executive
44 committee or other governing board or committee, the principal officers in

1 the case of a corporation and the partners of members in the case of a
2 partnership or association.

3 4. If the prepaid dental plan organization is a corporation, evidence
4 that the board of directors of such corporation includes:

5 (a) Dentists, duly licensed pursuant to title 32, chapter 11, who have
6 contracted with the corporation to render dental service to members.

7 (b) Members of the prepaid dental plan, who shall comprise at least
8 one-third of the members of the board.

9 5. A copy of any contract made or to be made between any providers or
10 persons listed in paragraph 3 of this subsection and the applicant.

11 6. A statement generally describing the prepaid dental plan
12 organization, its dental plan or plans, facilities and personnel, as approved
13 by the director of the department of health services.

14 7. A copy of the form of membership coverage to be issued to the
15 members.

16 8. A copy of the form of any group contract which is to be issued to
17 employers, unions, trustees or other applications.

18 9. Financial statements showing the applicant's assets, liabilities
19 and sources of financial support. If the applicant's financial affairs are
20 audited by independent certified public accountants, a copy of the
21 applicant's most recent regular certified financial statement shall satisfy
22 this requirement unless the director determines that additional or more
23 recent financial information is required for the proper administration of
24 this article.

25 10. A description of the proposed method of marketing the plan, a
26 financial plan which includes a three-year projection of the initial
27 operating results anticipated and a statement as to the sources of working
28 capital as well as any other sources of funding.

29 11. A power of attorney duly executed by such applicant, if not
30 domiciled in this state, appointing the director, the director's successors
31 in office and duly authorized deputies as the true and lawful attorney of
32 such applicant in and for this state, upon whom all lawful process in any
33 legal action or proceeding against the prepaid dental plan organization on
34 a cause of action arising in this state may be served.

35 12. A statement reasonably describing the geographic area or areas to
36 be served, as approved by the director of the department of health services.

37 13. A fee of not less than twenty-five dollars nor more than
38 seventy-five dollars for issuance of a certificate of authority.

39 14. Such other information as the director may require.

40 B. Within ten days following any significant modification of
41 information previously furnished pursuant to subsection A, a prepaid dental
42 plan organization shall file notice of such modification with the director.

43 C. The fees prescribed by this section shall be adjusted within the
44 limits prescribed by this section at the same time and in the same manner
45 prescribed by section 20-167, subsection G-F.

1 Sec. 5. Section 20-1004, Arizona Revised Statutes, as amended by Laws
2 2000, chapter 339, section 2, is amended to read:

3 20-1004. Issuance of certificate of authority

4 A. Issuance of a certificate of authority shall be granted by the
5 director if the director is satisfied that the following conditions are met:

6 1. The persons responsible for conducting the affairs of the prepaid
7 dental plan organization are competent and trustworthy and are professionally
8 capable of providing or arranging for the provision of services offered.

9 2. The prepaid dental plan organization constitutes an appropriate
10 mechanism to achieve an effective prepaid dental plan, in accordance with
11 regulations issued by the director of the department of health services,
12 which shall include at least the basic dental services appropriate to such
13 plan as determined by the director of the department of health services.

14 3. The prepaid dental plan organization is financially responsible and
15 may reasonably be expected to meet its obligations to members and prospective
16 members. In making this determination the director shall consider at least:

17 (a) The financial soundness of the prepaid dental plan's arrangements
18 for services and the schedule of charges used.

19 (b) Any agreement with an insurer, a hospital or a medical service
20 corporation, a government or any other organization for insuring the payment
21 of the cost of prepaid dental services or the provisions for automatic
22 applicability of an alternative coverage in the event of discontinuance of
23 the plan.

24 (c) The sufficiency of an agreement with providers for the provision
25 of prepaid dental services.

26 4. Each officer responsible for conducting the affairs of the prepaid
27 dental plan organization has filed with the director, subject to the
28 director's approval, a fidelity bond in the amount of fifty thousand dollars.

29 B. A certificate of authority shall expire at midnight on June 30 next
30 following the date of issuance or previous renewal. If the prepaid dental
31 plan organization remains in compliance with this article and has paid a
32 renewal fee of not less than twenty-five dollars nor more than seventy-five
33 dollars, its certificate shall be renewed.

34 C. The fees prescribed by this section shall be adjusted within the
35 limits prescribed by this section at the same time and in the same manner
36 prescribed by section 20-167, subsection G- F.

37 Sec. 6. Section 20-1095.03, Arizona Revised Statutes, is amended to
38 read:

39 20-1095.03. Qualifications for permit

40 A. The director shall not issue a permit to a service company unless
41 all of the following conditions are met:

42 1. If the applicant is a corporation, the applicant is a solvent
43 corporation incorporated under the laws of this state or another state,
44 district, territory or possession of the United States.

1	<u>Number of contracts</u>	<u>Bond amount</u>
2	1-250	\$ 50,000
3	251-500	\$100,000
4	501-750	\$150,000
5	751-1,000	\$200,000
6	1,001-and over	\$250,000

7 3. Cash or securities equal to the amount of the bond required by
8 paragraph 2 are filed with the state treasurer through the director's office
9 for the purpose of guaranteeing performance under service contracts issued
10 by the motor vehicle dealer.

11 C. The director shall approve the service contract program within
12 thirty days of filing if the program meets the requirements of this section
13 or disapprove the program specifying the deficiencies in it.

14 D. The director may disapprove a motor vehicle service contract
15 program which has previously been approved if the program no longer meets the
16 requirements of this section, the service contract administrator or insurer
17 becomes insolvent or the service contract administrator, insurer, or a
18 licensed motor vehicle dealer engages in any unfair trade practice described
19 in section 20-1095.09.

20 E. If the director disapproves a motor vehicle service contract
21 program, the director shall notify, by certified mail, all licensed motor
22 vehicle dealers selling the program. Upon receiving the notice the motor
23 vehicle dealers shall not continue to sell the program.

24 Sec. 8. Section 20-1096.04, Arizona Revised Statutes, is amended to
25 read:

26 20-1096.04. Qualifications

27 The director shall not issue a certificate of authority to a mechanical
28 reimbursement reinsurer unless all of the following conditions are met:

29 1. The applicant is a corporation incorporated under the laws of this
30 state.

