

House Engrossed

**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 164

# **HOUSE BILL 2144**

AN ACT

AMENDING SECTION 20-223, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 20, CHAPTER 3, ARTICLE 8, ARIZONA REVISED STATUTES, TO "LIFE AND HEALTH ACTUARIAL OPINION AND MEMORANDUM REQUIREMENTS"; AMENDING TITLE 20, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLES 9 AND 10; REPEALING LAWS 1991, CHAPTER 261, SECTION 35; RELATING TO INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 20-223, Arizona Revised Statutes, is amended to  
3 read:

4 20-223. Annual statement; payment of fees; penalty for failure  
5 to file or pay

6 A. Each authorized domestic insurer shall annually on or before March  
7 31 and each other authorized insurer shall annually on or before March 1 file  
8 with the director, or a repository designated by the director, a true  
9 statement of its financial condition, transactions and affairs as of the  
10 December 31 preceding. The statement shall be completed pursuant to the  
11 instructions and accounting practices and procedures that are approved by the  
12 national association of insurance commissioners. The statement shall be in  
13 such general form and context as approved by the national association of  
14 insurance commissioners for the kinds of insurance to be reported upon, and  
15 as supplemented for additional information required by the director. ~~The~~  
16 ~~director shall adopt rules providing requirements for the filing of annual~~  
17 ~~audited financial statements.~~ Coincident with the filing of its annual  
18 statement, each such insurer shall pay such fees prescribed by section 20-167  
19 for filing the annual statement and renewal of its certificate of authority.

20 B. The statement of an alien insurer shall relate only to its  
21 transactions and affairs in the United States unless the director requires  
22 otherwise. The statement shall be verified by the insurer's United States  
23 manager or other officer duly authorized.

24 C. The director may refuse to renew, or may suspend or revoke, the  
25 certificate of authority of any insurer failing to file its annual statement  
26 or pay its fees when due or within any extension of time therefor which the  
27 director, for good cause, may have granted.

28 D. Any insurer failing to file an annual statement or to pay its fees  
29 pursuant to this section is subject to payment of a penalty fee not to exceed  
30 twenty-five dollars for each day of delinquency.

31 Sec. 2. Heading change

32 The article heading of title 20, chapter 3, article 8, Arizona Revised  
33 Statutes, is changed from "ACTUARIAL OPINION AND MEMORANDUM REQUIREMENTS" to  
34 "LIFE AND HEALTH ACTUARIAL OPINION AND MEMORANDUM REQUIREMENTS".

35 Sec. 3. Title 20, chapter 3, Arizona Revised Statutes, is amended by  
36 adding articles 9 and 10, to read:

37 ARTICLE 9. PROPERTY AND CASUALTY ACTUARIAL  
38 OPINION REQUIREMENTS

39 20-697. Property and casualty actuarial opinions; limitation of  
40 liability

41 A. EVERY PROPERTY AND CASUALTY INSURANCE COMPANY DOING BUSINESS IN  
42 THIS STATE ANNUALLY SHALL FILE A STATEMENT OF ACTUARIAL OPINION THAT IS MADE  
43 BY AN APPOINTED ACTUARY. THE STATEMENT OF ACTUARIAL OPINION SHALL BE FILED  
44 WITH THE ANNUAL FINANCIAL STATEMENT REQUIRED BY SECTION 20-223 IN ACCORDANCE  
45 WITH THE APPROPRIATE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS PROPERTY

1 AND CASUALTY ANNUAL STATEMENT INSTRUCTIONS. THE STATEMENT OF ACTUARIAL  
2 OPINION IS A PUBLIC DOCUMENT.

3 B. EVERY PROPERTY AND CASUALTY INSURANCE COMPANY THAT IS DOMICILED IN  
4 THIS STATE AND THAT IS REQUIRED TO SUBMIT A STATEMENT OF ACTUARIAL OPINION  
5 ANNUALLY SHALL SUBMIT AN ACTUARIAL OPINION SUMMARY THAT IS WRITTEN BY THE  
6 COMPANY'S APPOINTED ACTUARY. THIS ACTUARIAL OPINION SUMMARY SHALL BE FILED  
7 IN ACCORDANCE WITH THE APPROPRIATE NATIONAL ASSOCIATION OF INSURANCE  
8 COMMISSIONERS PROPERTY AND CASUALTY ANNUAL STATEMENT INSTRUCTIONS AND SHALL  
9 BE CONSIDERED A DOCUMENT SUPPORTING THE ACTUARIAL OPINION REQUIRED BY  
10 SUBSECTION A OF THIS SECTION. A COMPANY THAT IS LICENSED BUT NOT DOMICILED  
11 IN THIS STATE SHALL PROVIDE THE ACTUARIAL OPINION SUMMARY ON THE DIRECTOR'S  
12 REQUEST.

