Senate Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

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CHAPTER 35

SENATE BILL 1177

AN ACT

AMENDING TITLE 20, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-220.01; AMENDING SECTIONS 20-229, 20-311, 20-311.01 AND 20-311.02, ARIZONA REVISED STATUTES; REPEALING SECTION 20-311.03, ARIZONA REVISED STATUTES; AMENDING SECTIONS 20-407, 20-411, 20-481.19, 20-488, 20-648, 20-705, 20-706, 20-709, 20-1098.04, 20-1098.07, 20-1098.15, 20-1243.05, 20-2102 AND 20-2901, ARIZONA REVISED STATUTES; RELATING TO INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 20, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 20-220.01, to read:

20-220.01. Hazardous financial condition; determination; order

A. THE DIRECTOR MAY CONSIDER THE FOLLOWING STANDARDS, EITHER SINGLY OR A COMBINATION OF TWO OR MORE, IN DETERMINING WHETHER THE CONTINUED OPERATION OF ANY INSURER TRANSACTING AN INSURANCE BUSINESS IN THIS STATE MAY BE DEEMED TO BE HAZARDOUS TO ITS POLICYHOLDERS OR CREDITORS OR THE GENERAL PUBLIC:

1. ADVERSE FINDINGS REPORTED IN FINANCIAL CONDITION AND MARKET CONDUCT EXAMINATION REPORTS, AUDIT REPORTS AND ACTUARIAL OPINIONS, REPORTS OR SUMMARIES.

2. THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS INSURANCE REGULATORY INFORMATION SYSTEM AND ITS OTHER FINANCIAL ANALYSIS SOLVENCY TOOLS AND REPORTS.

3. WHETHER THE INSURER HAS MADE ADEQUATE PROVISION, ACCORDING TO PRESENTLY ACCEPTED ACTUARIAL STANDARDS OF PRACTICE, FOR THE ANTICIPATED CASH FLOWS REQUIRED BY THE CONTRACTUAL OBLIGATIONS AND RELATED EXPENSES OF THE INSURER, WHEN CONSIDERED IN LIGHT OF THE ASSETS HELD BY THE INSURER WITH RESPECT TO THE RESERVES AND RELATED ACTUARIAL ITEMS, INCLUDING INVESTMENT EARNINGS ON THE ASSETS, AND THE CONSIDERATIONS ANTICIPATED TO BE RECEIVED AND RETAINED UNDER THE POLICIES AND CONTRACTS.

4. THE ABILITY OF AN ASSUMING REINSURER TO PERFORM AND WHETHER THE INSURER'S REINSURANCE PROGRAM PROVIDES SUFFICIENT PROTECTION FOR THE INSURER'S REMAINING SURPLUS AFTER TAKING INTO ACCOUNT THE INSURER'S CASH FLOW AND THE CLASSES OF BUSINESS WRITTEN AS WELL AS THE FINANCIAL CONDITION OF THE ASSUMING REINSURER.

5. WHETHER THE INSURER'S OPERATING LOSS IN THE LAST TWELVE-MONTH PERIOD OR ANY SHORTER PERIOD OF TIME, INCLUDING NET CAPITAL GAIN OR LOSS, CHANGE IN NONADMITTED ASSETS AND CASH DIVIDENDS PAID TO SHAREHOLDERS, IS GREATER THAN FIFTY PER CENT OF THE INSURER'S REMAINING SURPLUS AS REGARDS POLICYHOLDERS IN EXCESS OF THE MINIMUM REQUIRED.

6. WHETHER THE INSURER'S OPERATING LOSS IN THE LAST TWELVE-MONTH PERIOD OR ANY SHORTER PERIOD OF TIME, EXCLUDING NET CAPITAL GAINS, IS GREATER THAN TWENTY PER CENT OF THE INSURER'S REMAINING SURPLUS AS REGARDS POLICYHOLDERS IN EXCESS OF THE MINIMUM REQUIRED.

7. WHETHER A REINSURER, AN OBLIGOR OR ANY ENTITY WITHIN THE INSURER'S INSURANCE HOLDING COMPANY SYSTEM IS INSOLVENT, THREATENED WITH INSOLVENCY OR DELINQUENT IN PAYMENT OF ITS MONETARY OR OTHER OBLIGATIONS AND THAT, IN THE DIRECTOR'S OPINION, MAY AFFECT THE INSURER'S SOLVENCY.

8. CONTINGENT LIABILITIES, PLEDGES OR GUARANTIES THAT EITHER INDIVIDUALLY OR COLLECTIVELY INVOLVE A TOTAL AMOUNT THAT, IN THE DIRECTOR'S OPINION, MAY AFFECT THE INSURER'S SOLVENCY.

9. WHETHER ANY AFFILIATE OR CONTROLLING PERSON OF AN INSURER IS DELINQUENT IN THE TRANSMITTING TO OR PAYMENT OF NET PREMIUMS TO THE INSURER.

10. THE AGE AND COLLECTABILITY OF RECEIVABLES.

11. WHETHER THE MANAGEMENT OF AN INSURER, INCLUDING OFFICERS, DIRECTORS OR OTHER PERSONS WHO DIRECTLY OR INDIRECTLY CONTROL THE OPERATION OF THE INSURER, FAILS TO POSSESS AND DEMONSTRATE THE COMPETENCE, FITNESS AND REPUTATION DEEMED NECESSARY TO SERVE THE INSURER IN THE POSITION.

12. WHETHER THE MANAGEMENT OF AN INSURER HAS FAILED TO RESPOND TO INQUIRIES RELATIVE TO THE CONDITION OF THE INSURER OR HAS FURNISHED FALSE AND MISLEADING INFORMATION CONCERNING AN INQUIRY.

13. WHETHER THE INSURER HAS FAILED TO MEET FINANCIAL AND HOLDING COMPANY FILING REQUIREMENTS IN THE ABSENCE OF A REASON SATISFACTORY TO THE DIRECTOR.

14. WHETHER THE MANAGEMENT OF AN INSURER EITHER HAS FILED ANY FALSE OR MISLEADING SWORN FINANCIAL STATEMENT, HAS RELEASED FALSE OR MISLEADING FINANCIAL STATEMENTS TO LENDING INSTITUTIONS OR TO THE GENERAL PUBLIC, HAS MADE A FALSE OR MISLEADING ENTRY OR HAS OMITTED AN ENTRY OF MATERIAL AMOUNT IN THE INSURER'S BOOKS.

15. WHETHER THE INSURER HAS GROWN SO RAPIDLY AND TO AN EXTENT THAT THE INSURER LACKS ADEQUATE FINANCIAL AND ADMINISTRATIVE CAPACITY TO MEET ITS OBLIGATIONS IN A TIMELY MANNER.

16. WHETHER THE INSURER HAS EXPERIENCED OR WILL EXPERIENCE IN THE FORESEEABLE FUTURE CASH FLOW OR LIQUIDITY PROBLEMS.

17. WHETHER THE MANAGEMENT OF AN INSURER HAS ESTABLISHED RESERVES THAT DO NOT COMPLY WITH MINIMUM STANDARDS ESTABLISHED BY STATE INSURANCE LAWS, RULES, STATUTORY ACCOUNTING STANDARDS, SOUND ACTUARIAL PRINCIPLES AND STANDARDS OF PRACTICE.

18. WHETHER THE MANAGEMENT OF AN INSURER PERSISTENTLY ENGAGES IN MATERIAL UNDER RESERVING THAT RESULTS IN ADVERSE DEVELOPMENT.