31 2. The applicant furnishes such proof as necessary to the director
32 that the directors and management of the reinsurer are competent and
33 trustworthy and are capable of successfully managing its affairs in
34 compliance with law.

35 3. The applicant makes the deposit as required by section 20-1096.06.

36 4. The applicant is in compliance and continues to be in compliance
37 with all applicable laws.

38 5. The applicant pays an initial fee of not less than one hundred
39 dollars nor more than three hundred dollars. The fee shall be adjusted
40 within these limits at the same time and in the same manner prescribed by
41 section 20-167, subsection G F.

1 6. "MANAGER" MEANS A PERSON WHO IS EXPERIENCED IN THE FIELD OF CAPTIVE
2 INSURANCE AND WHO MAINTAINS ALL DOCUMENTS RELATING TO A CAPTIVE INSURER'S
3 OPERATIONS, TRANSACTIONS AND AFFAIRS IN THIS STATE AND ASSISTS THE CAPTIVE
4 INSURER IN ITS MANAGEMENT AND COMPLIANCE WITH THIS ARTICLE.

5 7. "MEMBER ORGANIZATION" MEANS ANY INDIVIDUAL, CORPORATION,
6 PARTNERSHIP, LIMITED LIABILITY COMPANY OR ASSOCIATION THAT BELONGS TO AN
7 ASSOCIATION.

8 8. "PURE CAPTIVE INSURER" MEANS ANY COMPANY THAT INSURES RISKS OF ITS
9 AFFILIATE OR CONTROLLED UNAFFILIATED BUSINESS.

10 20-1098.01. Licensing; authority

11 A. IF ALLOWED BY ITS ARTICLES OF INCORPORATION, BYLAWS OR OTHER
12 ORGANIZATIONAL DOCUMENT, A CAPTIVE INSURER MAY APPLY TO THE DIRECTOR FOR A
13 LICENSE TO TRANSACT ANY INSURANCE, EXCEPT THAT:

14 1. A PURE CAPTIVE INSURER SHALL NOT INSURE RISKS OTHER THAN THOSE
15 RISKS OF ITS AFFILIATES OR CONTROLLED UNAFFILIATED BUSINESS.

16 2. AN ASSOCIATION CAPTIVE INSURER SHALL NOT INSURE RISKS OTHER THAN
17 THOSE RISKS OF THE MEMBER ORGANIZATIONS OF ITS ASSOCIATION AND THE
18 ORGANIZATIONS' AFFILIATES.

19 3. A CAPTIVE INSURER SHALL NOT ENGAGE IN ANY OF THE FOLLOWING TYPES
20 OF INSURANCE BUSINESS:

21 (a) HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS,
22 DENTAL SERVICE CORPORATIONS, OPTOMETRIC SERVICE CORPORATIONS OR HOSPITAL,
23 MEDICAL, DENTAL AND OPTOMETRIC SERVICE CORPORATIONS AS DEFINED IN SECTION
24 20-822.

25 (b) HEALTH CARE SERVICES ORGANIZATIONS AS DEFINED IN SECTION 20-1051.

26 (c) PREPAID DENTAL PLAN ORGANIZATIONS AS DEFINED IN SECTION 20-1001.

27 (d) PREPAID LEGAL INSURANCE CONTRACTS AS DEFINED IN SECTION 20-1097.

28 (e) BUSINESS OF TITLE INSURANCE AS DEFINED IN SECTION 20-1562.

29 (f) PERSONAL MOTOR VEHICLE OR HOMEOWNER'S INSURANCE COVERAGE OR ANY
30 COMPONENT OF THAT INSURANCE COVERAGE.

31 (g) DIRECT WRITING OF COMMERCIAL MOTOR VEHICLE INSURANCE POLICIES
32 UNLESS THE INSURED AFFILIATE QUALIFIES AS A SELF-INSURER PURSUANT TO SECTION
33 28-4007. THIS SUBDIVISION DOES NOT LIMIT A CAPTIVE REINSURER'S ABILITY TO
34 REINSURE COMMERCIAL MOTOR VEHICLE INSURANCE.

35 (h) DIRECT WRITING OF MORTGAGE GUARANTY INSURANCE AS DEFINED IN
36 SECTION 20-1541.

37 (i) DIRECT WRITING OF WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY
38 INSURANCE POLICIES. THIS SUBDIVISION DOES NOT LIMIT A CAPTIVE INSURER'S
39 ABILITY TO REINSURE WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY INSURANCE.

40 4. A CAPTIVE INSURER SHALL NOT ACCEPT OR CEDE REINSURANCE EXCEPT AS
41 PROVIDED IN SECTION 20-1098.09.

42 5. A CAPTIVE INSURER THAT WRITES LIFE INSURANCE OR DISABILITY
43 INSURANCE SHALL COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS.

44 B. A CAPTIVE INSURER SHALL NOT TRANSACT INSURANCE BUSINESS IN THIS
45 STATE UNLESS:

1 1. IT FIRST OBTAINS FROM THE DIRECTOR A LICENSE AUTHORIZING IT TO
2 TRANSACT CAPTIVE INSURANCE BUSINESS IN THIS STATE.

3 2. ITS BOARD OF DIRECTORS HOLDS AT LEAST ONE MEETING EACH YEAR IN THIS
4 STATE.

5 3. IT MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE.

6 4. IT APPOINTS A RESIDENT STATUTORY AGENT TO ACCEPT SERVICE OF PROCESS
7 AND TO OTHERWISE ACT ON ITS BEHALF IN THIS STATE AND FILES THE APPOINTMENT
8 WITH THE DIRECTOR. IN THE CASE OF A CAPTIVE INSURER FORMED AS A CORPORATION,
9 IF THE STATUTORY AGENT CANNOT WITH REASONABLE DILIGENCE BE FOUND AT THE
10 REGISTERED OFFICE OF THE CAPTIVE INSURER, THE DIRECTOR IS AN AGENT OF THE
11 CAPTIVE INSURER ON WHOM ANY PROCESS, NOTICE OR DEMAND MAY BE SERVED.

12 C. BEFORE RECEIVING A LICENSE, A CAPTIVE INSURER SHALL FILE WITH THE
13 DIRECTOR A CERTIFIED COPY OF ITS ARTICLES OF INCORPORATION, BYLAWS OR OTHER
14 ORGANIZATIONAL DOCUMENT, A STATEMENT UNDER OATH OF ITS PRESIDENT AND
15 SECRETARY SHOWING ITS FINANCIAL CONDITION AND ANY OTHER STATEMENT OR DOCUMENT
16 REQUIRED BY THE DIRECTOR.

