House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 32

HOUSE BILL 2235

AN ACT

AMENDING SECTIONS 20-1098 AND 20-1098.04, ARIZONA REVISED STATUTES; 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 20-1098, Arizona Revised Statutes, is amended to
3 read:
4 20-1098. Definitions
5 In this article, unless the context otherwise requires:
6 1. "Affiliate" has the same meaning prescribed in section 20-481.
7 2. "Agency captive insurer" means a captive insurer that is owned by
8 one or more business entities that are licensed in any state as insurance
9 producers or managing general agents and that only insure risks on policies
10 placed through their owners.
11 3. "Association" means any lawfully formed association of individuals,
12 corporations or partnerships that has been in existence for at least one year
13 and that is organized for a primary purpose other than insuring its members.
14 4. "Business entity" has the same meaning prescribed in section
15 20-281.
16 5. "Captive insurer" means any pure captive insurer, agency captive
17 insurer, group captive insurer or protected cell captive insurer that is
18 domiciled in this state and that is formed and licensed under this article.
19 6. "Controlled unaffiliated business" means a company that satisfies
20 all of the following:
21 (a) Is not an affiliate of the captive insurer providing coverage or
22 reinsurance.
23 (b) Has an existing contractual relationship with an affiliate of the
24 captive insurer providing coverage or reinsurance out of which the subject
25 risk of loss arises.
26 (c) Whose risk management function is controlled by an affiliate of
27 the captive insurer providing coverage or reinsurance.
28 7. "Group" means either:
29 (a) A risk retention group formed pursuant to section 20-2402 and
30 either the product liability risk retention act of 1981 (15 United States
31 Code section 3901) or the liability risk retention act of 1986 (P.L. 99-563).
32 (b) An industry group or association that directly or through its
33 members satisfies at least one of the following criteria:
34 (i) Owns or controls, or holds with power to vote, all outstanding
35 voting securities of a group captive insurer incorporated as a stock insurer.
36 (ii) Has complete voting control over a group captive insurer
37 incorporated as a mutual insurer.
38 (iii) Constitutes all of the subscribers of a group captive insurer
39 formed as a reciprocal insurer.
40 8. "Group captive insurer" means a captive insurer that insures only
41 the risks of the group members and their affiliates.
42 9. "Industry group" means two or more individuals or business entities
43 that each:

(a) Procure the insurance of any risk or risks by use of the services of a full-time employee OR THIRD PARTY CONSULTANT acting as an insurance manager or buyer.

(b) Have aggregate annual premiums for insurance on all risks that total at least twenty-five thousand dollars.

(c) Have at least twenty-five full-time equivalent employees.

10. "Manager" means a person who is experienced in the field of captive insurance and who maintains all documents relating to a captive insurer's operations, transactions and affairs in this state and assists the captive insurer in its management and compliance with this article.

11. "Participant" means an entity and any affiliates of the entity that are insured by a protected cell captive insurer pursuant to a participant contract.

12. "Participant contract" means a contract by which a protected cell captive insurer insures a participant's risks and limits the participant's losses to the assets of the protected cell.

13. "Protected cell" means a separate account established and maintained by a protected cell captive insurer for one participant.

14. "Protected cell captive insurer" means a captive insurer:

(a) In which the minimum capital and surplus required by applicable law is provided by one or more sponsors.

(b) That is formed and licensed under this article.

(c) That insures the risks of separate participants through a contract.

(d) That segregates each participant's liability through one or more protected cells.

15. "Pure captive insurer" means any company that insures risks of its affiliate or controlled unaffiliated business.

16. "Sponsor" means an entity that meets the requirements of section 20-1098.06 and that the director has approved to provide all or part of the capital and surplus required by applicable law to operate a protected cell captive insurer.

Sec. 2. Section 20-1098.04, Arizona Revised Statutes, is amended to read:

20-1098.04. Formation of captive insurers; redomestication

A. ~~A pure captive insurer,~~ AN agency captive insurer or protected cell captive insurer shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

B. A group captive insurer may be formed in any of the following ways:

1. Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

2. Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

3. Organized as a reciprocal insurer pursuant to article 2 of this chapter.

4. INCORPORATED AS A NONPROFIT CORPORATION PURSUANT TO TITLE 10, CHAPTER 25.

C. A PURE CAPTIVE INSURER MAY BE FORMED IN ANY OF THE FOLLOWING WAYS:

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

2. INCORPORATED AS A NONPROFIT CORPORATION PURSUANT TO TITLE 10, CHAPTER 25.

~~C.~~ D. Each owner of an agency captive insurer shall be licensed as an insurance producer or managing general agent.

~~D.~~ E. A captive insurer shall have at least three incorporators at least one of whom shall be a resident of this state.

~~E.~~ F. The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.

~~F.~~ G. The articles of incorporation or bylaws of a captive insurer that is formed as a corporation may authorize a quorum of a board of directors to consist of at least one-third of the fixed or prescribed number of directors. The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

~~G.~~ H. A captive insurer organized as a stock insurer shall have at least one member of the board of directors who is a resident of this state. A captive insurer that is formed as a reciprocal insurer shall have at least one member of the subscribers' advisory committee who is a resident of this state.

~~H.~~ I. Any foreign or alien insurer may become a domestic captive insurer by complying with the requirements of this article relating to the organization and licensing of a domestic captive insurer of the same type, and by complying with all applicable requirements of the laws of this state relating to the formation and authorization of a corporation. The domestic captive insurer is entitled to a license to continue its business and is subject to the authority and jurisdiction of this state.

APPROVED BY THE GOVERNOR APRIL 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 1, 2004.

Passed the House February 10, 2004

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 29, 2004

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

Ken Bennett
President of the Senate

Charmain Billingsley
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29th day of March, 2004

at 3:26 o'clock P M.

Jennifer Ybarra
Secretary to the Governor

Approved this 1 day of

April, 2004,

at 11:05 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of April, 2004,

at 12:36 o'clock P. M.

Janice K. Brewer
Secretary of State

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