19. WHETHER TRANSACTIONS AMONG AFFILIATES, SUBSIDIARIES OR CONTROLLING PERSONS FOR WHICH THE INSURER RECEIVES ASSETS OR CAPITAL GAINS, OR BOTH, DO NOT PROVIDE SUFFICIENT VALUE, LIQUIDITY OR DIVERSITY TO ASSURE THE INSURER'S ABILITY TO MEET ITS OUTSTANDING OBLIGATIONS AS THEY MATURE.

20. ANY OTHER FINDING DETERMINED BY THE DIRECTOR TO BE HAZARDOUS TO THE INSURER'S POLICYHOLDERS OR CREDITORS OR THE GENERAL PUBLIC.

B. FOR THE PURPOSES OF MAKING A DETERMINATION OF AN INSURER'S FINANCIAL CONDITION UNDER THIS SECTION, THE DIRECTOR MAY:

1. DISREGARD ANY CREDIT OR AMOUNT RECEIVABLE RESULTING FROM TRANSACTIONS WITH A REINSURER THAT IS INSOLVENT, IMPAIRED OR OTHERWISE SUBJECT TO A DELINQUENCY PROCEEDING.

2. MAKE APPROPRIATE ADJUSTMENTS INCLUDING DISALLOWANCE TO ASSET VALUES ATTRIBUTABLE TO INVESTMENTS IN OR TRANSACTIONS WITH PARENTS, SUBSIDIARIES OR AFFILIATES CONSISTENT WITH THE ACCOUNTING PRACTICES AND PROCEDURES MANUAL ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, STATE LAWS AND RULES.

3. REFUSE TO RECOGNIZE THE STATED VALUE OF ACCOUNTS RECEIVABLE IF THE ABILITY TO COLLECT RECEIVABLES IS HIGHLY SPECULATIVE IN VIEW OF THE AGE OF THE ACCOUNT OR THE FINANCIAL CONDITION OF THE DEBTOR.

4. INCREASE THE INSURER'S LIABILITY IN AN AMOUNT EQUAL TO ANY CONTINGENT LIABILITY, PLEDGE OR GUARANTEE NOT OTHERWISE INCLUDED IF THERE IS A SUBSTANTIAL RISK THAT THE INSURER WILL BE CALLED ON TO MEET THE OBLIGATION UNDERTAKEN WITHIN THE NEXT TWELVE-MONTH PERIOD.

C. IF THE DIRECTOR DETERMINES THAT THE CONTINUED OPERATION OF THE INSURER LICENSED TO TRANSACT BUSINESS IN THIS STATE MAY BE HAZARDOUS TO ITS POLICYHOLDERS OR CREDITORS OR THE GENERAL PUBLIC, IN ADDITION TO ANY OTHER ACTION AUTHORIZED BY THIS TITLE, THE DIRECTOR MAY ISSUE AN ORDER REQUIRING THE INSURER TO:

1. REDUCE THE TOTAL AMOUNT OF PRESENT AND POTENTIAL LIABILITY FOR POLICY BENEFITS BY REINSURANCE.

2. REDUCE, SUSPEND OR LIMIT THE VOLUME OF BUSINESS BEING ACCEPTED OR RENEWED.

3. REDUCE GENERAL INSURANCE AND COMMISSION EXPENSES BY SPECIFIED METHODS.

4. INCREASE THE INSURER'S CAPITAL AND SURPLUS.

5. SUSPEND OR LIMIT THE DECLARATION AND PAYMENT OF DIVIDENDS BY AN INSURER TO ITS STOCKHOLDERS OR ITS POLICYHOLDERS.

6. FILE REPORTS IN A FORM ACCEPTABLE TO THE DIRECTOR CONCERNING THE MARKET VALUE OF AN INSURER'S ASSETS.

7. LIMIT OR WITHDRAW FROM CERTAIN INVESTMENTS OR DISCONTINUE CERTAIN INVESTMENT PRACTICES TO THE EXTENT THE DIRECTOR DEEMS NECESSARY.

8. DOCUMENT THE ADEQUACY OR PREMIUM RATES IN RELATION TO THE RISKS INSURED.

9. IN ADDITION TO REGULAR ANNUAL STATEMENTS, FILE INTERIM FINANCIAL REPORTS ON THE FORM ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR IN A FORMAT PRESCRIBED BY THE DIRECTOR.

10. CORRECT CORPORATE GOVERNANCE PRACTICE DEFICIENCIES AND ADOPT AND USE GOVERNANCE PRACTICES ACCEPTABLE TO THE DIRECTOR.

11. PROVIDE A BUSINESS PLAN TO THE DIRECTOR IN ORDER TO CONTINUE TO TRANSACT BUSINESS IN THIS STATE.

12. NOTWITHSTANDING ANY OTHER LAW LIMITING THE FREQUENCY OR AMOUNT OF PREMIUM RATE ADJUSTMENTS, ADJUST RATES FOR ANY NONLIFE INSURANCE PRODUCT WRITTEN BY THE INSURER THAT THE DIRECTOR CONSIDERS NECESSARY TO IMPROVE THE FINANCIAL CONDITION OF THE INSURER.

D. A HEARING DEMANDED BY AN INSURER AGGRIEVED BY AN ORDER OF THE DIRECTOR AS PRESCRIBED BY RULE SHALL BE CLOSED TO THE PUBLIC BUT THE HEARING SHALL BE OPEN TO THE PUBLIC IF REQUESTED ACCORDING TO SECTION 20-164, SUBSECTION A.

E. THIS SECTION DOES NOT LIMIT OR SUPERSEDE ANY PROVISION OF THIS TITLE OR ANY OTHER PROVISION OF LAW PERTAINING TO THE POWERS OF THE DIRECTOR OR THE REGULATION OF THE FINANCIAL CONDITION OF INSURERS TRANSACTING INSURANCE IN THIS STATE.

Sec. 2. Section 20-229, Arizona Revised Statutes, is amended to read:

20-229. Countersignature of insurance producer; exceptions

A. An authorized insurer shall not issue a policy covering a subject of insurance resident, located or to be performed in this state unless the policy or countersignature endorsement attached to the policy is countersigned by its licensed insurance producer~~,~~ OR bail bond agent ~~or managing general agent~~, as applicable.

B. Subsection A of this section does not apply to:

1. Reinsurance or life, disability or title insurance.

2. Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

3. Insurance of property in the course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

4. Insurance of ocean marine risks.

5. Policies issued through salaried insurance producers or issued by insurers not using insurance producers in the general solicitation of business.

6. Bid bonds issued by any surety insurer in connection with any public or private contracts.

7. Policies issued by a vending machine pursuant to section 20-293.

C. A violation of this section shall not invalidate the policy.

D. The countersignature that is required under subsection A of this section may be made by a facsimile signature or other printed or reproduced signature and shall be presumed to be the authorized signature of the person.

Sec. 3. Section 20-311, Arizona Revised Statutes, is amended to read:

20-311. Definition of managing general agent; exceptions; adjustment or payment of claims

A. In this article, unless the context otherwise requires, "managing general agent" means any person, firm, association or corporation ~~that negotiates and binds ceding reinsurance contracts on behalf of an insurer or~~ that manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, ~~that acts as an insurance producer or agent for the insurer~~ and that, with or without authority and either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium that is at least five per cent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year and that either:

1. Engages in the adjustment or payment of claims IN EXCESS OF TEN THOUSAND DOLLARS PER CLAIM.

2. Negotiates reinsurance on behalf of the insurer.

B. Notwithstanding subsection A of this section, for the purposes of this article the following persons are not managing general agents:

1. An employee of the insurer.

2. A United States manager of the United States branch of an alien insurer.

3. An underwriting manager who, pursuant to contract, manages all of the insurance operations of the insurer other than those operations that are managed by the insurer, who is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written.