17 D. IN ADDITION TO THE INFORMATION REQUIRED BY SUBSECTION C OF THIS
18 SECTION EACH APPLICANT CAPTIVE INSURER SHALL FILE WITH THE DIRECTOR EVIDENCE
19 OF ALL OF THE FOLLOWING:

20 1. THE AMOUNT AND LIQUIDITY OF ITS ASSETS RELATIVE TO THE RISKS TO BE
21 ASSUMED.

22 2. THE ADEQUACY OF THE EXPERTISE, EXPERIENCE AND CHARACTER OF THE
23 PERSON OR PERSONS WHO WILL MANAGE THE CAPTIVE INSURER.

24 3. THE OVERALL SOUNDNESS OF ITS PLAN OF OPERATION.

25 4. THE ADEQUACY OF THE LOSS PREVENTION PROGRAMS OF ITS PARENT OR
26 MEMBER ORGANIZATIONS.

27 5. THE ENGAGEMENT OF A COMPETENT MANAGER THAT RESIDES IN THIS STATE.

28 6. THE ESTABLISHMENT OF BUSINESS RELATIONSHIPS WITH ANY NECESSARY
29 ACCOUNTANTS, BANKS, ATTORNEYS AND OTHER PROFESSIONALS THAT DO BUSINESS AT A
30 LOCATION IN THIS STATE.

31 7. THE ABILITY OF THE CAPTIVE INSURER'S AFFILIATES OR ASSOCIATION
32 MEMBERS TO PAY CLAIMS TO THIRD PARTIES IF THE CAPTIVE INSURER IS UNABLE TO
33 PAY THOSE CLAIMS.

34 8. OTHER FACTORS DEEMED RELEVANT BY THE DIRECTOR IN ASCERTAINING
35 WHETHER THE PROPOSED CAPTIVE INSURER WILL BE ABLE TO MEET ITS POLICY
36 OBLIGATIONS.

37 E. A CAPTIVE INSURER SHALL NOTIFY THE DIRECTOR WITHIN THIRTY DAYS OF
38 ANY MATERIAL CHANGE IN THE INFORMATION FILED PURSUANT TO THIS SECTION.

39 F. NOTWITHSTANDING TITLE 39, CHAPTER 1, INFORMATION SUBMITTED PURSUANT
40 TO THIS SECTION IS CONFIDENTIAL AND THE DIRECTOR AND THE DIRECTOR'S EMPLOYEES
41 AND AGENTS SHALL NOT PROVIDE THE INFORMATION TO ANY OTHER PERSON WITHOUT THE
42 WRITTEN CONSENT OF THE CAPTIVE INSURER, EXCEPT THAT:

43 1. THIS SECTION DOES NOT APPLY TO THE DEPARTMENT'S USE OF INFORMATION
44 SUBMITTED BY A CAPTIVE INSURER FOR ANY REGULATORY PURPOSE, DISCIPLINARY
45 ACTION OR HEARING.

1 2. THE DIRECTOR SHALL PROVIDE INFORMATION SUBMITTED BY A CAPTIVE
2 INSURER THAT IS REQUIRED BY A SUBPOENA ISSUED IN CONNECTION WITH AN
3 ADMINISTRATIVE, CIVIL OR CRIMINAL INVESTIGATION BY A GOVERNMENT AGENCY.

4 3. THE INFORMATION MAY BE DISCOVERABLE BY A PARTY IN A CIVIL ACTION
5 OR CONTESTED CASE TO WHICH THE CAPTIVE INSURER THAT SUBMITTED THE INFORMATION
6 IS A PARTY, IF THE PARTY SEEKING TO DISCOVER THE INFORMATION DEMONSTRATES ALL
7 OF THE FOLLOWING:

8 (a) THE INFORMATION SOUGHT IS RELEVANT TO AND NECESSARY FOR THE
9 FURTHERANCE OF THE ACTION OR CASE.

10 (b) THE INFORMATION SOUGHT IS UNAVAILABLE FROM OTHER NONCONFIDENTIAL
11 SOURCES.

12 (c) A SUBPOENA ISSUED BY A JUDICIAL OR ADMINISTRATIVE OFFICER OF
13 COMPETENT JURISDICTION HAS BEEN SUBMITTED TO THE DIRECTOR.

14 4. THE DIRECTOR MAY DISCLOSE THE INFORMATION TO A PUBLIC OFFICIAL THAT
15 HAS JURISDICTION OVER THE REGULATION OF INSURANCE IN ANOTHER STATE IF THE
16 PUBLIC OFFICIAL AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY OF THE
17 INFORMATION AND THE LAWS OF THE STATE IN WHICH THE PUBLIC OFFICIAL SERVES
18 ALLOW OR REQUIRE THE INFORMATION TO BE AND REMAIN CONFIDENTIAL.

19 5. THE DIRECTOR MAY PROVIDE THE INFORMATION TO THE INDUSTRIAL
20 COMMISSION. THE INDUSTRIAL COMMISSION SHALL MAINTAIN THE CONFIDENTIALITY OF
21 THE INFORMATION IN ACCORDANCE WITH THIS SUBSECTION.

22 G. A CAPTIVE INSURER SHALL PAY TO THE DIRECTOR A NONREFUNDABLE FEE FOR
23 THE ISSUANCE AND RENEWAL OF A CAPTIVE INSURANCE LICENSE PURSUANT TO SECTION
24 20-167. THE CAPTIVE INSURER SHALL PAY THE RENEWAL FEE WHEN THE CAPTIVE
25 INSURER FILES THE ANNUAL REPORT PRESCRIBED IN SECTION 20-1098.05.