13 C. EVERY PROPERTY AND CASUALTY INSURANCE COMPANY THAT IS DOMICILED IN  
14 THIS STATE AND THAT IS REQUIRED TO SUBMIT A STATEMENT OF ACTUARIAL OPINION  
15 ANNUALLY SHALL REQUIRE ITS APPOINTED ACTUARY TO PREPARE AN ACTUARIAL REPORT  
16 IN SUPPORT OF THE ACTUARIAL OPINION THAT IS IN COMPLIANCE WITH THE  
17 REQUIREMENTS CONTAINED IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS  
18 PROPERTY AND CASUALTY ANNUAL STATEMENT INSTRUCTIONS. IF THE INSURANCE  
19 COMPANY FAILS TO PROVIDE A SUPPORTING ACTUARIAL REPORT OR WORK PAPERS AT THE  
20 REQUEST OF THE DIRECTOR OR THE DIRECTOR DETERMINES THAT THE SUPPORTING  
21 ACTUARIAL REPORT OR WORK PAPERS ARE OTHERWISE UNACCEPTABLE, THE DIRECTOR MAY  
22 ENGAGE A QUALIFIED ACTUARY AT THE COMPANY'S EXPENSE TO REVIEW THE OPINION AND  
23 THE BASIS FOR THE OPINION AND TO PREPARE THE SUPPORTING ACTUARIAL REPORT OR  
24 WORK PAPERS.

25 D. THE APPOINTED ACTUARY IS NOT LIABLE FOR DAMAGES TO ANY PERSON OTHER  
26 THAN THE INSURANCE COMPANY AND THE DIRECTOR FOR ANY ACT, ERROR, OMISSION,  
27 DECISION OR CONDUCT WITH RESPECT TO THE ACTUARY'S OPINION, UNLESS THE ACTUARY  
28 ENGAGED IN FRAUD OR WILFUL MISCONDUCT.

29 20-697.01. Confidentiality; sharing of information

30 A. DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE POSSESSION OR  
31 CONTROL OF THE DEPARTMENT THAT ARE CONSIDERED AN ACTUARIAL REPORT, WORK  
32 PAPERS OR ACTUARIAL OPINION SUMMARY PROVIDED IN SUPPORT OF THE OPINION AND  
33 ANY OTHER MATERIAL PROVIDED BY THE COMPANY TO THE DIRECTOR IN CONNECTION WITH  
34 THE ACTUARIAL REPORT, WORK PAPERS OR ACTUARIAL OPINION SUMMARY ARE  
35 CONFIDENTIAL, SHALL NOT BE SUBJECT TO PUBLIC RECORDS REQUESTS, SHALL NOT BE  
36 SUBJECT TO SUBPOENA AND SHALL NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE IN  
37 EVIDENCE IN ANY PRIVATE CIVIL ACTION.

38 B. THIS SECTION AND SECTION 20-697 SHALL NOT BE CONSTRUED TO LIMIT THE  
39 DIRECTOR'S AUTHORITY TO RELEASE THE DOCUMENTS TO THE ACTUARIAL BOARD FOR  
40 COUNSELING AND DISCIPLINE SO LONG AS THE MATERIAL IS REQUIRED FOR THE PURPOSE  
41 OF PROFESSIONAL DISCIPLINARY PROCEEDINGS AND THAT THE ACTUARIAL BOARD FOR  
42 COUNSELING AND DISCIPLINE ESTABLISHES PROCEDURES SATISFACTORY TO THE DIRECTOR  
43 FOR PRESERVING THE CONFIDENTIALITY OF THE DOCUMENTS, NOR SHALL THIS SECTION  
44 BE CONSTRUED TO LIMIT THE DIRECTOR'S AUTHORITY TO USE THE DOCUMENTS,

1 MATERIALS OR OTHER INFORMATION IN FURTHERANCE OF ANY REGULATORY OR LEGAL  
2 ACTION BROUGHT AS PART OF THE DIRECTOR'S OFFICIAL DUTIES.

3 C. NEITHER THE DIRECTOR NOR ANY PERSON WHO RECEIVES DOCUMENTS,  
4 MATERIALS OR OTHER INFORMATION WHILE ACTING UNDER THE AUTHORITY OF THE  
5 DIRECTOR SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL  
6 ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERIALS OR INFORMATION  
7 SUBJECT TO SUBSECTION A OF THIS SECTION.

