

Senate Engrossed House Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
Second Regular Session  
2010

CHAPTER 251

# **HOUSE BILL 2071**

AN ACT

AMENDING SECTIONS 20-651 AND 20-1209, ARIZONA REVISED STATUTES; REPEALING SECTION 20-1211, ARIZONA REVISED STATUTES; AMENDING SECTIONS 20-1226, 20-1241.01, 20-1243.04 AND 20-1251, ARIZONA REVISED STATUTES; RELATING TO LIFE INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 20-651, Arizona Revised Statutes, is amended to  
3 read:

4 20-651. Establishment of separate accounts; income, gains and  
5 losses; variable benefits; requirements; reserves

6 A. Any legal reserve life insurance company, except a limited capital  
7 stock company, may establish one or more separate accounts, and may allocate  
8 amounts thereto, including without limitation proceeds applied under optional  
9 modes of settlement or under dividend options, to provide for life insurance,  
10 guaranteed investment contracts or annuities, and benefits incidental  
11 thereto, payable in fixed or in variable dollar amounts or in both.

12 B. The income, gains and losses, realized or unrealized, from assets  
13 allocated to a separate account shall be credited to or charged against the  
14 account, without regard to other income, gains or losses of the company.

15 C. Except with the approval of the director and under such conditions  
16 as to investments and other matters as the director may prescribe, which  
17 shall recognize the guaranteed nature of the benefits provided, reserves for  
18 benefits guaranteed as to dollar amount and duration and funds guaranteed as  
19 to principal amount or stated rate of interest shall not be maintained in a  
20 separate account.

21 D. Amounts allocated to a separate account in the exercise of the  
22 power granted by this section shall be owned by the company and the company  
23 shall not be, nor hold itself out to be, a trustee with respect to such  
24 amounts. If and to the extent so provided under the applicable contracts,  
25 that portion of the assets of any such separate account equal to the reserves  
26 and other contract liabilities with respect to such account shall not be  
27 chargeable with liabilities arising out of any other business the company may  
28 conduct.

29 E. To the extent such company deems it necessary to comply with any  
30 applicable federal or state laws, such company, with respect to any separate  
31 account, including without limitation any separate account ~~which~~ THAT is a  
32 management investment company or a unit investment trust, may provide for  
33 persons having an interest in the account appropriate voting and other rights  
34 and special procedures for the conduct of the business of such account,  
35 including without limitation special rights and procedures relating to  
36 investment policy, investment advisory services, selection of independent  
37 public accountants, and the selection of a committee, the members of which  
38 need not be otherwise affiliated with such company, to manage the business of  
39 such account.

40 F. Any contract providing benefits payable in variable amounts that is  
41 delivered or issued for delivery in this state shall contain a statement of  
42 the essential features of the procedures to be followed by the company in  
43 determining the dollar amount of such variable benefits. Any ~~such~~ contract  
44 under which the benefits vary to reflect investment experience, including a  
45 group contract and any certificate in evidence of variable benefits issued

1 under the contract, shall state that such dollar amount will so vary and  
2 shall contain on its first page a statement to the effect that the benefits  
3 under the contract are on a variable basis.

4 G. Except for sections 20-1219, 20-1223, 20-1224, 20-1225, 20-1271 and  
5 20-1274 in the case of a variable annuity contract and sections 20-1203,  
6 20-1207, 20-1209, ~~20-1211~~, 20-1212, 20-1213, 20-1231, 20-1231.01 and 20-1259  
7 in the case of a variable life insurance policy and except as otherwise  
8 provided in this section and in sections 20-515 and 20-536.01, all pertinent  
9 provisions of this title shall apply to separate accounts and contracts  
10 relating to separate accounts. Any individual variable life insurance  
11 contract or variable annuity contract delivered or issued for delivery in  
12 this state shall contain grace, reinstatement and nonforfeiture provisions  
13 appropriate to such a contract, and if participating, an appropriate dividend  
14 provision. Any group variable life insurance contract or variable annuity  
15 contract delivered or issued for delivery in this state shall contain grace  
16 and nonforfeiture provisions appropriate to such a contract. The reserve  
17 liability for variable contracts shall be established in accordance with  
18 actuarial procedures that recognize the variable nature of the benefits  
19 provided and any mortality guarantees.