26 H. IF THE DIRECTOR IS SATISFIED THAT THE DOCUMENTS AND STATEMENTS THAT
27 THE CAPTIVE INSURER HAS FILED COMPLY WITH THIS ARTICLE, THE DIRECTOR MAY
28 GRANT THE CAPTIVE INSURER A LICENSE THAT AUTHORIZES THE CAPTIVE INSURER TO
29 TRANSACT INSURANCE BUSINESS IN THIS STATE. IF THE PLAN OF OPERATION INCLUDES
30 THE REINSURANCE OF WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY RISKS
31 RESIDENT, LOCATED OR TO BE PERFORMED IN THIS STATE, THE DIRECTOR SHALL
32 PROVIDE THE INDUSTRIAL COMMISSION WITH AN OPPORTUNITY TO REVIEW THE PLAN OF
33 OPERATION AND ADVISE THE DIRECTOR AS TO ITS SOUNDNESS.

34 I. THE DIRECTOR SHALL APPROVE OR DENY AN APPLICATION FOR A LICENSE TO
35 TRANSACT CAPTIVE INSURANCE BUSINESS WITHIN THIRTY DAYS AFTER THE DIRECTOR
36 DEEMS THE APPLICATION COMPLETE.

37 20-1098.02. Names of companies

38 A. A CAPTIVE INSURER SHALL NOT ADOPT A NAME THAT IS THE SAME,
39 DECEPTIVELY SIMILAR TO OR LIKELY TO BE CONFUSED WITH OR MISTAKEN FOR ANY
40 OTHER EXISTING BUSINESS NAME REGISTERED IN THIS STATE.

41 B. A CAPTIVE INSURER SHALL HAVE OR USE A NAME THAT CONTAINS THE WORD
42 "CAPTIVE". THE NAME OF A CAPTIVE INSURER THAT IS A MUTUAL COMPANY SHALL ALSO
43 CONTAIN THE WORD "MUTUAL".

1 20-1098.03. Minimum capital and surplus; letter of credit

2 A. THE DIRECTOR SHALL NOT ISSUE A LICENSE TO A PURE CAPTIVE INSURER
3 OR ASSOCIATION CAPTIVE INSURER UNLESS THE INSURER POSSESSES AND THEREAFTER
4 MAINTAINS MINIMUM UNIMPAIRED PAID-IN CAPITAL AND SURPLUS IN COMBINATION AS
5 FOLLOWS:

6 1. IN THE CASE OF A PURE CAPTIVE INSURER, AT LEAST TWO HUNDRED FIFTY
7 THOUSAND DOLLARS.

8 2. IN THE CASE OF AN ASSOCIATION CAPTIVE INSURER, AT LEAST FIVE
9 HUNDRED THOUSAND DOLLARS.

10 3. IN THE CASE OF A CAPTIVE INSURER THAT TRANSACTS ONLY REINSURANCE,
11 ONE-HALF OF THE APPLICABLE AMOUNT PRESCRIBED IN PARAGRAPH 1 OR 2 OF THIS
12 SUBSECTION.

13 B. ALL MINIMUM CAPITAL AND SURPLUS REQUIREMENTS SHALL BE IN THE FORM
14 OF AN IRREVOCABLE AND UNCONDITIONAL LETTER OF CREDIT THAT CONTAINS AN
15 EVERGREEN CLAUSE, THAT IS PAYABLE TO, FILED WITH AND HELD BY THE DIRECTOR IN
16 TRUST FOR THE PROTECTION OF ALL POLICYHOLDERS, CEDING INSURERS AND RELATED
17 EXPENSES AND THAT MEETS THE FOLLOWING CONDITIONS:

18 1. THE LETTER OF CREDIT SHALL BE ISSUED OR CONFIRMED BY A QUALIFIED
19 UNITED STATES FINANCIAL INSTITUTION AS DEFINED IN SECTION 20-261.03,
20 SUBSECTION A AND SHALL COMPLY WITH THE REQUIREMENTS PRESCRIBED BY THE
21 DIRECTOR.

22 2. THE CAPTIVE INSURER SHALL NOT BE DIRECTLY OR CONTINGENTLY LIABLE
23 FOR ANY LETTER OF CREDIT COMPRISING ITS CAPITAL OR SURPLUS AND ITS ASSETS
24 SHALL NOT BE PLEDGED AS SECURITY FOR THE LETTER OF CREDIT.

25 C. THE DIRECTOR MAY PRESCRIBE ADDITIONAL CAPITAL AND SURPLUS
26 REQUIREMENTS BASED ON THE TYPE, VOLUME AND NATURE OF INSURANCE.

27 20-1098.04. Formation of captive insurers

28 A. A PURE CAPTIVE INSURER SHALL BE INCORPORATED AS A STOCK INSURER
29 WITH ITS CAPITAL DIVIDED INTO SHARES AND HELD BY THE STOCKHOLDERS.

30 B. AN ASSOCIATION CAPTIVE INSURER MAY BE FORMED IN ANY OF THE
31 FOLLOWING WAYS:

32 1. INCORPORATED AS A STOCK INSURER WITH ITS CAPITAL DIVIDED INTO
33 SHARES AND HELD BY THE STOCKHOLDERS.

34 2. INCORPORATED AS A MUTUAL INSURER WITHOUT CAPITAL STOCK, THE
35 GOVERNING BODY OF WHICH IS ELECTED BY THE MEMBER ORGANIZATIONS OF ITS
36 ASSOCIATION.

37 C. A CAPTIVE INSURER SHALL HAVE AT LEAST THREE INCORPORATORS AT LEAST
38 ONE OF WHOM SHALL BE A RESIDENT OF THIS STATE.

39 D. THE CAPITAL STOCK OF A CAPTIVE INSURER INCORPORATED AS A STOCK
40 INSURER MAY BE AUTHORIZED WITH NO PAR VALUE.

41 E. A CAPTIVE INSURER THAT IS FORMED AS A CORPORATION HAS THE
42 PRIVILEGES PRESCRIBED IN AND IS SUBJECT TO THE APPLICABLE PROVISIONS OF TITLE
43 10 AND THE APPLICABLE PROVISIONS CONTAINED IN THIS ARTICLE. THE PROVISIONS
44 OF ARTICLE 1 OF THIS CHAPTER RELATING TO MERGERS, CONSOLIDATIONS,
45 CONVERSIONS, MUTUALIZATIONS AND REDOMESTICATIONS APPLY IN DETERMINING THE

1 PROCEDURES TO BE FOLLOWED BY CAPTIVE INSURERS IN CARRYING OUT THOSE
2 TRANSACTIONS, EXCEPT THAT THE DIRECTOR MAY WAIVE OR MODIFY THE REQUIREMENTS
3 FOR A PUBLIC NOTICE AND HEARING PRESCRIBED IN SECTION 20-731.

