House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 69

HOUSE BILL 2153

AN ACT

AMENDING SECTIONS 20-157.01, 20-158, 20-481.19, 20-532, 20-536 AND 20-552, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 3, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 20-552.01 AND 20-560; RELATING TO FINANCIAL PROVISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 20-157.01, Arizona Revised Statutes, is amended to read:

20-157.01. Insurer claim files; access by director; definition

A. Pursuant to the director's authority under sections 20-156, 20-157, 20-160 and 20-466, an insurer shall comply with a request to produce any documents, reports or other materials, whether maintained in written or electronic format, from an insurer's claim file.

B. Any documents, reports or other materials that are provided to the director pursuant to this section are confidential and are not subject to disclosure, including discovery or subpoena, unless the subpoena is issued by the attorney general or a county attorney or by a court at the request of the attorney general, a county attorney or any other law enforcement agency. The director may only disclose the information to a state or federal agency or officer pursuant to a lawful request, subpoena or formal discovery procedure. If the requesting party cannot warrant confidentiality pursuant to section 20-158, subsection ~~F~~ I, the information that is provided pursuant to discovery, subpoena or lawful request as provided for in this subsection remains confidential. The director shall make reasonable efforts to notify an insurer of any request for a subpoena for documents, reports or other materials in an insurer claim file or record that are produced by the insurer pursuant to this section so that the insurer may assert, in a court of competent jurisdiction, any applicable privileges.

C. The director may use the documents, reports or other materials in the furtherance of any regulatory action brought by the director or in actions brought against the director.

D. For the purposes of this section, "insurer claim file" includes medical records, repair estimates, adjuster notes, insurance policy provisions, recordings or transcripts of witness interviews and any other records regarding coverage, settlement, payment or denial of a claim asserted under an insurance policy.

Sec. 2. Section 20-158, Arizona Revised Statutes, is amended to read:

20-158. Report of examinations by director; information sharing

A. The director shall make a full written report of each examination. The director or the examiner in charge of the examination shall certify the report.

B. The director shall provide a copy of the report to the person examined not less than ten days before filing the report. If the person makes a request in writing within the ten day period, the director shall consider any objections the person may have to the proposed report and shall not file the report until after making any amendments the director deems proper.

C. The report, when filed, is admissible in evidence in any action or proceeding brought by the director against the person examined, or its officers or agents. The director or the director's examiners may at any time

testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served or filed in the director's office.

D. The director may withhold from public inspection any examination or investigation report for as long as the director deems prudent.

E. The director may disclose the nonpublic content of a report of examination, a preliminary report or any other matter relating to a report to the insurance department of any other state or jurisdiction, to law enforcement officials of this or any other state or jurisdiction or to an agency of the federal government if the agency or official receiving the report or information agrees in writing to hold the information confidential.

F. EXCEPT AS PROVIDED IN SUBSECTIONS E AND I OF THIS SECTION, DOCUMENTS, MATERIALS OR OTHER INFORMATION, INCLUDING ALL WORKING PAPERS AND COPIES THEREOF, CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE DIRECTOR OR THE DIRECTOR'S DEPUTIES, ASSISTANTS OR EXAMINERS IN THE COURSE OF AN EXAMINATION OR IN THE COURSE OF ANALYSIS OF THE FINANCIAL CONDITION OR MARKET CONDUCT OF AN INSURER ARE CONFIDENTIAL AND PRIVILEGED, ARE NOT SUBJECT TO TITLE 39, CHAPTER 1, ARTICLE 2, ARE NOT SUBJECT TO SUBPOENA AND ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN A PRIVATE CIVIL ACTION. THE DIRECTOR MAY USE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS PART OF THE DIRECTOR'S OFFICIAL DUTIES.