8 D. THE DIRECTOR MAY:

9 1. SHARE DOCUMENTS, MATERIALS OR OTHER INFORMATION, INCLUDING THE  
10 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS OR INFORMATION SUBJECT TO  
11 SUBSECTION A OF THIS SECTION WITH OTHER STATE, FEDERAL AND INTERNATIONAL  
12 REGULATORY AGENCIES, WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS  
13 AND ITS AFFILIATES AND SUBSIDIARIES AND WITH STATE, FEDERAL AND INTERNATIONAL  
14 LAW ENFORCEMENT AUTHORITIES, PROVIDED THAT THE RECIPIENT AGREES TO MAINTAIN  
15 THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENT, MATERIAL OR OTHER  
16 INFORMATION AND HAS THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY.

17 2. RECEIVE DOCUMENTS, MATERIALS OR INFORMATION, INCLUDING OTHERWISE  
18 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS OR INFORMATION, FROM THE  
19 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND  
20 SUBSIDIARIES, AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER  
21 FOREIGN OR DOMESTIC JURISDICTIONS, AND SHALL MAINTAIN AS CONFIDENTIAL OR  
22 PRIVILEGED ANY DOCUMENT, MATERIAL OR INFORMATION RECEIVED WITH NOTICE OR THE  
23 UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE  
24 JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT, MATERIAL OR INFORMATION.

25 3. ENTER INTO AGREEMENTS GOVERNING THE SHARING AND USE OF INFORMATION  
26 CONSISTENT WITH SUBSECTIONS A THROUGH D OF THIS SECTION.

27 E. NO WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY  
28 IN THE DOCUMENTS, MATERIALS OR INFORMATION SHALL OCCUR AS A RESULT OF  
29 DISCLOSURE TO THE DIRECTOR UNDER THIS SECTION OR AS A RESULT OF SHARING AS  
30 AUTHORIZED IN SUBSECTION D OF THIS SECTION.

31 ARTICLE 10. AUDITED FINANCIAL REPORTS

32 20-698. Annual audited financial reports

33 A. FOR THE YEAR ENDING DECEMBER 31, 2010 AND FOR EACH YEAR THEREAFTER,  
34 EVERY INSURER HAVING DIRECT PREMIUMS WRITTEN IN THIS STATE OF ONE MILLION  
35 DOLLARS OR MORE IN ANY CALENDAR YEAR AND MORE THAN ONE THOUSAND POLICYHOLDERS  
36 OR CERTIFICATE HOLDERS OF DIRECT WRITTEN POLICIES NATIONWIDE AT THE END OF  
37 THE CALENDAR YEAR IS SUBJECT TO THE REQUIREMENTS OF THE NATIONAL ASSOCIATION  
38 OF INSURANCE COMMISSIONERS ANNUAL FINANCIAL REPORTING MODEL REGULATION FOR  
39 THAT CALENDAR YEAR. EVERY INSURER HAVING DIRECT PREMIUMS WRITTEN IN THIS  
40 STATE OF LESS THAN ONE MILLION DOLLARS IN ANY CALENDAR YEAR AND LESS THAN ONE  
41 THOUSAND POLICYHOLDERS OR CERTIFICATE HOLDERS OF DIRECT WRITTEN POLICIES  
42 NATIONWIDE AT THE END OF THE CALENDAR YEAR IS EXEMPT FROM THE REQUIREMENTS OF  
43 THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS ANNUAL FINANCIAL  
44 REPORTING MODEL REGULATION FOR THAT CALENDAR YEAR, UNLESS THE DIRECTOR MAKES  
45 A SPECIFIC FINDING THAT COMPLIANCE IS NECESSARY FOR THE DIRECTOR TO CARRY OUT

1 STATUTORY RESPONSIBILITIES. INSURERS THAT ASSUMED PREMIUMS PURSUANT TO  
2 CONTRACTS OR TREATIES OF REINSURANCE OF ONE MILLION DOLLARS OR MORE ARE NOT  
3 EXEMPT.