4. The attorney-in-fact who is authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

5. A reinsurance intermediary broker or a reinsurance intermediary manager as defined in section 20-486, who provides administrative services for an insurer and whose compensation consists only of remuneration not related directly or indirectly to direct written premium. For the purposes of this paragraph, reinsurance commissions shall not be considered remuneration related to direct written premium.

C. The director shall establish by rule the dollar amount of adjusted or paid claims that constitutes engaging in the adjustment or payment of claims.

Sec. 4. Section 20-311.01, Arizona Revised Statutes, is amended to read:

20-311.01. Managing general agents; requirements

A. A person ~~in this state~~ shall not act ~~as~~ IN THE CAPACITY OF a managing general agent ~~of an insurer or underwriter's department~~ FOR AN INSURER LICENSED IN THIS STATE WITH RESPECT TO THE RISKS LOCATED IN THIS STATE unless the person is licensed AS AN INSURANCE PRODUCER by the director. ~~A person shall apply for the license on forms designated and provided by the director. The director shall issue the license on completion and filing of the application and payment of the license fee prescribed in section 20-167.~~

~~B. The license expires as prescribed in section 20-289. The director may suspend or revoke the license or licenses of a managing general agent for any of the same causes and pursuant to the same procedures that apply to insurance producer licenses under article 3 of this chapter.~~

~~C. All managing general agents shall maintain a deposit according to section 20-581 in favor of this state to be held in trust for the benefit and protection of insureds and insurers whose monies the managing general agent handles that consists of any of the following:~~

~~1. Cash.~~

~~2. Securities eligible for investment pursuant to chapter 3, articles 1 and 2 of this title.~~

~~3. Surety insurance as defined in section 20-257 in a form acceptable to the director and issued by a corporate surety authorized to transact business in this state. The surety insurance may include individual bonds or schedule or blanket forms of bonds.~~

~~D. The amount of the deposit required by subsection C of this section is ten per cent of the amount of total monies handled by the managing general agent on behalf of insurers possessing a certificate of authority issued by the director to transact insurance in this state unless the director determines that a lesser amount is adequate for the protection of the public, except that the deposit shall not be less than fifty thousand dollars or more than one hundred thousand dollars. The amount of the deposit shall be determined by the total monies handled by the managing general agent during the preceding year, or if no monies were handled during the preceding year, the amount of monies reasonably estimated to be handled during the current calendar year by the managing general agent. The amount of the deposit is payable on the failure of the managing general agent to pay funds that it is legally obligated to pay and shall provide protection to the insurers and insureds of this state against loss by reason of acts of fraud or dishonesty.~~

~~E. The director may require a managing general agent to maintain an errors and omissions policy.~~

~~F. For purposes of this section, "monies" means the total amount of gross written premium less gross return premium.~~

B. A PERSON SHALL NOT ACT IN THE CAPACITY OF A MANAGING GENERAL AGENT FOR AN INSURER DOMICILED IN THIS STATE WITH RESPECT TO RISKS LOCATED OUTSIDE OF THIS STATE UNLESS THE PERSON IS LICENSED AS AN INSURANCE PRODUCER BY THE DIRECTOR.

Sec. 5. Section 20-311.02, Arizona Revised Statutes, is amended to read:

20-311.02. Requirements for managing general agent agreements

A. A person, firm, association or corporation acting in the capacity of a managing general agent shall not place business with an insurer unless there is in force a written contract between the parties that sets forth the responsibilities of each party and, if both parties share responsibility for a particular function, specifies the division of the responsibilities. The contract shall contain the following minimum provisions:

1. The insurer may terminate the contract for cause on written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of a dispute regarding the cause for termination.

2. At least each month the managing general agent shall render accounts to the insurer detailing all transactions and remit all monies due under the contract to the insurer.

3. The managing general agent shall hold in a fiduciary capacity all monies that are collected for the account of an insurer in a bank that is ~~a member of the federal reserve system~~ AN INSTITUTION THAT IS INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION. The account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

4. The managing general agent shall maintain separate records of business that is written by the managing general agent. The insurer shall have access to and the right to copy all accounts and records related to its business in a form usable by the insurer. The director shall have access to all books, bank accounts and records of the managing general agent in a form usable to the director.

5. The managing general agent may not assign the contract in whole or in part.

6. Appropriate underwriting guidelines, including:

(a) The maximum annual premium volume.

(b) The basis of the rates to be charged.

(c) The types of risks that may be written.

(d) Maximum limits of liability.

(e) Applicable exclusions.

(f) Territorial limitations.

(g) Policy cancellation provisions.

(h) The maximum policy period.

7. The insurer may cancel or refuse to renew an insurance policy subject to applicable laws and rules.

8. If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims shall be reported to the company in a timely manner.

(b) A copy of the claim file shall be sent to the insurer on request or as soon as it becomes known that the claim:

(i) May exceed an amount determined by the director or exceeds the limit set by the company, whichever is less.

(ii) Involves a coverage dispute.

(iii) May exceed the managing general agent's claims settlement authority.

(iv) Is open for more than six months.

(v) Is closed by payment of an amount set by the director or an amount set by the company, whichever is less.

(c) All claim files are the joint property of the insurer and the managing general agent. On an order of liquidation of the insurer the files become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority that is granted to the managing general agent may be terminated for cause on the insurer's written notice to the managing general agent or on the termination of the contract. The insurer may suspend the settlement authority during the pendency of a dispute regarding the cause for termination.

9. If electronic claims files exist, provisions on the timely transmission of the data.

10. If the contract provides for the sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments or any other manner, interim profits shall not be paid to the managing general agent until one year after the interim profits are earned for property insurance business or five years after the interim profits are earned on casualty business and the interim profits have been verified pursuant to subsection B of this section.

11. The managing general agent shall not:

(a) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with whom the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

(b) Commit the insurer to participation in insurance or reinsurance syndicates.

(c) Appoint a producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed.

(d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, that does not exceed one per cent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year.

(e) Without prior approval of the insurer, collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer. If prior approval is given, a report shall be forwarded promptly to the insurer.

(f) Permit its subproducer to serve on the insurer's board of directors.

(g) Employ jointly an individual who is employed by the insurer.

(h) Appoint a submanaging general agent.

12. THE MANAGING GENERAL AGENT MAY USE ONLY ADVERTISING MATERIAL PERTAINING TO THE BUSINESS ISSUED BY AN INSURER THAT HAS BEEN APPROVED IN WRITING BY THE INSURER IN ADVANCE OF ITS USE.

B. With respect to its managing general agent, an insurer shall:

~~1. Have an independent financial examination of each managing general agent it does business with on file in a form acceptable to the director.~~

1. REQUIRE THE MANAGING GENERAL AGENT TO OBTAIN AND MAINTAIN A SURETY BOND FOR THE PROTECTION OF THE INSURER. THE AMOUNT OF THE SURETY BOND SHALL BE TEN PER CENT OF THE MANAGING GENERAL AGENT'S TOTAL ANNUAL WRITTEN PREMIUM NATIONWIDE PRODUCED BY THE MANAGING GENERAL AGENT FOR THE INSURER IN THE PRIOR CALENDAR YEAR, EXCEPT THAT THE SURETY BOND SHALL NOT BE IN AN AMOUNT LESS THAN ONE HUNDRED THOUSAND DOLLARS OR MORE THAN FIVE HUNDRED THOUSAND

DOLLARS. THE INSURER SHALL MAKE THE BOND AVAILABLE FOR INSPECTION BY THE DIRECTOR.