G. DOCUMENTS, MATERIALS OR OTHER INFORMATION, INCLUDING ALL WORKING PAPERS AND COPIES THEREOF, IN THE POSSESSION OR CONTROL OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS AFFILIATES ARE CONFIDENTIAL AND PRIVILEGED, ARE NOT SUBJECT TO TITLE 39, CHAPTER 1, ARTICLE 2, ARE NOT SUBJECT TO SUBPOENA AND ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION IF THE DOCUMENTS, MATERIALS OR INFORMATION ARE EITHER:

1. CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS AFFILIATES IN THE COURSE OF ASSISTING THE DIRECTOR IN THE EXAMINATION OR ANALYSIS OF THE FINANCIAL CONDITION OR MARKET CONDUCT OF AN INSURER UNDER THIS TITLE.

2. DISCLOSED TO THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS AFFILIATES BY THE DIRECTOR UNDER SUBSECTION E OR I OF THIS SECTION.

H. THE DIRECTOR, THE DIRECTOR'S DEPUTIES, ASSISTANTS OR EXAMINERS AND REPRESENTATIVES OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS AFFILIATES ARE PROHIBITED FROM TESTIFYING IN ANY PRIVATE CIVIL ACTION CONCERNING DOCUMENTS, MATERIALS OR OTHER INFORMATION THAT ARE CONFIDENTIAL AND PRIVILEGED PURSUANT TO SUBSECTION F OR G OF THIS SECTION.

~~F.~~ I. The director may:

1. Share nonpublic documents, materials or other information with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries and with state, federal and international law enforcement authorities if the

recipient agrees and warrants that it has the authority to maintain the confidentiality and privileged status of the documents, materials or other information.

2. Receive documents, materials and other information from the national association of insurance commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other jurisdictions and shall maintain as confidential or privileged any document, material or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

3. Enter into agreements that govern the sharing and use of documents, materials and other information and that are consistent with this section.

~~G.~~ J. A disclosure to or by the director pursuant to this section or as a result of sharing information pursuant to subsection ~~F~~ I OF THIS SECTION is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information disclosed or shared.

Sec. 3. Section 20-481.19, Arizona Revised Statutes, is amended to read:

20-481.19. Extraordinary dividend or distribution; time; notice; definition; approval by director

A. No insurer subject to registration under section 20-481.09 shall pay an extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the director has received notice of the declaration thereof and has not within such period disapproved such payment, or the director shall have approved such payment. NOTICE OF THE DECLARATION SHALL BE PROVIDED TO THE DIRECTOR NO MORE THAN FIVE BUSINESS DAYS AFTER THE DECLARATION.

B. For THE purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the ~~lesser~~ GREATER of either ten per cent of such insurer's surplus as regards policyholders as of ~~the thirty-first day of~~ December 31 next preceding, or the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve month period ending ~~the thirty-first day of~~ December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

C. Notwithstanding any other ~~provision of~~ law to the contrary, an insurer may declare an extraordinary dividend or distribution which is conditional upon the approval of the director, and such a declaration shall confer no rights upon shareholders until the director has either approved the payment of such dividend or distribution or has not disapproved such payment within thirty days after the notice of such declaration has been received.

Sec. 4. Section 20-532, Arizona Revised Statutes, is amended to read:

20-532. Eligible investments

A. Insurers shall invest in or loan their funds on the security of, and shall hold as assets, only eligible investments as prescribed in this article.

B. Any particular investment that was held by an insurer on January 1, 1955, that was a legal investment at the time it was made and that the insurer was legally entitled to possess immediately before January 1, 1955 is an eligible investment.

C. The eligibility of an investment shall be determined as of the date of its making or acquisition.

D. Any investment limitation based on the amount of the insurer's assets or particular funds shall relate to assets or funds as shown by the insurer's annual statement as of the December 31 last preceding date of investment OR ON THE INSURER'S MOST RECENTLY REQUIRED STATUTORY BALANCE SHEET FILED WITH THE DIRECTOR, unless the accounting practices and procedures manual adopted by the national association of insurance commissioners prescribes the use of a ~~more current~~ DIFFERENT financial statement.

E. Any investment shall not be disqualified solely because it is held in a security depository if the director has approved the depository.

Sec. 5. Section 20-536, Arizona Revised Statutes, is amended to read:

20-536. Investments; type; limitations

A. Every insurer may invest and maintain invested funds in cash and in the securities and investments described in this article without limitation unless a limitation for the securities and investments is otherwise prescribed in this article.