4 F. THE ARTICLES OF INCORPORATION OR BYLAWS OF A CAPTIVE INSURER THAT
5 IS FORMED AS A CORPORATION MAY AUTHORIZE A QUORUM OF A BOARD OF DIRECTORS TO
6 CONSIST OF AT LEAST ONE-THIRD OF THE FIXED OR PRESCRIBED NUMBER OF DIRECTORS.

7 20-1098.05. Annual report

8 A. NOT LATER THAN NINETY DAYS AFTER THE END OF THE CAPTIVE INSURER'S
9 FISCAL YEAR, THE CAPTIVE INSURER SHALL SUBMIT TO THE DIRECTOR A REPORT OF ITS
10 FINANCIAL CONDITION THAT IS VERIFIED BY OATH OF TWO OF ITS EXECUTIVE OFFICERS
11 AND THAT IS SUPPLEMENTED BY ADDITIONAL INFORMATION AS REQUIRED BY THE
12 DIRECTOR. EXCEPT AS PROVIDED IN SECTION 20-1098.03, A CAPTIVE INSURER MAY
13 SUBMIT A REPORT THAT USES GENERALLY ACCEPTED ACCOUNTING PRINCIPLES UNLESS THE
14 DIRECTOR REQUIRES THE CAPTIVE INSURER TO USE STATUTORY ACCOUNTING PRINCIPLES
15 WITH ANY USEFUL OR NECESSARY MODIFICATIONS OR ADAPTATIONS OF THOSE PRINCIPLES
16 REQUIRED BY THE DIRECTOR FOR THE TYPE OF INSURANCE AND KINDS OF INSURERS TO
17 BE REPORTED ON.

18 B. THE CAPTIVE INSURER'S FINANCIAL STATEMENTS SHALL BE AUDITED BY AN
19 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT UNLESS THE DIRECTOR DETERMINES THAT
20 AN AUDIT IS NOT NECESSARY.

21 20-1098.06. Examinations

22 A. WHENEVER THE DIRECTOR DETERMINES IT TO BE PRUDENT THE DIRECTOR MAY
23 EXAMINE THE BUSINESS, TRANSACTIONS AND AFFAIRS OF EACH CAPTIVE INSURER TO
24 ASCERTAIN THE CAPTIVE INSURER'S FINANCIAL CONDITION AND ABILITY TO FULFILL
25 ITS OBLIGATIONS AND WHETHER THE CAPTIVE INSURER HAS COMPLIED WITH THIS
26 ARTICLE.

27 B. SECTION 20-1098.01, SUBSECTION F APPLIES TO ALL EXAMINATION
28 REPORTS, PRELIMINARY EXAMINATION REPORTS OR RESULTS, WORKING PAPERS, RECORDED
29 INFORMATION, DOCUMENTS AND COPIES OF ANY OF THOSE REPORTS, RESULTS, PAPERS,
30 INFORMATION OR DOCUMENTS PRODUCED BY, OBTAINED BY OR DISCLOSED TO THE
31 DIRECTOR IN THE COURSE OF AN EXAMINATION MADE UNDER THIS SECTION.

32 C. THE DIRECTOR MAY USE INDEPENDENT CONTRACTOR EXAMINERS PURSUANT TO
33 SECTIONS 20-148 AND 20-159 TO CONDUCT EXAMINATIONS PURSUANT TO THIS
34 SECTION. ALL EXAMINATIONS AND EXAMINATION RELATED EXPENSES SHALL BE BORNE
35 BY THE CAPTIVE INSURER AND SHALL BE PAID BY THE INSURANCE EXAMINERS'
36 REVOLVING FUND PURSUANT TO SECTION 20-159.

37 20-1098.07. Grounds and procedures for license suspension or
38 revocation

39 THE DIRECTOR MAY SUSPEND, REVOKE OR REFUSE TO RENEW THE LICENSE OF A
40 CAPTIVE INSURER TO TRANSACT INSURANCE BUSINESS IN THIS STATE FOR ANY OF THE
41 FOLLOWING REASONS:

42 1. INSOLVENCY OR IMPAIRMENT OF CAPITAL AND SURPLUS.

43 2. REFUSAL OR FAILURE TO SUBMIT AN ANNUAL REPORT AS PRESCRIBED IN
44 SECTION 20-1098.05 OR ANY OTHER REPORT OR STATEMENT REQUIRED BY LAW OR BY
45 LAWFUL ORDER OF THE DIRECTOR.

1 3. FAILURE TO COMPLY WITH THE PROVISIONS OF ITS OWN ARTICLES OF
2 INCORPORATION, BYLAWS OR OTHER ORGANIZATIONAL DOCUMENT.

3 4. FAILURE TO SUBMIT TO AN EXAMINATION OR ANY LEGAL OBLIGATION RELATED
4 TO THE EXAMINATION AS PRESCRIBED IN SECTION 20-1098.06.

5 5. REFUSAL OR FAILURE TO PAY THE COST OF AN EXAMINATION AS PRESCRIBED
6 IN SECTION 20-1098.06.

7 6. USE OF METHODS THAT, ALTHOUGH NOT OTHERWISE SPECIFICALLY PROHIBITED
8 BY LAW, RENDER ITS OPERATION HAZARDOUS OR ITS CONDITION UNSOUND WITH RESPECT
9 TO THE PUBLIC OR TO ITS POLICYHOLDERS.

10 7. FAILURE TO OTHERWISE COMPLY WITH THIS ARTICLE.

11 20-1098.08. Legal investments

12 A. AN ASSOCIATION CAPTIVE INSURER SHALL COMPLY WITH THE INVESTMENT
13 REQUIREMENTS PRESCRIBED IN CHAPTER 3, ARTICLE 2 OF THIS
14 TITLE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, THE DIRECTOR MAY
15 APPROVE THE USE OF ALTERNATIVE RELIABLE METHODS OF VALUATION AND RATING.

16 B. A PURE CAPTIVE INSURER IS NOT SUBJECT TO RESTRICTIONS ON ALLOWABLE
17 INVESTMENTS, EXCEPT THAT THE DIRECTOR MAY PROHIBIT OR LIMIT ANY INVESTMENT
18 THAT THREATENS THE SOLVENCY OR LIQUIDITY OF THE PURE CAPTIVE INSURER.