2. HAVE ON FILE AN INDEPENDENT AUDITED ANNUAL FINANCIAL STATEMENT OR REPORT FOR THE TWO MOST RECENT FISCAL YEARS THAT PROVE THAT THE MANAGING GENERAL AGENT HAS A POSITIVE NET WORTH. IF THE MANAGING GENERAL AGENT HAS BEEN IN EXISTENCE FOR LESS THAN TWO FISCAL YEARS, THE MANAGING GENERAL AGENT SHALL INCLUDE FINANCIAL STATEMENTS OR REPORTS THAT ARE CERTIFIED BY AN OFFICER OF THE MANAGING GENERAL AGENT AND THAT ARE PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES FOR ANY COMPLETED FISCAL YEARS AND FOR ANY MONTH DURING THE CURRENT FISCAL YEAR FOR WHICH THE FINANCIAL STATEMENTS OR REPORTS HAVE BEEN COMPLETED. FOR AN AUDITED FINANCIAL REPORT PREPARED ON A CONSOLIDATED BASIS, A MANAGING GENERAL AGENT SHALL PROVIDE TO THE INSURER WITH THE FINANCIAL REPORT A COLUMNAR CONSOLIDATING WORKSHEET THAT INCLUDES AMOUNTS SHOWN ON THE CONSOLIDATED AUDITED FINANCIAL REPORT, AMOUNTS FOR EACH ENTITY STATED SEPARATELY AND EXPLANATIONS OF CONSOLIDATING AND ELIMINATING ENTRIES.

~~2.~~ 3. Notwithstanding any other required loss reserve certification, if the managing general agent establishes loss reserves, annually obtain an actuary's opinion attesting to the adequacy of the loss reserves established for losses incurred and outstanding on business that is produced by the managing general agent.

~~3.~~ 4. Conduct semiannually an on-site review of the managing general agent's underwriting and claims processing operations.

~~4.~~ 5. Give to an officer of the insurer who is not affiliated with the managing general agent binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates.

~~5.~~ 6. Within thirty days of entering into or terminating a contract with a managing general agent, provide to the director written notification of the appointment or termination. A notice of appointment of a managing general agent shall include a statement of the duties that the applicant shall perform on behalf of the insurer, the lines of insurance for which the applicant shall be authorized to act and any other information the director may request.

~~6.~~ 7. Review its books and records each quarter to determine if a producer has become, by operation, a managing general agent. If the insurer determines that a producer has become a managing general agent, the insurer promptly shall notify the producer and the director of the determination. The insurer and the producer shall comply with this section within thirty days.

C. An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of its managing general agents. This subsection does not apply to relationships that are governed by the insurance holding company act or, if applicable, the producer controlled insurer act.

D. The acts of the managing general agent are considered to be the acts of the insurer on whose behalf the managing general agent is acting. A managing general agent may be examined BY THE DIRECTOR as if the managing general agent were the insurer AND THE INSURER SHALL BEAR ALL EXPENSES OF THE EXAMINATION AS PRESCRIBED BY SECTIONS 20-156 AND 20-159.

E. If after a hearing the director finds that a person has violated this section, the director may order:

1. For each separate violation, a civil penalty in an amount of up to one thousand dollars.

2. Revocation or suspension of the producer's license.

3. The managing general agent to reimburse the insurer or the rehabilitator or liquidator of the insurer for any losses THAT ARE incurred by the insurer AND that are caused by an act that is committed by the managing general agent in violation of this section.

F. Nothing contained in this section affects the right of the director to impose any other penalties pursuant to this title.

G. Nothing contained in this section limits or restricts the rights of policyholders, claimants and auditors.

H. The director may adopt rules for the implementation and administration of this section.

I. Except as provided in section 41-1092.08, subsection H, the final decision, determination or order of the director pursuant to subsection E of this section is subject to judicial review pursuant to title 12, chapter 7, article 6.

Sec. 6. Repeal

Section 20-311.03, Arizona Revised Statutes, is repealed.

Sec. 7. Section 20-407, Arizona Revised Statutes, is amended to read:

20-407. Surplus lines; brokers

A. Any portion or all of an insurance coverage designated in this article as "surplus lines" may be procured from unauthorized insurers subject to the following conditions:

1. The insurance is procured through a surplus lines broker licensed in this state, referred to in this article as the "broker".

2. The insurance coverage is a recognized surplus line pursuant to section 20-409 or the insurance coverage is not procurable, after diligent effort has been made to procure coverage or the coverage has been procured to the full extent the insurers are willing to insure, and the placing of insurance with an unauthorized insurer is not for the purpose of securing advantages either as to premium rate or terms of the insurance contract.

B. Subsection A, paragraph 2 of this section does not apply to the sale of insurance coverage to an industrial insured as defined in section 20-401.07. At the inception of each new policy and at the time of each renewal, but not less than annually during the term of the policy, each industrial insured that purchases a policy as provided in this section shall certify to the broker on a form prescribed by the director that the insured

meets the definition of industrial insured prescribed in section 20-401.07. The broker shall maintain the certification in the broker's files. The insurance is surplus lines insurance and is subject to the applicable provisions of this article that relate to surplus lines insurance.

C. ~~Nothing in~~ This section ~~prohibits~~ DOES NOT PROHIBIT a resident or nonresident insurance producer ~~or managing general agent~~ licensed in this state for property or casualty insurance from obtaining surplus lines insurance for policyholders through a surplus lines broker if the insurance producer ~~or managing general agent~~ uses a surplus lines broker licensed in this state for the transaction of the insurance with the surplus lines insurer. The surplus lines broker is responsible for compliance with the applicable provisions of this article. The insurance producer ~~or managing general agent~~ may pay a fee or share a commission with a surplus lines broker who procures the surplus coverage on behalf of the insurance producer. For the purposes of this subsection, "transaction" means the acts listed in section 20-106, subsection A.

D. For the transaction of surplus lines insurance, a surplus lines broker licensed in this state shall not receive a fee, commission, brokerage or other valuable consideration from any person who is not licensed in this state as any of the following:

1. An insurance producer pursuant to ~~chapter 2,~~ article 3 of this ~~title~~ CHAPTER.

2. A managing general agent pursuant to ~~chapter 2,~~ article 3.1 of this ~~title~~ CHAPTER.

3. A surplus lines broker pursuant to section 20-411, 20-411.01 or 20-411.02.

Sec. 8. Section 20-411, Arizona Revised Statutes, is amended to read:

20-411. Licensing of surplus lines broker; examination

A. A person shall not act as a surplus lines broker in this state on behalf of an insured whose home state is Arizona unless the person has a current surplus lines broker license issued by the director.

B. Any individual who is a resident of this state and who is licensed as a resident insurance producer authorized for property or casualty insurance in this state may also be licensed as a resident surplus lines broker if the director determines that the insurance producer is competent and trustworthy. The director shall prescribe and furnish application forms.