B. Except with the director's consent, an insurer shall not have invested at any one time more than twenty per cent of its assets in the classes of securities described in any one of the following sections of this article:

1. Section 20-546, exclusive of common stocks of public utilities and common stocks acquired under section 20-481.01.

2. Section 20-557.

3. SECTION 20-552.

C. Except with the director's consent, an insurer shall not have invested at any one time more than ten per cent of its assets in the classes of securities described in any one of the following sections of this article:

1. Section 20-548.

2. Section 20-547.

3. Section 20-543.

4. Section 20-555.

~~5. Section 20-552.~~

Sec. 6. Section 20-552, Arizona Revised Statutes, is amended to read:

20-552. Foreign securities

A. An insurer may make investments in securities of or in a foreign country possessing characteristics and of a quality similar to those required pursuant to this article for investments in the United States.

B. AFTER GIVING EFFECT TO AN INVESTMENT IN SECURITIES OF OR IN A FOREIGN COUNTRY, THE AGGREGATE AMOUNT OF SUCH INVESTMENTS THEN HELD BY AN INSURER UNDER THIS SECTION IN A SINGLE FOREIGN JURISDICTION SHALL NOT EXCEED TEN PER CENT OF THE INSURER'S ADMITTED ASSETS AS TO A FOREIGN JURISDICTION THAT HAS A SOVEREIGN DEBT RATING OF SVO 1 OR THREE PER CENT OF THE INSURER'S ADMITTED ASSETS AS TO ANY OTHER FOREIGN JURISDICTION. FOR THE PURPOSES OF THIS SUBSECTION, "SVO" MEANS THE SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ANY SUCCESSOR OFFICE ESTABLISHED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

C. FOR THE PURPOSES OF THE QUANTITATIVE LIMITATIONS SET FORTH IN THIS ARTICLE, INVESTMENT IN SECURITIES OF OR IN A FOREIGN COUNTRY UNDER THIS SECTION SHALL NOT INCLUDE A CANADIAN INVESTMENT UNDER SECTION 20-552.01.

Sec. 7. Title 20, chapter 3, article 2, Arizona Revised Statutes, is amended by adding sections 20-552.01 and 20-560, to read:

20-552.01. Canadian investments; definition

A. AN INSURER MAY MAKE INVESTMENTS IN SECURITIES OF OR IN CANADA POSSESSING CHARACTERISTICS AND OF A QUALITY SIMILAR TO THOSE REQUIRED PURSUANT TO THIS ARTICLE FOR INVESTMENTS IN THE UNITED STATES.

B. SUBJECT TO SUBSECTIONS C, D AND E OF THIS SECTION, AN INSURER SHALL NOT ACQUIRE, DIRECTLY OR INDIRECTLY THROUGH AN INVESTMENT SUBSIDIARY, A CANADIAN INVESTMENT OTHERWISE PERMITTED UNDER THIS ARTICLE, IF AFTER GIVING EFFECT TO THE INVESTMENT, THE AGGREGATE AMOUNT OF CANADIAN INVESTMENTS THEN HELD BY THE INSURER WOULD EXCEED TWENTY-FIVE PER CENT OF ITS ADMITTED ASSETS.

C. AS TO AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN CANADA OR THAT HAS OUTSTANDING INSURANCE, ANNUITY OR REINSURANCE CONTRACTS ON LIVES OR RISKS RESIDENT OR LOCATED IN CANADA AND DENOMINATED IN CANADIAN CURRENCY, THE LIMITATIONS OF SUBSECTION B OF THIS SECTION SHALL BE INCREASED BY THE GREATER OF:

1. THE AMOUNT THE INSURER IS REQUIRED BY APPLICABLE CANADIAN LAW TO INVEST IN CANADA OR TO BE DENOMINATED IN CANADIAN CURRENCY.

2. ONE HUNDRED FIFTEEN PER CENT OF THE AMOUNT OF THE INSURER'S RESERVES AND OTHER OBLIGATIONS UNDER CONTRACTS ON LIVES OR RISKS RESIDENT OR LOCATED IN CANADA.