19 C. ONLY A PURE CAPTIVE INSURER MAY MAKE LOANS TO ITS AFFILIATES IF
20 BEFORE MAKING A LOAN TO AN AFFILIATE THE PURE CAPTIVE INSURER OBTAINS WRITTEN
21 APPROVAL BY THE DIRECTOR TO MAKE THE LOAN AND THE LOAN IS EVIDENCED BY A NOTE
22 IN A FORM APPROVED BY THE DIRECTOR.

23 20-1098.09. Reinsurance

24 A. A CAPTIVE INSURER MAY PROVIDE REINSURANCE ON RISKS CEDED BY ANY
25 OTHER INSURER IN ACCORDANCE WITH THE LIMITATIONS PRESCRIBED IN SECTION
26 20-1098.01 AND AS OTHERWISE ALLOWED UNDER THIS ARTICLE.

27 B. A CAPTIVE INSURER MAY TAKE CREDIT FOR RESERVES ON RISKS OR PORTIONS
28 OF RISKS CEDED TO A REINSURER THAT IS IN COMPLIANCE WITH SECTIONS 20-261 AND
29 20-261.01 THROUGH 20-261.04. A CAPTIVE INSURER SHALL NOT TAKE CREDIT FOR
30 RESERVES ON RISKS OR PORTIONS OF RISKS CEDED TO A REINSURER IF THE REINSURER
31 IS NOT IN COMPLIANCE WITH SECTIONS 20-261 AND 20-261.01 THROUGH 20-261.04.

32 20-1098.10. Rating organization; exemption

33 A CAPTIVE INSURER IS NOT REQUIRED TO JOIN A RATING ORGANIZATION.

34 20-1098.11. Associations; benefits; prohibitions

35 A CAPTIVE INSURER SHALL NOT JOIN OR CONTRIBUTE FINANCIALLY TO ANY PLAN,
36 POOL, ASSOCIATION OR GUARANTY OR INSOLVENCY FUND IN THIS STATE. A CAPTIVE
37 INSURER OR ITS INSURED, PARENT, AFFILIATE, MEMBER ORGANIZATION OF ITS
38 ASSOCIATION OR CLAIMANT UNDER ANY CAPTIVE INSURANCE SHALL NOT RECEIVE ANY
39 BENEFIT FROM THE PLAN, POOL, ASSOCIATION, OR GUARANTY OR INSOLVENCY FUND FOR
40 CLAIMS ARISING OUT OF THE OPERATIONS OF THE CAPTIVE INSURER.

41 20-1098.12. Rules

42 THE DIRECTOR MAY ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6 TO CARRY
43 OUT THIS ARTICLE.

1 20-1098.13. Applicability

2 A. CHAPTER 2, ARTICLE 6 OF THIS TITLE RELATING TO UNFAIR TRADE
3 PRACTICES AND FRAUDS APPLIES TO CAPTIVE INSURERS, EXCEPT TO THE EXTENT THE
4 DIRECTOR DETERMINES THE NATURE OF CAPTIVE INSURANCE RENDERS PARTICULAR
5 PORTIONS OF CHAPTER 2, ARTICLE 6 OF THIS TITLE INAPPROPRIATE.

6 B. ALL OTHER PROVISIONS OF THIS TITLE THAT ARE NOT INCONSISTENT WITH
7 THIS ARTICLE APPLY TO CAPTIVE INSURERS EXCEPT TO THE EXTENT THE DIRECTOR
8 DETERMINES THE NATURE OF CAPTIVE INSURANCE RENDERS PARTICULAR PROVISIONS OF
9 THIS TITLE INAPPROPRIATE.

10 20-1098.14. Captive manager

11 A CAPTIVE INSURER SHALL ENGAGE A MANAGER WHO IS A RESIDENT OF THIS
12 STATE. THE CAPTIVE MANAGER SHALL MAINTAIN THE BOOKS AND RECORDS OF THE
13 CAPTIVE INSURER'S BUSINESS, TRANSACTIONS AND AFFAIRS AT A LOCATION THAT IS
14 IN THIS STATE AND THAT IS ACCESSIBLE TO THE DIRECTOR. THE CAPTIVE MANAGER
15 SHALL PROMPTLY NOTIFY THE DIRECTOR OF ANY FAILURE OF THE CAPTIVE INSURER TO
16 COMPLY WITH THIS ARTICLE. THE DIRECTOR MAY REQUIRE A CAPTIVE INSURER TO
17 DISCHARGE A CAPTIVE MANAGER FOR FAILURE TO SUBSTANTIVELY FULFILL THE CAPTIVE
18 MANAGER'S DUTIES UNDER THIS ARTICLE.

19 Sec. 11. Section 20-1802, Arizona Revised Statutes, is amended to
20 read:

21 20-1802. Permit required; application; definition

22 A. No person may solicit or enter into a life care contract as a
23 provider or as a provider extend the term of an existing life care contract
24 except pursuant to this chapter.

25 B. To qualify for a permit to enter into life care contracts with
26 respect to a particular facility, a person shall file an application for a
27 permit with the department on permit application forms provided by the
28 department which shall include as an exhibit a copy of the proposed form of
29 life care contract to be entered into with residents at each facility. The
30 application shall contain the following information:

31 1. The name and business address of the applicant.

32 2. The name, the address and a description of the physical property
33 of the facility.

34 3. The terms and conditions of the life care contracts to be used by
35 the applicant, including the services to be provided to residents pursuant
36 to the contract and the fees or charges to be paid by residents, including
37 the method of payment of such fees or charges.

38 4. If the applicant is other than an individual, such as a
39 corporation, partnership or trust, a statement naming the fiscal year end
40 date that is the last day of a calendar month and the type of legal entity
41 and listing the interest and extent of such interest of each principal in the
42 entity. For the purposes of this section, "principal" means any person or
43 entity having a ten per cent or more financial interest or, if the legal
44 entity is a trust, each beneficiary of the trust holding a ten per cent or
45 more beneficial interest.

1 5. If the applicant is other than an individual, a biographical
2 affidavit on a form approved by the director for each of the members of the
3 board of directors, the officers, the trustees or the managing partners.

4 6. The estimated number of residents of the facility to be provided
5 services by the applicant pursuant to the life care contracts.