C. Each individual applicant for an original license as a resident surplus lines broker or for renewal of a resident surplus lines broker license who has not previously taken and passed a surplus lines broker license examination in this state shall take and pass to the director's satisfaction a written examination given by or under the supervision of the director. The examination shall reasonably test the applicant's knowledge of surplus lines insurance and the legal responsibilities of a surplus lines broker.

D. The director may issue a resident surplus lines broker license to any business entity that is licensed as a resident property or casualty insurance producer in this state and that satisfies all of the requirements prescribed by section 20-285, subsections C and D.

E. At least one individual in each office or place where surplus lines insurance is transacted in this state shall be licensed pursuant to this title as ~~either~~ an insurance producer authorized for property or casualty insurance ~~or a managing general agent for property or casualty insurance~~, and shall be licensed pursuant to this article as a surplus lines broker.

F. The license prescribed in this section shall expire and be subject to renewal coincidental to, and in the same manner as, other insurance license authority as prescribed in section 20-289. The director shall charge the surplus lines broker license fee prescribed in section 20-167, except that, from and after June 30, 2005, a licensee adding surplus lines broker authority to an existing insurance license shall be charged one-half the surplus lines broker license fee if less than two years remain in the term of the existing insurance license as of the date the director receives the application to add surplus lines broker authority to the existing insurance license.

G. To the extent not inconsistent with this article, section 20-281, section 20-283, subsection B, paragraph 6, section 20-286, subsection C and sections 20-287, 20-289, 20-291, 20-292, 20-295, 20-296, 20-297, 20-298, 20-299, 20-300, 20-301 and 20-302 apply to surplus lines brokers.

H. For the purposes of implementing the nonadmitted and reinsurance reform act of 2010 (15 United States Code section 8201) the director shall participate in the national insurance producer database of the national association of insurance commissioners or any other equivalent national database for the licensure and license renewal of surplus lines brokers on and after July 21, 2012.

Sec. 9. Section 20-481.19, Arizona Revised Statutes, is amended to read:

20-481.19. <u>Extraordinary dividend or distribution; time; notice; definition; approval by director</u>

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 greater of either ten per cent of such insurer's surplus as regards policyholders as 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 December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

C. Notwithstanding any other 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. 10. Section 20-488, Arizona Revised Statutes, is amended to read:

20-488. Definitions

In this article, unless the context otherwise requires:

1. "Adjusted RBC report" means a report that has been adjusted by the director in accordance with section 20-488.01.

2. "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is more than or equal to its mandatory control level RBC but less than its authorized control level RBC.

(b) The notification by the director to the insurer of an adjusted RBC report that indicates the event under subdivision (a) of this paragraph, unless the insurer challenges the adjusted RBC report under section 20-488.06.

(c) If the insurer challenges an adjusted RBC report that indicates the event under subdivision (a) of this paragraph, the notification by the director to the insurer that the director, after a hearing, has rejected the insurer's challenge.

(d) The failure of the insurer to satisfactorily respond to a corrective order, unless the insurer has challenged the corrective order under section 20-488.06.

(e) If the insurer challenges a corrective order and, after a hearing, the director rejects the challenge or modifies the corrective order, the failure of the insurer to satisfactorily respond to the corrective order after its modification or the rejection of the challenge by the director.

3. "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions.

4. "Company action level event" means any of the following:

(a) The filing of an RBC report by an insurer indicating either that:

(i) The insurer's total adjusted capital is more than or equal to its regulatory action level RBC but less than its company action level RBC.

(ii) ~~If the insurer is a life or health insurer,~~ The insurer's total adjusted capital is more than or equal to its company action level RBC but less than the product of its authorized control level RBC and ~~2.5~~ 3.0 and has a negative trend.

~~(iii) If the insurer is a property and casualty insurer, the insurer's total adjusted capital is more than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and has a negative trend.~~

(b) The notification by the director to the insurer of an adjusted RBC report that indicates any of the events under subdivision (a) of this paragraph, unless the insurer challenges the adjusted RBC report under section 20-488.06.

(c) If the insurer challenges an adjusted RBC report that indicates either of the events under subdivision (a) of this paragraph, the notification by the director to the insurer that the director, after a hearing, has rejected the insurer's challenge.

5. "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC.

6. "Corrective order" means an order that is issued by the director and that specifies corrective actions that the director has determined are required.

7. "Domestic insurer" means a life or health insurer, OR BOTH, A property or casualty insurer, OR BOTH, or A health organization that is authorized to transact insurance business in this state and that is organized in this state.

8. "Foreign insurer" means a life or health insurer, OR BOTH, A property or casualty insurer, OR BOTH, or A health organization that is authorized to transact insurance business in this state but that is not domiciled in this state.

9. "Health organization" means a hospital service corporation, medical service corporation, dental service corporation or optometric service corporation or a hospital, medical, dental and optometric service corporation that has a certificate of authority pursuant to chapter 4, article 3 of this title, a prepaid dental plan organization that has a certificate of authority pursuant to chapter 4, article 7 of this title or a health care services organization that has a certificate of authority pursuant to chapter 4, article 9 of this title.

10. "Life or health insurer" means an insurer authorized to transact life insurance, annuities or accident and health insurance in this state, A FRATERNAL BENEFIT SOCIETY or an authorized property or casualty insurer writing only accident and health insurance, but does not include ~~fraternal benefit societies, hospital, medical, dental and optometric service corporations, health care services organizations or prepaid dental plan organizations~~ A HEALTH ORGANIZATION.

11. "Mandatory control level event" means any of the following:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is less than its mandatory control level RBC.

(b) The notification by the director to the insurer of an adjusted RBC report that indicates the event under subdivision (a) of this paragraph, unless the insurer challenges the adjusted RBC report under section 20-488.06.

(c) If the insurer challenges an adjusted RBC report that indicates the event under subdivision (a) of this paragraph, the notification by the director to the insurer that the director, after a hearing, has rejected the insurer's challenge.

12. "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

13. "Negative trend" means, with respect to ~~a life or health~~ AN insurer, a negative trend over a period of time as determined in accordance with the trend test calculation included in the RBC instructions.

14. "Property or casualty insurer" means an insurer licensed to transact insurance as described in section 20-256 or 20-252, respectively, but does not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

15. "RBC" means risk-based capital.

16. "RBC instructions" means the RBC report, including risk-based capital instructions adopted by the national association of insurance commissioners.

17. "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC or mandatory control level RBC.

18. "RBC plan" means a comprehensive financial plan containing the elements specified in section 20-488.02, subsection A. If the director rejects the RBC plan and the insurer revises the plan, regardless of the director's recommendation, the plan shall be called the revised RBC plan.

19. "RBC report" means the report required under section 20-488.01.

20. "Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is more than or equal to its authorized control level RBC but less than its regulatory action level RBC.

(b) The notification by the director to the insurer of an adjusted RBC report that indicates the event under subdivision (a) of this paragraph, unless the insurer challenges the adjusted RBC report under section 20-488.06.

(c) If the insurer challenges an adjusted RBC report that indicates the event under subdivision (a) of this paragraph, the notification by the director to the insurer that the director, after a hearing, has rejected the insurer's challenge.

(d) The failure by the insurer to file an RBC report by the filing date, unless the insurer provides the director with a satisfactory explanation for the failure and cures the failure within ten days after the filing date.

(e) The failure by the insurer to submit an RBC plan to the director within the time period prescribed in section 20-488.02, subsection B.

(f) Notification by the director to the insurer that both:

(i) The RBC plan or revised RBC plan that the insurer submitted is, in the judgment of the director, unsatisfactory.