D. AN INSURER SHALL NOT ACQUIRE AN INVESTMENT IN CANADIAN COMMON STOCK, OR SHARES OF ANY SOLVENT INSTITUTION CREATED OR EXISTING UNDER THE LAWS OF CANADA, ANY PROVINCE OF CANADA, OR ANY POLITICAL SUBDIVISION OF CANADA OR A PROVINCE OF CANADA IF, AFTER GIVING EFFECT TO THE INVESTMENT, THE AGGREGATE AMOUNT OF THE INVESTMENTS THEN HELD BY THE INSURER WOULD EXCEED TWENTY PER CENT OF ITS ADMITTED ASSETS.

E. AN INSURER SHALL NOT ACQUIRE AN INVESTMENT IN BONDS, NOTES OR OTHER EVIDENCES OF INDEBTEDNESS THAT ARE SECURED BY SECOND MORTGAGES OR DEEDS OF TRUST ON IMPROVED REAL PROPERTY LOCATED IN CANADA IF, AFTER GIVING EFFECT TO THE INVESTMENT, THE AGGREGATE AMOUNT OF SUCH INVESTMENTS THEN HELD BY THE INSURER WOULD EXCEED TWENTY PER CENT OF ITS ADMITTED ASSETS.

F. FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "INVESTMENT SUBSIDIARY" MEANS A SUBSIDIARY OF AN INSURER ENGAGED OR ORGANIZED TO ENGAGE EXCLUSIVELY IN THE OWNERSHIP AND MANAGEMENT OF ASSETS AUTHORIZED AS INVESTMENTS FOR THE INSURER IF EACH SUBSIDIARY AGREES TO LIMIT ITS INVESTMENT IN ANY ASSET SO THAT ITS INVESTMENTS WILL NOT CAUSE THE AMOUNT OF THE TOTAL INVESTMENT OF THE INSURER TO EXCEED ANY OF THE INVESTMENT LIMITATIONS OR AVOID ANY OTHER PROVISIONS OF THIS ARTICLE APPLICABLE TO THE INSURER. FOR THE PURPOSES OF THIS SUBSECTION, "TOTAL INVESTMENT OF THE INSURER" INCLUDES:

1. DIRECT INVESTMENT BY THE INSURER IN AN ASSET.

2. THE INSURER'S PROPORTIONATE SHARE OF AN INVESTMENT IN AN ASSET BY AN INVESTMENT SUBSIDIARY OF THE INSURER, WHICH SHALL BE CALCULATED BY MULTIPLYING THE AMOUNT OF THE SUBSIDIARY'S INVESTMENT BY THE PERCENTAGE OF THE INSURER'S OWNERSHIP INTEREST IN THE SUBSIDIARY.

20-560. Derivative transactions; definitions

A. AN INSURER, DIRECTLY OR INDIRECTLY THROUGH AN INVESTMENT SUBSIDIARY, MAY USE DERIVATIVE INSTRUMENTS TO ENGAGE IN HEDGING TRANSACTIONS, INCOME GENERATION TRANSACTIONS AND REPLICATION TRANSACTIONS PURSUANT TO THIS SECTION.

B. AN INSURER MAY ENTER INTO HEDGING TRANSACTIONS IF, AFTER GIVING EFFECT TO SUCH TRANSACTIONS, ALL OF THE FOLLOWING APPLY:

1. THE AGGREGATE STATEMENT VALUE OF OPTIONS, CAPS, FLOORS AND WARRANTS NOT ATTACHED TO ANOTHER FINANCIAL INSTRUMENT PURCHASED AND USED IN HEDGING TRANSACTIONS DOES NOT EXCEED SEVEN AND ONE-HALF PER CENT OF ITS ADMITTED ASSETS.

2. THE AGGREGATE STATEMENT VALUE OF OPTIONS, CAPS AND FLOORS WRITTEN IN HEDGING TRANSACTIONS DOES NOT EXCEED THREE PER CENT OF ITS ADMITTED ASSETS.