20 H. No company shall deliver or issue for delivery within this state  
21 variable contracts unless it is licensed or organized to do a life insurance  
22 or annuity business in this state, and the director is satisfied that its  
23 condition or methods of operation in connection with the issuance of such  
24 variable contracts will not render its operation hazardous to the public or  
25 its policyholders in this state. In this connection, the director shall  
26 consider, among other things, all of the following:

27 1. The history and financial condition of the company.

28 2. The character, responsibility and fitness of the officers and  
29 directors of the company.

30 3. In the case of a company other than a domestic company, whether the  
31 statutes and regulations of the jurisdiction of its incorporation provide a  
32 degree of protection to policyholders and the public ~~which~~ THAT is  
33 substantially equal to that provided by this section and the rules issued  
34 under this section. If the company is a subsidiary of an admitted life  
35 insurance company or affiliated with such company through common management  
36 or ownership, it may be deemed by the director to have met the provisions of  
37 this subsection if either it or the parent or the affiliated company meets  
38 the requirements of this section.

39 I. Notwithstanding any other law, the director shall have sole  
40 authority to regulate the issuance and sale of variable contracts and to  
41 issue such reasonable rules as may be appropriate to carry out the purposes  
42 and provisions of this section and sections 20-515 and 20-536.01.

1           Sec. 2. Section 20-1209, Arizona Revised Statutes, is amended to read:  
2           20-1209. Policy loan on new policies

3           A. In case of policies issued on and after January 1, 1979, there  
4 shall be a provision that after the policy has a cash surrender value and  
5 while no premium is in default beyond the grace period for payment, the  
6 insurer will advance, on proper assignment or pledge of the policy and on the  
7 sole security of such policy, at a specified rate of interest, ~~not exceeding~~  
8 ~~eight per cent per annum or seven and four-tenths per cent per annum if~~  
9 ~~payable in advance,~~ an amount equal to or, at the option of the party  
10 entitled thereto, less than the loan value of the policy. ~~If the policy~~  
11 ~~provides for a rate of interest in excess of six per cent per annum, the~~  
12 ~~insurer shall certify to the director that the holders of such policies will~~  
13 ~~benefit from increased earnings of the insurer resulting from such higher~~  
14 ~~interest rates through the use of higher dividends or lower premiums or~~  
15 ~~both.~~ The loan value of the policy shall be at least equal to the cash  
16 surrender value at the end of the then current policy year, provided that the  
17 insurer may deduct, either from the loan value or from the proceeds of the  
18 loan, any existing indebtedness not already deducted in determining the cash  
19 surrender value including any interest then accrued but not due, any unpaid  
20 balance of the premium for the current policy year and interest on the loan  
21 to the end of the current policy year. The policy may also provide that if  
22 interest on any indebtedness is not paid when due it shall then be added to  
23 the existing indebtedness and shall bear interest at the same rate, and that  
24 if and when the total indebtedness on the policy, including interest due or  
25 accrued, equals or exceeds the amount of the loan value the policy shall  
26 terminate and become void. The policy shall reserve to the insurer the right  
27 to defer the granting of a loan, other than for the payment of any premium to  
28 the insurer, for six months after application. The policy, at the insurer's  
29 option, may provide for an automatic premium loan, subject to an election of  
30 the party entitled to elect.

31           B. This section shall not apply to term policies nor to term insurance  
32 benefits provided by rider or supplemented policy provision.