(ii) If the insurer has not challenged a determination pursuant to section 20-488.06, the notification constitutes a regulatory action level event.

(g) If the insurer challenges pursuant to section 20-488.06 a determination made by the director pursuant to subdivision (f) of this paragraph, the notification by the director to the insurer that the director, after a hearing, has rejected the insurer's challenge.

(h) If the insurer has not challenged the determination pursuant to section 20-488.06, the notification by the director to the insurer that the insurer has failed to adhere to the insurer's RBC plan or revised RBC plan and that states that failure has a substantial adverse effect on the insurer's ability to eliminate the regulatory action level event in accordance with its RBC plan or revised RBC plan.

(i) If the insurer challenges pursuant to section 20-488.06 a determination made by the director pursuant to subdivision (h) of this paragraph, the notification by the director to the insurer that the director, after a hearing, has rejected the insurer's challenge, unless the insurer's failure to adhere to its RBC plan or revised RBC plan does not have a substantial adverse effect on the insurer's ability to eliminate the regulatory action level event.

21. "Regulatory action level RBC" means the product of 1.5 and an insurer's authorized control level RBC.

22. "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus.

(b) Any other items that the RBC instructions may provide.

Sec. 11. Section 20-648, Arizona Revised Statutes, is amended to read:

20-648. <u>Receivership liquidation fund; purpose; deposit; expenses of receivership; deputy receiver; powers and duties</u>

A. The director shall appoint a deputy receiver to administer the conservation, rehabilitation or liquidation of an insurer pursuant to this article.

B. ~~There is established~~ A receivership liquidation fund IS ESTABLISHED. The deputy receiver shall file a petition with the court authorizing the deputy receiver to deposit in the fund ten per cent of the insolvent insurer's deposit required under section 20-213.

C. The common administrative costs of the receiverships incurred by the deputy receiver are payable from the receivership liquidation fund. The director shall by order after a hearing describe the nature of administrative costs common to every receivership in the operation of the receivership office that are payable from this fund. Costs may include the compensation of special deputies, clerks or assistants but shall not include attorney fees.

D. The deputy receiver shall prepare and file with the court a quarterly financial report listing expenditures and the balance remaining in the fund allocable to the respective insurer. On termination of a receivership, the deputy receiver shall remit any balance remaining in the fund ~~which~~ THAT is allocated to a particular insurer to the separate account for that receivership or to the person entitled to the monies. If the common administrative expenses allocable to a receivership exceed the initial ten per cent deposit to the fund, the deputy receiver may petition the court to authorize an amount, equal to the excess, to be deposited in the fund.

E. ON NOTICE FROM THE DIRECTOR, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE RECEIVERSHIP LIQUIDATION FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

Sec. 12. Section 20-705, Arizona Revised Statutes, is amended to read:

20-705. Articles of incorporation

~~A. Five or more individuals aged eighteen years or more may incorporate a stock insurer and ten or more such individuals may incorporate a mutual insurer. Not less than two thirds of the incorporators shall be citizens of the United States residing in this state. The articles of incorporation shall be signed and acknowledged by the incorporators as deeds are required to be acknowledged.~~

~~B.~~ A. The articles of incorporation shall state:

1. The name of the corporation. If a mutual, the word "mutual" shall be a part of the name.

2. The duration of its existence, which may be perpetual.

3. The kinds of insurance the corporation is formed to transact, according to the definitions thereof in this title. If the corporation is to be a limited stock insurer, the articles shall provide for limitations ~~upon~~ ON the insuring powers of the corporation consistent with ~~the provisions of~~ section 20-708.

4. If a stock corporation, its authorized capital, the classes and number of shares into which divided, the par value of each such share and the respective rights of each such class. Shares without par value shall not be authorized.

5. If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessible policies, for payment of losses and expenses incurred, which liability shall be as stated in the articles of incorporation but not less than one nor more than six times the premium for the member's policy at the annual premium rate for a term of one year.

6. The number of directors, not less than five nor more than fifteen, who shall conduct the affairs of the corporation, and the names and addresses of the corporation's first directors and officers for stated terms of office of not less than two months or more than one year.

7. The time of the annual meeting of stockholders or members.

8. The city or town in this state in which the principal place of business is to be located, and the counties, states and countries in which business may be transacted.

9. The limitations, if any, on the corporation's indebtedness.

10. If a stock corporation, the extent, if any, to which stock of the corporation shall be liable to assessment.

11. Such other provisions, not inconsistent with law, as deemed appropriate by the incorporators.

12. The names and addresses of the incorporators.

~~C.~~ B. ~~The provisions of~~ This section ~~shall apply~~ APPLIES to stock and mutual insurers incorporated in this state after January 1, 1955.

Sec. 13. Section 20-706, Arizona Revised Statutes, is amended to read:

20-706. Filing and publication of articles; appointment of agent to receive process; issuance of certificate

A. The articles of incorporation shall be filed in the office of the corporation commission, and certified copies thereof shall be filed with the director of insurance ~~and recorded in the office of the county recorder in each county of the state in which the corporation proposes to transact business~~.

B. The articles of incorporation shall be published ~~at least six times in a newspaper published in or having a general circulation in the county of the corporation's principal place of business. Upon completion of publication, and within three months after recording the certified copy of the articles in the office of the county recorder of such county, an affidavit of publication shall be filed in the office of the corporation commission~~ AS REQUIRED BY TITLE 10.

C. The corporation shall appoint a statutory agent located in this state ~~upon~~ ON whom all process in any action or proceeding may be served and shall file ~~duplicate~~ originals of such appointment in the director's office and in the corporation commission's office. Any termination of such statutory agent shall not take effect until the corporation has appointed a new, valid statutory agent.

D. ~~Upon completion of the filing and recording as to the articles of incorporation, and filing of the appointment of a statutory agent for service of process, the corporation commission shall issue to the corporation a certificate of incorporation.~~ The corporation shall not transact business as an insurer until it has applied for and received from the director a certificate of authority as provided by this title.

Sec. 14. Section 20-709, Arizona Revised Statutes, is amended to read:

20-709. Formation of mutual insurer; applications for insurance

A. Upon issuance of its certificate of incorporation ~~as provided in subsection D of section 20-706~~ BY THE CORPORATION COMMISSION, the directors and officers of a domestic mutual corporation formed for the purpose of becoming a mutual insurer may open books for the registration of such requisite applications for insurance policies as they may accept, and may receive deposits of premiums thereon.

B. All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located or to be performed in this state.

C. All such applications shall provide that:

1. Issuance of the policy is contingent upon completion of organization of the insurer and issuance to it of a proper certificate of authority.

2. No insurance is provided until the certificate of authority has been so issued.

3. The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if the organization is not completed and the certificate of authority issued before a specified reasonable date, which date shall be not later than one year following date of issuance of the certificate of incorporation.

D. All qualifying premiums collected shall be in cash.

E. Solicitation for qualifying applications for insurance shall be by licensed agents of the corporation, and the director shall upon application therefor issue temporary agent's licenses expiring on the date specified pursuant to paragraph 3 of subsection C of this section to individuals appointed by the corporation and qualified as for a resident agent's license except as to the taking of an examination. The director may suspend or revoke any such license for the same causes and pursuant to the same procedures applicable to suspension or revocation of licenses of agents in general under article 3 of chapter 2 of this title.

Sec. 15. Section 20-1098.04, Arizona Revised Statutes, is amended to read:

20-1098.04. Formation of captive insurers; redomestication

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

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.