3. THE AGGREGATE POTENTIAL EXPOSURE OF COLLARS, SWAPS, FORWARDS AND FUTURES USED IN HEDGING TRANSACTIONS DOES NOT EXCEED SIX AND ONE-HALF PER CENT OF ITS ADMITTED ASSETS.

C. AN INSURER MAY ENTER INTO THE FOLLOWING TYPES OF INCOME GENERATION TRANSACTIONS IF AFTER GIVING EFFECT TO THE TRANSACTIONS THE AGGREGATE STATEMENT VALUE OF THE FIXED INCOME ASSETS THAT ARE SUBJECT TO CALL OR THAT GENERATE THE CASH FLOWS FOR PAYMENTS UNDER THE CAPS OR FLOORS, PLUS THE FACE VALUE OF FIXED INCOME SECURITIES UNDERLYING A DERIVATIVE INSTRUMENT SUBJECT TO CALL, PLUS THE AMOUNT OF THE PURCHASE OBLIGATIONS UNDER THE PUTS, DOES NOT EXCEED TEN PER CENT OF ITS ADMITTED ASSETS:

1. SALES OF COVERED CALL OPTIONS ON NONCALLABLE FIXED INCOME SECURITIES, CALLABLE FIXED INCOME SECURITIES IF THE OPTION EXPIRES BY ITS

TERMS BEFORE THE END OF THE NONCALLABLE PERIOD OR DERIVATIVE INSTRUMENTS BASED ON FIXED INCOME SECURITIES.

2. SALES OF COVERED CALL OPTIONS ON EQUITY SECURITIES, IF THE INSURER HOLDS IN ITS PORTFOLIO OR CAN IMMEDIATELY ACQUIRE THROUGH THE EXERCISE OF OPTIONS, WARRANTS OR CONVERSION RIGHTS ALREADY OWNED, THE EQUITY SECURITIES SUBJECT TO CALL DURING THE COMPLETE TERM OF THE CALL OPTION SOLD.

3. SALES OF COVERED PUTS ON INVESTMENTS THAT THE INSURER IS PERMITTED TO ACQUIRE UNDER THIS ARTICLE, IF THE INSURER HAS ESCROWED OR ENTERED INTO A CUSTODIAN AGREEMENT SEGREGATING, CASH OR CASH EQUIVALENTS WITH A MARKET VALUE EQUAL TO THE AMOUNT OF ITS PURCHASE OBLIGATIONS UNDER THE PUT DURING THE COMPLETE TERM OF THE PUT OPTION SOLD.

4. SALES OF COVERED CAPS OR FLOORS, IF THE INSURER HOLDS IN ITS PORTFOLIO THE INVESTMENTS GENERATING THE CASH FLOW TO MAKE THE REQUIRED PAYMENTS UNDER THE CAPS OR FLOORS DURING THE COMPLETE TERM THAT THE CAP OR FLOOR IS OUTSTANDING.

D. AN INSURER MAY ENTER INTO REPLICATION TRANSACTIONS WITH THE PRIOR WRITTEN APPROVAL OF THE DIRECTOR IF BOTH OF THE FOLLOWING APPLY:

1. THE INSURER WOULD OTHERWISE BE AUTHORIZED TO INVEST ITS FUNDS UNDER THIS ARTICLE IN THE ASSET BEING REPLICATED.

2. THE ASSET BEING REPLICATED IS SUBJECT TO ALL THE PROVISIONS OF THIS ARTICLE RELATING TO THE MAKING OF INVESTMENTS BY THE INSURER IN THAT TYPE OF ASSET AS IF THE TRANSACTION CONSTITUTED A DIRECT INVESTMENT BY THE INSURER IN THE REPLICATED ASSET.

E. THE DIRECTOR MAY APPROVE OF ADDITIONAL TRANSACTIONS INVOLVING THE USE OF DERIVATIVE INSTRUMENTS IN EXCESS OF THE LIMITS OF SUBSECTION B OF THIS SECTION OR FOR OTHER RISK MANAGEMENT PURPOSES, EXCEPT THAT REPLICATION TRANSACTIONS SHALL BE PERMITTED ONLY FOR RISK MANAGEMENT PURPOSES.