4 B. THE DIRECTOR MAY DETERMINE WHETHER, CONSISTENT WITH THE  
5 REQUIREMENTS OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS ANNUAL  
6 FINANCIAL REPORTING MODEL REGULATION:

7 1. A FOREIGN OR ALIEN INSURER MAY BE EXEMPT FROM THIS ARTICLE IF THE  
8 DIRECTOR FINDS ITS DOMICILIARY JURISDICTION HAS A SUBSTANTIALLY SIMILAR LAW  
9 IN EFFECT AND THE INSURER HAS FILED ITS AUDITED FINANCIAL REPORT AND OTHER  
10 REQUIRED COMMUNICATIONS WITH THE DIRECTOR AS OTHERWISE REQUIRED BY THIS  
11 ARTICLE.

12 2. AN INSURER IS REQUIRED TO FILE AN AUDITED FINANCIAL REPORT EARLIER  
13 THAN JUNE 1, WITH NINETY DAYS ADVANCED NOTICE TO THE INSURER.

14 3. AN EXTENSION OF THE JUNE 1 FILING DATE WILL BE GRANTED FOR  
15 THIRTY-DAY PERIODS.

16 4. AN EXCEPTION WILL BE GRANTED TO THE ROTATION REQUIREMENT FOR A LEAD  
17 AUDIT PARTNER FOR AN INSURER.

18 5. AN INDIVIDUAL MEETS THE QUALIFICATIONS AS AN INDEPENDENT CERTIFIED  
19 PUBLIC ACCOUNTANT FOR THE PURPOSES OF THIS ARTICLE.

20 6. A FINANCIAL OR ORGANIZATIONAL HARDSHIP EXEMPTION WILL BE GRANTED TO  
21 ALLOW A QUALIFIED INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT TO PERFORM NONAUDIT  
22 SERVICES FOR AN INSURER HAVING DIRECT WRITTEN AND ASSUMED PREMIUMS OF LESS  
23 THAN ONE HUNDRED MILLION DOLLARS IN ANY CALENDAR YEAR.

24 7. AN INSURER MAY FILE CONSOLIDATED OR COMBINED AUDITED FINANCIAL  
25 STATEMENTS IN LIEU OF A SEPARATE ANNUAL AUDITED FINANCIAL STATEMENT IF THE  
26 INSURER IS PART OF A GROUP OF INSURANCE COMPANIES THAT USES A POOLING OR ONE  
27 HUNDRED PER CENT REINSURANCE AGREEMENT THAT AFFECTS THE SOLVENCY AND  
28 INTEGRITY OF THE INSURER'S RESERVES AND THE INSURER CEDES ALL OF ITS DIRECT  
29 AND ASSUMED BUSINESS TO THE POOL.

30 8. AN INSURER WILL BE GRANTED A HARDSHIP WAIVER OF THE AUDIT COMMITTEE  
31 REQUIREMENTS REGARDING INDEPENDENT AUDIT COMMITTEE MEMBERS.

32 9. AN INSURER WILL BE GRANTED A FINANCIAL OR ORGANIZATIONAL HARDSHIP  
33 EXEMPTION FROM COMPLIANCE WITH ANY OR ALL OF THE ANNUAL FINANCIAL REPORTING  
34 REQUIREMENTS.

35 20-698.01. Rule making; exemption from rule making procedures

36 A. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT THIS ARTICLE.

37 B. THE DEPARTMENT IS EXEMPT FROM TITLE 41, CHAPTER 6 FOR THE PURPOSES  
38 OF ADOPTING RULES RELATING TO REQUIREMENTS OF THE NATIONAL ASSOCIATION OF  
39 INSURANCE COMMISSIONERS ANNUAL FINANCIAL REPORTING MODEL REGULATION AND THE  
40 DIRECTOR'S AUTHORITY TO GRANT EXTENSIONS, EXEMPTIONS AND WAIVERS CONSISTENT  
41 WITH THOSE PROVISIONS AND PRESCRIBED IN SECTION 20-698.

42 Sec. 4. Repeal

43 Laws 1991, chapter 261, section 35 is repealed.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Passed the House June 16, 20 09

by the following vote: 50 Ayes,

2 Nays, 8 Not Voting

Stu B. Bachus  
Speaker of the House  
*Pro Tempore*

Thomas L. Joyce  
Chief Clerk of the House

Passed the Senate June 30, 20 09

by the following vote: 24 Ayes,

0 Nays, 4 Not Voting

Robert L. Bennett  
President of the Senate

Charmian Bellinger  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

1<sup>st</sup> day of July, 20 09

at 8:25 o'clock A. M.

Susan K. Myers  
Secretary to the Governor

Approved this 13<sup>th</sup> day of

July 2009

at 9:55 o'clock A. M.

Janice K. Brewer  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13<sup>th</sup> day of July, 20 09

at 7:35 o'clock P. M.

Ken Blount  
Secretary of State