6 7. A statement of the provisions that have been made or will be made
7 to provide reserve funding or security by the provider to enable the provider
8 to fully perform his obligations pursuant to life care contracts, including,
9 but not limited to, the establishment of escrow accounts, accounts in
10 financial institutions, trusts or reserve funds.

11 8. A statement as to whether the applicant was or is affiliated with
12 a religious, charitable or other nonprofit organization, the extent of any
13 affiliation and the extent to which the affiliate organization will be
14 responsible for the financial and contract obligations of the applicant.

15 9. If the applicant is a subsidiary corporation or the affiliate of
16 another corporation, a statement identifying the parent corporation or the
17 other affiliate corporation and the primary activities of such parent or
18 other affiliate corporation.

19 10. A description of the business experience of the provider in the
20 operation of similar facilities and, if the facility will be managed on a
21 day-to-day basis by a corporation or organization other than the provider,
22 a description of the business experience of the manager in the operation or
23 management of similar facilities.

24 11. A statement as to whether the applicant, a promoter, a principal,
25 a parent or subsidiary corporation or an affiliate has had any injunctive or
26 restrictive order of a court of record, or any suspension or revocation of
27 any state or federal license or permit, arising out of or relating to
28 business activity or health care applied against it, including without
29 limitation actions affecting a license to operate a foster care facility, a
30 health care institution, a retirement home or a home for the aged.

31 12. A statement of any periodic rates to be initially paid by
32 residents, the method by which such rates are determined and the manner by
33 which the provider may adjust such rates in the future. If the facility is
34 already in operation, or if the provider operates one or more similar
35 facilities within this state, the statement shall include tables showing the
36 frequency and average dollar amount of each increase in periodic rates at
37 each such facility for the previous five years or such shorter period as the
38 facility may have been operated by the provider.

39 13. A statement of the terms and conditions under which a life care
40 contract may be canceled by the provider or resident, including any health
41 and financial conditions required for a person to continue as a resident and
42 any conditions under which all or any portion of the entrance fee will be
43 refunded by the provider.

1 14. If construction or purchase of the facility has not yet been
2 completed, a statement of the anticipated source and application of the funds
3 to be used in such purchase or construction, including all of the following:

4 (a) An estimate of the cost of purchasing or constructing and
5 equipping the facility including such related costs as financing expense,
6 legal expense, land costs, occupancy development costs and all other similar
7 costs which the provider expects to incur or become obligated for prior to
8 the commencement of operations.

9 (b) An estimate of the total entrance fees to be received from
10 residents upon completion of occupancy.

11 (c) A description of any mortgage loan or other long-term financing
12 intended to be used for the financing of the facility, including the
13 anticipated terms and costs of such financing.

14 (d) An estimate of any funds which are anticipated to be necessary to
15 fund start-up losses and to assure full performance of the obligations of the
16 provider pursuant to life care contracts including, but not limited to, any
17 reserve fund escrow required by the director pursuant to section 20-1806.

18 15. Certified financial statements of the provider, promoter and
19 manager as of a date not more than ninety days prior to the date the permit
20 application is filed, which shall include a balance sheet and the related
21 statements of income, retained earnings or equity and changes in financial
22 position for the three most recent fiscal years or such shorter period of
23 time as the provider, promoter or manager has been in existence. Each of
24 these statements shall be prepared in accordance with generally accepted
25 accounting principles and reported upon by a certified public accountant in
26 accordance with generally accepted auditing standards. If the fiscal year
27 ended more than ninety days prior to the date of filing, the provider shall
28 include an income statement, which need not be certified, covering the period
29 between the date such fiscal year ended and a date not more than ninety days
30 prior to the date the application is filed.

31 16. A feasibility study which shall include a financial forecast of the
32 life care facility estimating the most probable financial position, results
33 of operations and changes in financial position for the immediately
34 succeeding five year period. The feasibility study must set forth the
35 actuarial assumptions for determining that the project has sufficient
36 revenues and funds, including reserves, for the project to continue as a
37 viable operating concern. The study shall include all of the following:

38 (a) Beginning cash balance, and in the event that operation of the
39 facility has not yet commenced, the beginning cash balance shall be
40 consistent with the statement of anticipated source and application of funds
41 described in paragraph 14.

42 (b) Anticipated earnings on cash reserves.

43 (c) Estimates of net receipts from entrance fees, other than entrance
44 fees included in the statement of source and application of funds required
45 under paragraph 14, less estimated entrance fee refunds and a description of

1 the actuarial basis and method of calculation for the projection of entrance
2 fee receipts.

3 (d) An estimate of gifts or bequests if any are to be relied on to
4 meet operating expenses.

5 (e) A projection of estimated income from fees and charges other than
6 entrance fees, showing individual rates presently anticipated to be charged,
7 including a description of the assumptions used for calculating the effect
8 on the income of the facility of subsidized health services to be provided
9 pursuant to the life care contracts.

10 (f) A projection of estimated operating expenses of the facility,
11 including a description of the assumptions used in calculating the expenses,
12 and separate allowances for the replacement of equipment and furnishings and
13 anticipated major structural repairs or additions.

14 (g) An estimate of annual payments of principal and interest required
15 by any mortgage loan or other long-term financing.

16 17. An actuarial study prepared by a qualified actuary to be submitted
17 with the feasibility study for the purpose of demonstrating that the project
18 has sufficient revenues and funds, including reserves, for the project to
19 continue as a viable operating concern. The actuarial study shall include
20 a cash flow projection, an evaluation of the adequacy of current pricing
21 structures and an analysis of the long-term relationship between the
22 project's assets and liabilities.

23 18. If the feasibility study required by paragraph 16 indicates that
24 the provider will have cash balances over and above two months' projected
25 operating expenses of the facility, a description of the manner in which the
26 reserve funds will be invested and the persons who will be making the
27 investment decisions.

28 C. The application shall be signed under oath by the chief executive
29 officer of the applicant.

30 D. Copies of the escrow agreements executed with an escrow agent
31 pursuant to sections 20-1804 and 20-1806 shall be recorded as exhibits to the
32 application.