3. Incorporated as a limited liability ~~corporation~~ COMPANY pursuant to title 29, chapter 4.

D. The capital stock of a captive insurer that is incorporated as a stock insurer may be authorized with no par value.

E. A captive insurer that is formed as a corporation shall have at least three incorporators, at least one of whom shall be a resident of this state. Notwithstanding subsection B, paragraph 3 of this section, a captive insurer that is formed as a reciprocal insurer may be organized by three or more subscribers, none of whom shall be required to be a resident of this state.

F. A pure captive insurer shall have at least one director. Any other kind of corporate captive insurer shall have at least three directors. Any group captive insurer formed as a reciprocal insurer shall have at least three subscribers' advisory committee members. In addition to independent directors, a group captive insurer may have as many directors as it has members.

G. A captive insurer that is formed as a corporation 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. The articles of incorporation or bylaws of a captive insurer that is formed as a corporation with more than one director may authorize a quorum of a board of directors to consist of at least one-third of the fixed or prescribed number of directors, but at least two 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, but at least two members.

I. Any foreign or alien insurer may become a domestic captive insurer by complying with the requirements of this article relating to the licensing of a domestic captive insurer and by complying with all applicable requirements of the laws of this state relating to the domestication of a corporation to this state. The effective date of a license that is issued to a foreign or alien insurer domesticated to this state shall be the date of filing its articles of domestication with the corporation commission.

Sec. 16. Section 20-1098.07, Arizona Revised Statutes, is amended to read:

20-1098.07. Annual report

A. Not later than ninety days after the end of the captive insurer's fiscal year, the captive insurer shall submit to the director a report of its financial condition that is verified by oath of two of its executive officers and that is supplemented by additional information as required by the director. Except as provided in section 20-1098.03, a captive insurer may submit a report that uses generally accepted accounting principles unless the director requires the captive insurer to use statutory accounting principles with any useful or necessary modifications or adaptations of those principles required by the director for the type of insurance and kinds of insurers to be reported on.

B. The captive insurer's financial statements shall be audited by an independent certified public accountant AND BE IN COMPLIANCE WITH CHAPTER 3, ARTICLE 10 OF THIS TITLE, unless the director determines that an audit is not necessary. The audit shall include a reconciliation of differences, if any, between the audited financial report and the statement or form filed with the department. The audit opinion shall be filed with the director not later than six months after the end of the captive insurer's fiscal year.

C. Unless exempted by the director, the annual report shall ~~include an opinion as to the adequacy of the captive insurer's loss reserves and loss expense reserves. A member in good standing of the casualty actuarial society, a member in good standing of the American academy of actuaries or an individual who has demonstrated competence in loss reserve evaluations to the director shall certify the opinion.~~ BE BASED ON THE TYPE OF RISKS INSURED BY THE INSURER AND SHALL MEET THE APPLICABLE REQUIREMENTS OF ONE OR MORE OF THE FOLLOWING:

1. CHAPTER 3, ARTICLE 8 OF THIS TITLE.

2. CHAPTER 3, ARTICLE 9 OF THIS TITLE.

3. THE ACTUARIAL PROVISIONS OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS HEALTH ANNUAL STATEMENT INSTRUCTIONS.

Sec. 17. Section 20-1098.15, Arizona Revised Statutes, is amended to read:

20-1098.15. Applicability

A. Chapter 2, article 6 of this title relating to unfair trade practices and frauds applies to captive insurers, except to the extent the director determines the nature of captive insurance renders particular provisions of chapter 2, article 6 of this title inappropriate.

B. All other provisions of this title that are not inconsistent with this article apply to captive insurers, except to the extent the director determines the nature of captive insurance renders particular provisions of this title inappropriate.

C. A captive insurer that is formed as a corporation is subject to the applicable provisions of title 10, except as otherwise prescribed in this article.

D. A captive insurer that is formed as a limited liability company is subject to the applicable provisions of title 29, except as otherwise prescribed in this article.

E. The provisions of article 1 of this chapter relating to mergers, consolidations, conversions, mutualizations and redomestications apply in determining the procedures to be followed by captive insurers in carrying out those transactions, except that the director may waive or modify the requirements for a public notice and hearing prescribed in section 20-731.

F. Chapter 2, article 8 of this title relating to insurance holding company systems applies to risk retention groups as defined in section 20-1098 or 20-2401.

G. CHAPTER 2, ARTICLE 12 OF THIS TITLE RELATING TO RISK-BASED CAPITAL, AS MODIFIED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS FOR RISK RETENTION GROUPS, APPLIES TO RISK RETENTION GROUPS AS DEFINED IN SECTION 20-1098 OR 20-2401. IF A RISK RETENTION GROUP IS SUBJECT TO REGULATORY ACTION AS PRESCRIBED IN SECTION 20-488.02, 20-488.03, 20-488.04 OR 20-488.05, THE REGULATORY ACTION SHALL BE AT THE DISCRETION OF THE DIRECTOR.

H. UNLESS OTHERWISE PRESCRIBED BY THE DIRECTOR BASED ON A RISK RETENTION GROUP'S BUSINESS PLAN, REMOTENESS OF THE RISK AND CLAIM FREQUENCY, SECTION 20-260, SUBSECTION A, RELATING TO INDIVIDUAL RISK LIMITATION, APPLIES TO RISK RETENTION GROUPS AS DEFINED IN SECTION 20-1098 OR 20-2401.

Sec. 18. Section 20-1243.05, Arizona Revised Statutes, is amended to read:

20-1243.05. Mitigation of responsibility; director orders

A. The director may order:

1. An insurer to take reasonably appropriate corrective action for any consumer who is harmed by the insurer's or by the insurer's insurance producer's violation of this article.

2. An insurance producer to take reasonably appropriate corrective action for any consumer who is harmed by an insurance producer's violation of this article.

3. A ~~managing general agent or~~ business entity that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to consumers to take reasonably appropriate corrective action for any consumer who is harmed by the insurance producer's violation of this article.

B. The director may reduce or eliminate any applicable penalty under sections 20-220, 20-295 and 20-456 for a violation of section 20-1243.03, subsection A, B or D if corrective action for the consumer was taken promptly after a violation was discovered.

1 Sec. 19. Section 20-2102, Arizona Revised Statutes, is amended to
2 read:
3 20-2102. Definitions
4 In this chapter, unless the context otherwise requires:
5 1. "Adverse underwriting decision" means any of the following actions
6 involving insurance coverage which is individually underwritten:
7 (a) A declination of insurance coverage.
8 (b) A termination of insurance coverage.
9 (c) Failure of an insurance producer to apply for insurance coverage
10 with a specific insurance institution which the insurance producer represents
11 and which is requested by an applicant.
12 (d) In the case of property or casualty insurance coverage, placement
13 by an insurance institution or insurance producer of a risk with a residual
14 market mechanism, an unauthorized insurer or an insurance institution which
15 specializes in substandard risks, or the charging of a higher rate on the
16 basis of information which differs from that which the applicant or
17 policyholder furnished.
18 (e) In the case of life, health or disability insurance coverage, an
19 offer to insure at higher than standard rates.
20 (f) In the case of property or casualty insurance, assigning an
21 applicant or policyholder to a higher rating tier or failing to apply a
22 premium discount or credit based on any credit related information derived
23 from the applicant's or policyholder's consumer report, insurance score or
24 lack of credit history.
25 Notwithstanding subdivisions (a) through (f) of this paragraph, the
26 termination of an individual policy form on a class or statewide basis, a
27 declination of insurance coverage solely because the coverage is not
28 available on a class or statewide basis or the rescission of a policy is not
29 considered an adverse underwriting decision, but the insurance institution or
30 insurance producer responsible for its occurrence shall provide the applicant
31 or policyholder with the specific reasons for its occurrence.
32 2. "Affiliate" or "affiliated" means a person that directly or
33 indirectly through one or more intermediaries controls, is controlled by or
34 is under common control with another person.
35 3. "Applicant" means any person who seeks to contract for insurance
36 coverage other than a person seeking group insurance that is not individually
37 underwritten.
38 4. "Consumer report" means any written, oral or other communication of
39 information that bears on a natural person's creditworthiness, credit
40 standing, credit capacity, character, general reputation, personal
41 characteristics or mode of living and that is used or expected to be used in
42 connection with an insurance transaction.
43 5. "Consumer reporting agency" means any person who does any of the
44 following:

(a) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee.