33           Sec. 3. Repeal

34           Section 20-1211, Arizona Revised Statutes, is repealed.

35           Sec. 4. Section 20-1226, Arizona Revised Statutes, is amended to read:  
36           20-1226. Limitation of liability

37           A. ~~No policy of~~ life insurance POLICY shall be delivered or issued for  
38 delivery in this state if it contains a provision ~~which~~ THAT excludes or  
39 restricts liability for death caused in a certain specified manner or  
40 occurring while the insured has a specified status, except that a policy may  
41 contain provisions excluding or restricting coverage as specified therein in  
42 the event of death under any one or more of the following circumstances:

43           1. Death as a result, directly or indirectly, of war, declared or  
44 undeclared, or of action by military forces, or of any act or hazard of such  
45 war or action, or of service in the military, naval or air forces or in

1 civilian forces auxiliary thereto, or from any cause while a member of such  
2 military, naval or air forces of any country at war, declared or undeclared,  
3 or of any country engaged in such military action.

4 2. Death as a result of aviation.

5 3. Death as a result of a specified hazardous occupation or  
6 occupations.

7 4. Death while the insured is outside THE continental United States  
8 and Canada.

9 ~~5. Death within two years from the date of issue of the policy as a~~  
10 ~~result of suicide, while sane or insane.~~

11 B. A LIFE INSURANCE POLICY THAT IS DELIVERED OR ISSUED FOR DELIVERY IN  
12 THIS STATE MAY INCLUDE AN EXCLUSION FOR DEATH RESULTING FROM SUICIDE THAT  
13 OCCURS WITHIN TWO YEARS AFTER THE ISSUE OR REINSTATEMENT OF THE POLICY. IF  
14 THE OWNER APPLIES FOR AN INCREASE IN DEATH BENEFITS AFTER THE POLICY ISSUE  
15 DATE, THE POLICY MAY PROVIDE AN EXCLUSION FOR SUICIDE THAT OCCURS WITHIN ONE  
16 YEAR AFTER ANY INCREASE IN DEATH BENEFITS ONLY TO THE EXTENT OF THE INCREASED  
17 DEATH BENEFITS.

18 ~~B.~~ C. A policy ~~which~~ THAT contains any exclusion or restriction  
19 pursuant to ~~subsection A~~ of this section shall also provide that in the event  
20 of death under the circumstances to which the exclusion or restriction is  
21 applicable, the insurer will pay an amount not less than a reserve determined  
22 according to the commissioners reserve valuation method upon the basis of the  
23 mortality table and interest rate specified in the policy for the calculation  
24 of nonforfeiture benefits, or if the policy provides for no such benefits,  
25 computed according to a mortality table and interest rate determined by the  
26 insurer and specified in the policy, with adjustment for indebtedness or  
27 dividend credit.

28 ~~C.~~ D. This section shall not apply to group life insurance,  
29 disability insurance, reinsurance or annuities, or to any provision in a life  
30 insurance policy relating to disability benefits or to additional benefits in  
31 the event of death by accident or accidental means.

32 Sec. 5. Section 20-1241.01, Arizona Revised Statutes, is amended to  
33 read:

34 20-1241.01. Scope of article

35 A. This article applies to the replacement of policies and contracts  
36 except for the following:

37 1. Credit life insurance.

38 2. Except as provided in subsection B of this section, group policies  
39 and contracts that do not involve direct solicitation of individuals by an  
40 insurance producer.

41 3. Policies and contracts used to fund prearranged funeral agreements  
42 as defined in section 32-1301.

43 4. Except as provided in subsection C of this section, a policy or  
44 contract that is used to fund any of the following:

1 (a) An employee pension and welfare plan as defined by and that is  
2 subject to the employee retirement income security act of 1974 (29 United  
3 States Code sections 1001 through 1461).

4 (b) A plan described by sections 401(a), 401(k) or 403(b) of the  
5 internal revenue code, where the plan, for purposes of the employee  
6 retirement income security act of 1974, is established or maintained by an  
7 employer.

8 (c) A governmental or church plan as defined in section 414 of the  
9 internal revenue code, a governmental or church welfare benefit plan, or a  
10 deferred compensation plan of a state or local government or a tax exempt  
11 organization pursuant to section 457 of the internal revenue code.

12 (d) A nonqualified deferred compensation arrangement established or  
13 maintained by an employer or plan sponsor.

14 5. An application to the existing insurer that issued the existing  
15 policy or contract:

16 (a) To exercise a contractual change or a conversion privilege.