F. EACH DERIVATIVE INSTRUMENT SHALL BE ONE OF THE FOLLOWING:

1. TRADED ON A QUALIFIED EXCHANGE.

2. ENTERED INTO WITH OR GUARANTEED BY A BUSINESS ENTITY.

3. ISSUED OR WRITTEN WITH THE ISSUER OF THE UNDERLYING INTEREST ON WHICH THE DERIVATIVE INSTRUMENT IS BASED.

4. ENTERED INTO WITH A QUALIFIED FOREIGN EXCHANGE.

G. FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "BUSINESS ENTITY" INCLUDES A SOLE PROPRIETORSHIP, CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION, PARTNERSHIP, JOINT STOCK COMPANY, JOINT VENTURE, MUTUAL FUND, TRUST, JOINT TENANCY OR OTHER SIMILAR FORM OF BUSINESS ORGANIZATION, WHETHER ORGANIZED FOR-PROFIT OR NOT-FOR-PROFIT.

2. "CAP" MEANS AN AGREEMENT OBLIGATING THE SELLER TO MAKE PAYMENTS TO THE BUYER, WITH EACH PAYMENT BASED ON THE AMOUNT BY WHICH A REFERENCE PRICE OR LEVEL OR THE PERFORMANCE OR VALUE OF ONE OR MORE UNDERLYING INTERESTS EXCEEDS A PREDETERMINED NUMBER, SOMETIMES CALLED THE STRIKE RATE OR STRIKE PRICE.

3. "COLLAR" MEANS AN AGREEMENT TO RECEIVE PAYMENTS AS THE BUYER OF AN OPTION, CAP OR FLOOR AND TO MAKE PAYMENTS AS THE SELLER OF A DIFFERENT OPTION, CAP OR FLOOR.

4. "DERIVATIVE INSTRUMENT":

(a) MEANS AN AGREEMENT, OPTION OR INSTRUMENT OR A SERIES OR COMBINATION THAT EITHER:

(i) REQUIRES A PARTY TO MAKE OR TAKE DELIVERY OF, OR ASSUME OR RELINQUISH, A SPECIFIED AMOUNT OF ONE OR MORE UNDERLYING INTERESTS, OR TO MAKE A CASH SETTLEMENT IN LIEU THEREOF.

(ii) HAS A PRICE, PERFORMANCE, VALUE OR CASH FLOW BASED PRIMARILY ON THE ACTUAL OR EXPECTED PRICE, LEVEL, PERFORMANCE, VALUE OR CASH FLOW OF ONE OR MORE UNDERLYING INTERESTS.

(b) INCLUDES OPTIONS, WARRANTS USED IN A HEDGING TRANSACTION AND NOT ATTACHED TO ANOTHER FINANCIAL INSTRUMENT, CAPS, FLOORS, COLLARS, SWAPS, FORWARDS, FUTURES AND ANY OTHER AGREEMENTS, OPTIONS OR INSTRUMENTS SUBSTANTIALLY SIMILAR THERETO OR ANY SERIES OR COMBINATION THEREOF AND ANY AGREEMENTS, OPTIONS OR INSTRUMENTS PERMITTED UNDER RULES ADOPTED TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

(c) DOES NOT INCLUDE AN INVESTMENT AUTHORIZED BY SECTIONS 20-537 THROUGH 20-548, 20-550 THROUGH 20-558, 20-561 AND 20-562.

5. "DERIVATIVE TRANSACTION" MEANS A TRANSACTION INVOLVING THE USE OF ONE OR MORE DERIVATIVE INSTRUMENTS.

6. "FLOOR" MEANS AN AGREEMENT OBLIGATING THE SELLER TO MAKE PAYMENTS TO THE BUYER IN WHICH EACH PAYMENT IS BASED ON THE AMOUNT BY WHICH A PREDETERMINED NUMBER EXCEEDS A REFERENCE PRICE, LEVEL, PERFORMANCE OR VALUE OF ONE OR MORE UNDERLYING INTERESTS.