33 E. The life care contract shall provide that any person entering into
34 the contract shall have a period of seven days within which to rescind the
35 life care contract without penalty or further obligation beginning with the
36 first full calendar day following the last to occur of the execution of the
37 contract, the payment of an initial sum of money as a deposit or application
38 fee or receipt of a copy of the provider's most recent annual report if the
39 provider has filed an annual report with the director pursuant to section
40 20-1807, or, if the provider has not filed an annual report, a copy of the
41 provider's application. In the event of such rescission, all money or
42 property paid or transferred by such person shall be fully refunded by the
43 provider. No person shall be required to move into a facility until after
44 the expiration of the seven-day rescission period.

1 F. The director may charge an applicant a fee of not less than one
2 hundred fifty dollars nor more than four hundred fifty dollars for processing
3 the application filed pursuant to subsection B of this section. This fee
4 shall be adjusted within the limits prescribed by this subsection at the same
5 time and in the same manner prescribed in section 20-167, subsection ~~G~~ F.

6 G. Nothing in this article is deemed to require the director to
7 determine the actual financial condition of any life care contract
8 provider. The approval of a permit indicates only that the entity appears
9 to be financially viable based upon the information provided to the director.

10 Sec. 12. Section 20-1807, Arizona Revised Statutes, is amended to
11 read:

12 20-1807. Annual report; penalty

13 A. Each year not later than ninety days after the last day of the
14 provider's fiscal year, each provider shall file with the department an
15 annual report accompanied by a fee of not less than one hundred fifty dollars
16 nor more than four hundred fifty dollars. The fee shall be adjusted within
17 these limits at the same time and in the same manner prescribed by section
18 20-167, subsection ~~G~~ F. The annual report shall include the information
19 required by section 20-1802, subsection B, except that the information
20 required by paragraphs 5, 15 and 17 of that subsection shall be filed in
21 accordance with the provisions of subsection C of this section. The annual
22 report need not include the information required by section 20-1802,
23 subsection B, paragraph 16. The annual report shall be made on forms
24 provided by the department. The annual report and any amendment to the
25 annual report shall be signed under oath by the chief executive officer of
26 the provider. For good cause, the director may extend the due date for a
27 provider to file its annual report and pay the required fee.

28 B. A provider shall amend its annual report on file with the
29 department at any time, without the payment of any additional fee, if an
30 amendment is necessary to prevent the annual report from containing a
31 material misstatement of fact or omitting to state a material fact required
32 to be stated.

33 C. Any provider, manager or promoter shall comply with the
34 requirements of this section as follows:

35 1. Information required by section 20-1802, subsection B, paragraph
36 5 shall be filed:

37 (a) Immediately on the substitution or installation of a member of the
38 board of directors or an officer, trustee or managing partner different from
39 the information disclosed in the provider's application or submission
40 pursuant to subdivision (b) of this paragraph.

41 (b) Every three years after the initial filing of the biographical
42 affidavit by the provider.

43 2. Certified financial statements required by section 20-1802,
44 subsection B, paragraph 15 for the two most recent fiscal years shall be
45 filed with the annual report by the provider and manager only. The certified

1 financial statements of the promoter shall be filed with the annual report
2 unless the promoter is not currently employed by the provider.

3 3. The actuarial study required by section 20-1802, subsection B,
4 paragraph 17 shall be filed by the provider on a triennial basis beginning
5 with the year in which resident occupancy began at the facility pursuant to
6 the permit issued to the provider. The director may require a provider to
7 file an actuarial study on a more frequent basis if the director deems it
8 necessary and may adjust subsequent triennial filings accordingly.

9 D. A provider shall not change the fiscal year end date disclosed
10 pursuant to section 20-1802, subsection B, paragraph 4 without the prior
11 approval of the director. The director shall approve the change if the
12 commissioner of the internal revenue service grants a request for a change
13 of a fiscal year pursuant to 26 United States Code section 442.

14 E. Assets shall be reported at values determined pursuant to sections
15 20-511 through 20-515. If the director deems it necessary to value any real
16 estate the director may employ one or more competent appraisers for that
17 purpose, and the reasonable expense shall be borne by the provider.

18 F. The director may assess and collect a civil penalty of not more
19 than twenty-five dollars for each day the annual report is late against a
20 provider who fails to file the annual report timely accompanied by the
21 required fee.

22 Sec. 13. Captive fees report

23 The department of insurance shall submit an annual report that provides
24 a list of the fees collected from captive insurers to the governor, the
25 president of the senate and the speaker of the house of representatives and
26 shall provide a copy of this report to the secretary of state and the
27 director of the Arizona state library, archives and public records.

28 Sec. 14. Appropriations; purpose; exemption

29 A. The sum of \$93,000 and one FTE is appropriated from the state
30 general fund in fiscal year 2001-2002 and \$275,000 and four FTEs in fiscal
31 year 2002-2003 to the department of insurance for use by the department of
32 insurance to establish and administer a captive insurance program.

33 B. The appropriations made in subsection A of this section are exempt
34 from the provisions of section 35-190, Arizona Revised Statutes, relating to
35 lapsing of appropriations.

36 Sec. 15. Effective date

37 This act is effective from and after June 30, 2002.

APPROVED BY THE GOVERNOR MAY 4, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2001.

Passed the House March 20, 2001,

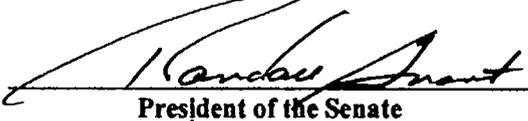
Passed the Senate April 27, 2001,

by the following vote: 40 Ayes,
13 Nays, 7 Not Voting

by the following vote: 29 Ayes,
0 Nays, 1 Not Voting



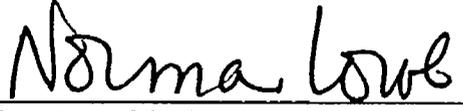
Speaker of the House



President of the Senate



Chief Clerk of the House



Asst. 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

H.B. 2116

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

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 01, 2001,

by the following vote: 57 Ayes,

1 Nays, 2 Not Voting

Jake Flake
Speaker of the House
Pro Tempore
Spencer L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1 day of May, 2001,

at 3:35 o'clock P M.

Jandra Ramirez
Secretary to the Governor

Approved this 4th day of

May, 2001,

at 10:49 o'clock A M.

Janice McPherson
Governor of Arizona

H.B. 2116

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 04 day of May, 2001,

at 4:34 o'clock P M.

Ruby Rayless
Secretary of State