17 (b) If the existing insurer is replacing the existing policy or  
18 contract pursuant to a program filed with and approved by the director.

19 (c) If a term conversion privilege is exercised among corporate  
20 affiliates.

21 6. Existing life insurance that is a nonrenewable and nonconvertible  
22 term life insurance policy that will expire in five years or less.

23 7. Proposed life insurance that is to replace life insurance under a  
24 binding or conditional receipt issued by the same insurer.

25 8. New coverage that is provided under a policy or contract if the  
26 insured's employer or an association of which the insured is a member bears  
27 all costs.

28 9. Immediate annuities that are purchased with proceeds from an  
29 existing contract. Immediate annuities purchased with proceeds from an  
30 existing policy are subject to this article.

31 10. Structured settlements as defined in section 12-2901.

32 11. THE REINSTATEMENT OF A LIFE INSURANCE POLICY PURSUANT TO SECTION  
33 20-1213.

34 B. Group policies and contracts involving direct solicitation are  
35 subject to this article.

36 C. Notwithstanding subsection A of this section, this article applies  
37 to a policy or contract that is used to fund any plan or arrangement that  
38 meets all of the following requirements:

39 1. The plan or arrangement is funded solely by contributions an  
40 employee elects to make on a pretax or after tax basis.

41 2. The insurer has been notified that plan participants may choose  
42 from among two or more contract providers or policy providers.

43 3. The insurance producer directly solicits individual employees for  
44 the purchase of the contract or policy.

1 D. Registered contracts are exempt from the requirements of this  
2 article with respect to the provision of illustrations or policy  
3 summaries. Premium or contract contribution amounts and identification of  
4 the appropriate prospectus or offering circular are required.

5 Sec. 6. Section 20-1243.04, Arizona Revised Statutes, is amended to  
6 read:

7 20-1243.04. Standards for supervision

8 A. An insurer shall either assure that a system to supervise  
9 recommendations that is reasonably designed to achieve compliance with this  
10 article is established and maintained by complying with subsections C, D and  
11 E, or establish and maintain such a system. Such a system includes:

12 1. Maintaining written procedures.

13 2. Conducting periodic reviews of records that are reasonably designed  
14 to assist in detecting and preventing violations of this article.

15 B. A managing general agent and business entity shall either adopt a  
16 system that is established by an insurer to supervise recommendations of its  
17 insurance producers and that is reasonably designed to achieve compliance  
18 with this article or establish and maintain such a system. Such a system  
19 includes:

20 1. Maintaining written procedures.

21 2. Conducting periodic reviews of records that are reasonably designed  
22 to assist in detecting and preventing violations of this article.

23 C. An insurer may contract with a third party, including a managing  
24 general agent or business entity, to establish and maintain a system of  
25 supervision as required by subsection A with respect to insurance producers  
26 under contract with or employed by the third party.

27 D. An insurer shall make reasonable inquiry to assure that the third  
28 party contracting under subsection C is performing the functions required  
29 under subsection A and shall take such action as is reasonable under the  
30 circumstances to enforce the contractual obligation to perform the  
31 functions. An insurer may comply with the obligation to make reasonable  
32 inquiry by doing both of the following:

33 1. Annually obtaining a certification from a third party senior  
34 manager who has responsibility for the delegated functions that the manager  
35 has a reasonable basis to represent, and does represent, that the third party  
36 is performing the required functions.

37 2. Based on reasonable selection criteria, periodically select third  
38 parties contracting under subsection C for a review to determine if the third  
39 parties are performing the required functions. The insurer shall perform  
40 those procedures to conduct the review that are reasonable under the  
41 circumstances.

42 E. An insurer that contracts with a third party pursuant to subsection  
43 C and that complies with the requirements to supervise in subsection D  
44 fulfills its responsibilities under subsection A.

1 F. An insurer, managing general agent or business entity is not  
2 required pursuant to subsection A or B to:

3 1. Review, or provide for review of, all insurance producer solicited  
4 transactions.

5 2. Include in its system of supervision an insurance producer's  
6 recommendations to consumers of products other than the annuities offered by  
7 the insurer, managing general agent or business entity.