7. "FORWARD" MEANS AN AGREEMENT, OTHER THAN A FUTURE, TO MAKE OR TAKE DELIVERY OF, OR EFFECT A CASH SETTLEMENT BASED ON THE ACTUAL OR EXPECTED PRICE, LEVEL, PERFORMANCE OR VALUE OF, ONE OR MORE UNDERLYING INTERESTS.

8. "FUTURE" MEANS AN AGREEMENT, TRADED ON A QUALIFIED EXCHANGE OR QUALIFIED FOREIGN EXCHANGE, TO MAKE OR TAKE DELIVERY OF, OR EFFECT A CASH SETTLEMENT BASED ON THE ACTUAL OR EXPECTED PRICE, LEVEL, PERFORMANCE OR VALUE OF, ONE OR MORE UNDERLYING INTERESTS.

9. "HEDGING TRANSACTION" MEANS A DERIVATIVE TRANSACTION THAT IS ENTERED INTO AND MAINTAINED TO REDUCE EITHER:

(a) THE RISK OF A CHANGE IN THE VALUE, YIELD, PRICE, CASH FLOW OR QUANTITY OF ASSETS OR LIABILITIES THAT THE INSURER HAS ACQUIRED OR INCURRED OR ANTICIPATES ACQUIRING OR INCURRING.

(b) THE CURRENCY EXCHANGE RATE RISK OR THE DEGREE OF EXPOSURE AS TO ASSETS OR LIABILITIES THAT AN INSURER HAS ACQUIRED OR INCURRED OR ANTICIPATES ACQUIRING OR INCURRING.

10. "INCOME GENERATION TRANSACTION" MEANS A DERIVATIVE TRANSACTION INVOLVING THE WRITING OF COVERED CALL OPTIONS, COVERED PUT OPTIONS, COVERED CAPS OR COVERED FLOORS THAT IS INTENDED TO GENERATE INCOME OR ENHANCE RETURN.

11. "OPTION" MEANS AN AGREEMENT GIVING THE BUYER THE RIGHT TO BUY OR RECEIVE, REFERRED TO AS A "CALL OPTION", TO SELL OR DELIVER, REFERRED TO AS A "PUT OPTION", TO ENTER INTO, EXTEND OR TERMINATE, OR TO EFFECT A CASH SETTLEMENT BASED ON THE ACTUAL OR EXPECTED PRICE, SPREAD, LEVEL, PERFORMANCE OR VALUE OF ONE OR MORE UNDERLYING INTERESTS.

12. "QUALIFIED EXCHANGE" MEANS:

(a) A SECURITIES EXCHANGE REGISTERED AS A NATIONAL SECURITIES EXCHANGE, OR A SECURITIES MARKET REGULATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

(b) A BOARD OF TRADE OR COMMODITIES EXCHANGE DESIGNATED AS A CONTRACT MARKET BY THE COMMODITY FUTURES TRADING COMMISSION OR ANY SUCCESSOR THEREOF.

(c) PRIVATE OFFERINGS, RESALES AND TRADING THROUGH AUTOMATED LINKAGES.

(d) A DESIGNATED OFFSHORE SECURITIES MARKET AS DEFINED IN SECURITIES EXCHANGE COMMISSION REGULATIONS, 17 CODE OF FEDERAL REGULATIONS PART 230, AS AMENDED.

(e) A QUALIFIED FOREIGN EXCHANGE.

13. "QUALIFIED FOREIGN EXCHANGE" MEANS A FOREIGN EXCHANGE, BOARD OF TRADE OR CONTRACT MARKET LOCATED OUTSIDE THE UNITED STATES OR ITS TERRITORIES OR POSSESSIONS IF ONE OF THE FOLLOWING APPLIES:

(a) THE EXCHANGE, BOARD OF TRADE OR CONTRACT MARKET HAS RECEIVED REGULATORY COMPARABILITY RELIEF UNDER COMMODITY FUTURES TRADING COMMISSION RULE 30.10, AS SET FORTH IN APPENDIX C TO 17 CODE OF FEDERAL REGULATIONS PART 30.