8 G. A managing general agent or business entity contracting with an  
9 insurer pursuant to subsection C, if requested by the insurer pursuant to  
10 subsection D, shall promptly give a certification as described in subsection  
11 D or give a clear statement that it is unable to meet the certification  
12 criteria.

13 H. A person shall not provide a certification under subsection D,  
14 paragraph 1 unless both of the following apply:

15 1. The person is a senior manager with responsibility for the  
16 delegated functions.

17 2. The person has a reasonable basis for making the certification.

18 I. Compliance with the financial industry regulatory authority conduct  
19 rules pertaining to suitability satisfies the requirements under this section  
20 for the recommendation of variable annuities REGISTERED UNDER THE SECURITIES  
21 ACT OF 1933 (15 UNITED STATES CODE SECTIONS 77a THROUGH 77aa) OR RULES  
22 ADOPTED THEREUNDER. However, this subsection does not limit the director's  
23 ability to enforce this article.

24 Sec. 7. Section 20-1251, Arizona Revised Statutes, is amended to read:  
25 20-1251. Requirements for group contracts

26 A. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, no life  
27 insurance policy shall be delivered in this state insuring the lives of more  
28 than one individual unless to one of the groups as provided for in section  
29 20-1251.01 and sections 20-1252 through 20-1256 and unless in compliance with  
30 the other applicable provisions of those sections.

31 B. Subsection A of this section shall not apply to life insurance  
32 policies:

33 1. Insuring only individuals related by marriage, blood or legal  
34 adoption.

35 2. Insuring only individuals having a common interest through  
36 ownership of a business enterprise, or a substantial legal interest or equity  
37 therein, and who are actively engaged in the management thereof.

38 3. Insuring only individuals otherwise having an insurable interest in  
39 each other's lives.

40 C. A LIFE INSURANCE POLICY MAY BE DELIVERED OR ISSUED FOR DELIVERY IN  
41 THIS STATE INSURING THE LIVES OF MORE THAN ONE INDIVIDUAL IF, IN THE  
42 DIRECTOR'S DISCRETION, THE DIRECTOR DETERMINES THAT THE GROUP OF INDIVIDUALS  
43 TO BE INSURED IS SUBSTANTIALLY SIMILAR TO A GROUP DESCRIBED IN SECTION  
44 20-1251.01 AND SECTIONS 20-1252 THROUGH 20-1256.

1           C. D. Nothing in this article validates any charge or practice  
2 illegal under any rule of law or regulation governing usury, consumer lender  
3 loans, retail installment sales or the like, or extends the application of  
4 any such rule of law or regulation to any transaction not otherwise subject  
5 thereto.

6           Sec. 8. Applicability

7           This act applies to policies issued or renewed from and after December  
8 31, 2010.

APPROVED BY THE GOVERNOR MAY 7, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2010.

Passed the House February 16, 2010

Passed the Senate April 22, 2010

by the following vote: 58 Ayes,

by the following vote: 28 Ayes,

0 Nays, 1 Not Voting  
1 vacancy

0 Nays, 2 Not Voting

[Signature]  
Speaker of the House  
Pro Tempore

[Signature]  
President of the Senate  
President Pro Tempore

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

~~\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_~~

~~at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~

~~\_\_\_\_\_  
Secretary to the Governor~~

Approved this \_\_\_\_\_ day of

~~\_\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~

~~\_\_\_\_\_  
Governor of Arizona~~

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

~~this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_~~

~~at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~

~~\_\_\_\_\_  
Secretary of State~~

H.B. 2071

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 27, 2010,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Steve R. Garvey

Speaker of the House  
Pro Tempore

Cheryl Laube

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

27 day of April, 2010,

at 4:15 o'clock P. M.

Wade Bendie  
Secretary to the Governor

Approved this 7 day of

May, 2010,

at 10:35 o'clock A. M.

Janice K. Brewer  
Governor of Arizona

H.B. 2071

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7<sup>th</sup> day of May, 2010,

at 4:30 o'clock P. M.

Ken Bennett  
Secretary of State