(b) THE EXCHANGE, BOARD OF TRADE OR CONTRACT MARKET IS, OR ITS MEMBERS ARE, SUBJECT TO THE JURISDICTION OF A FOREIGN FUTURES AUTHORITY THAT HAS RECEIVED REGULATORY COMPARABILITY RELIEF UNDER COMMODITY FUTURES TRADING COMMISSION RULE 30.10, AS SET FORTH IN APPENDIX C TO 17 CODE OF FEDERAL REGULATIONS, PART 30, AS TO FUTURES TRANSACTIONS IN THE JURISDICTION WHERE THE EXCHANGE, BOARD OF TRADE OR CONTRACT MARKET IS LOCATED.

(c) FOREIGN STOCK INDEX FUTURES CONTRACTS ARE LISTED ON THE EXCHANGE, BOARD OF TRADE OR CONTRACT MARKET AND THE CONTRACTS ARE THE SUBJECT OF NO-ACTION RELIEF ISSUED BY THE COMMODITY FUTURES TRADING COMMISSION OFFICE OF GENERAL COUNSEL IF THE EXCHANGE, BOARD OF TRADE OR CONTRACT MARKET THAT QUALIFIES AS A QUALIFIED FOREIGN EXCHANGE UNDER THIS SUBDIVISION IS A QUALIFIED FOREIGN EXCHANGE ONLY AS TO FOREIGN STOCK INDEX FUTURES CONTRACTS THAT ARE THE SUBJECT OF NO-ACTION RELIEF.

14. "REPLICATION TRANSACTION":

(a) MEANS A DERIVATIVE TRANSACTION THAT IS INTENDED TO REPLICATE THE PERFORMANCE OF ONE OR MORE ASSETS THAT AN INSURER IS AUTHORIZED TO ACQUIRE UNDER THIS ARTICLE.

(b) DOES NOT INCLUDE A DERIVATIVE TRANSACTION THAT IS ENTERED INTO AS A HEDGING TRANSACTION.

15. "SWAP" MEANS AN AGREEMENT TO EXCHANGE OR TO NET PAYMENTS AT ONE OR MORE TIMES BASED ON THE ACTUAL OR EXPECTED PRICE, LEVEL, PERFORMANCE OR VALUE OF ONE OR MORE UNDERLYING INTERESTS.

16. "UNDERLYING INTEREST" MEANS THE ASSETS, LIABILITIES, OTHER INTERESTS OR A COMBINATION THEREOF UNDERLYING A DERIVATIVE INSTRUMENT, INCLUDING ANY SECURITIES, CURRENCIES, RATES, INDICES, COMMODITIES OR DERIVATIVE INSTRUMENTS.

17. "WARRANT" MEANS AN INSTRUMENT THAT GIVES THE HOLDER THE RIGHT TO PURCHASE AN UNDERLYING FINANCIAL INSTRUMENT AT A GIVEN PRICE AND TIME OR AT A SERIES OF PRICES AND TIMES OUTLINED IN THE WARRANT AGREEMENT. WARRANTS MAY BE ISSUED ALONE OR IN CONNECTION WITH THE SALE OF OTHER SECURITIES, INCLUDING AS PART OF A MERGER OR RECAPITALIZATION AGREEMENT OR TO FACILITATE DIVESTITURE OF THE SECURITIES OF ANOTHER BUSINESS ENTITY.

APPROVED BY THE GOVERNOR MARCH 21, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 22, 2012.

Passed the House February 9, 2012

by the following vote: 54 Ayes,

0 Nays, 5 Not Voting / vacant

Speaker of the House

Cheryl Laube
Chief Clerk of the House

Passed the Senate March 20, 2012

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

Steve Pierce
President of the Senate

Chairman Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of March, 2012

at 3 o'clock P M.

Secretary to the Governor

Approved this 21st day of

March

at 1:21 o'clock P. 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 22nd day of March, 2012

at 8:14 o'clock a M.

Ken Bennett
Secretary of State

H.B. 2153