(b) Obtains information primarily from sources other than insurance institutions.

(c) Furnishes consumer reports to other persons.

6. "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

7. "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

8. "Individual" means any natural person who:

(a) In the case of property or casualty insurance, is a past, present or proposed named insured or certificate holder.

(b) In the case of life, health or disability insurance, is a past, present or proposed principal insured or certificate holder.

(c) Is a past, present or proposed policyowner.

(d) Is a past or present applicant.

(e) Is a past or present claimant.

(f) Derived, derives or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

9. "Institutional source" means any person or governmental entity that provides information about an individual to an insurance producer, insurance institution or insurance support organization, other than an insurance producer, the individual who is the subject of the information or a natural person acting in a personal capacity rather than in a business or professional capacity.

10. "Insurance institution" means any corporation, association, partnership, reciprocal insurer, inter-insurer, Lloyd's association, fraternal benefit society or other person engaged in the business of insurance, including health care service organizations and hospital, medical, dental and optometric service corporations as defined in this title. Insurance institution does not include insurance producers or insurance support organizations.

11. "Insurance producer" means an insurance producer as defined in section 20-281 ~~or a managing general agent as defined in section 20-311~~.

12. "Insurance score" means, for the purpose of insurance underwriting or rating, a designation that is derived by using a variety of data sources, including an individual's consumer report in an algorithm, computer program, model or other process that reduces the data to a number, alpha character or rating that is used for insurance underwriting and rating decisions.

1 13. "Insurance support organization" means:
2 (a) Any person who regularly engages, in whole or in part, in the
3 practice of assembling or collecting information about natural persons for
4 the primary purpose of providing the information to an insurance institution
5 or insurance producer for insurance transactions, including the furnishing of
6 consumer reports or investigative consumer reports to an insurance
7 institution or insurance producer for use in connection with an insurance
8 transaction or the collection of personal information from insurance
9 institutions, insurance producers or other insurance support organizations
10 for the purpose of detecting or preventing fraud, material misrepresentation
11 or material nondisclosure in connection with insurance underwriting or
12 insurance claim activity.
13 (b) Notwithstanding subdivision (a) of this paragraph the following
14 persons are not considered insurance support organizations for purposes of
15 this chapter:
16 (i) Insurance producers.
17 (ii) Government institutions.
18 (iii) Insurance institutions.
19 (iv) Medical care institutions.
20 (v) Medical professionals.
21 14. "Insurance transaction" means any transaction that involves
22 insurance primarily for personal, family or household needs rather than
23 business or professional needs and that entails the determination of an
24 individual's eligibility for an insurance coverage, benefit or payment or the
25 servicing of an insurance application, policy, contract or certificate,
26 including transfers of business.
27 15. "Investigative consumer report" means a consumer report or portion
28 of a consumer report in which information about a natural person's character,
29 general reputation, personal characteristics or mode of living is obtained
30 through personal interviews with the person's neighbors, friends, associates,
31 acquaintances or others who may have knowledge concerning those items of
32 information.
33 16. "Medical care institution" means any facility or institution that
34 is licensed to provide health care services to natural persons including:
35 (a) Health care service organizations.
36 (b) Home health agencies.
37 (c) Hospitals.
38 (d) Medical clinics.
39 (e) Public health agencies.
40 (f) Rehabilitation agencies.
41 (g) Skilled nursing facilities.
42 17. "Medical professional" means any person licensed or certified to
43 provide health care services to natural persons, including a chiropractor,
44 clinical dietitian, clinical psychologist, dentist, nurse, occupational

1 therapist, optometrist, pharmacist, physical therapist, physician,
2 podiatrist, psychiatric social worker or speech therapist.
3 18. "Medical record information" means personal information that
4 relates to an individual's physical or mental condition, medical history or
5 medical treatment and that is obtained from a medical professional or medical
6 care institution, the individual or the individual's spouse, parent or legal
7 guardian.
8 19. "Personal information" means any individually identifiable
9 information gathered in connection with an insurance transaction and from
10 which judgments can be made about an individual's character, habits,
11 avocations, finances, occupation, general reputation, credit, health or any
12 other personal characteristics. Personal information includes an
13 individual's name and address and medical record information but does not
14 include privileged information.
15 20. "Policyholder" means any person who:
16 (a) In the case of individual property or casualty insurance, is a
17 present named insured.
18 (b) In the case of individual life, health or disability insurance, is
19 a present policyowner.
20 (c) In the case of group insurance which is individually underwritten,
21 is a present group certificate holder.
22 21. "Pretext interview" means an interview in which a person, in an
23 attempt to obtain information about a natural person, performs one or more of
24 the following acts:
25 (a) Pretends to be someone he or she is not.
26 (b) Pretends to represent a person he or she is not in fact
27 representing.
28 (c) Misrepresents the true purpose of the interview.
29 (d) Refuses to identify himself or herself on request.
30 22. "Privileged information" means any individually identifiable
31 information that relates to a claim for insurance benefits or a civil or
32 criminal proceeding involving an individual and that is collected in
33 connection with or in reasonable anticipation of a claim for insurance
34 benefits or a civil or criminal proceeding involving an individual, except
35 that information otherwise meeting the requirements of this paragraph is
36 considered personal information under this chapter if it is disclosed in
37 violation of section 20-2113.
38 23. "Residual market mechanism" means an agreement for the equitable
39 apportionment among insurers of insurance afforded applicants who are in good
40 faith entitled to but who are unable to procure insurance through ordinary
41 methods.
42 24. "Termination of insurance coverage" or "termination of an insurance
43 policy" means either a cancellation or nonrenewal of an insurance policy, in
44 whole or in part, for any reason other than the failure to pay a premium as
45 required by the policy.

25. "Transfer of business":

(a) Means the transfer by an insurance institution or insurance producer that owns the policy expiration of a policyholder's existing policy of insurance or the transfer of a group of policyholders' existing policies of insurance to another insurance institution.

(b) Does not include the transfer of business by an insurance producer that is under an exclusive contract or a contract requiring the insurance producer to submit all eligible business to an insurer or group of insurers under a common management.

26. "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the director to transact insurance in this state.

Sec. 20. Section 20-2901, Arizona Revised Statutes, is amended to read:

20-2901. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a provider organization that submits an application to the contractor to provide continuing education courses.

2. "Approved continuing education course" means any course that has been approved by at least five other states or that is approved by a contractor or automatically approved pursuant to section 20-2904.

3. "Approved provider" means an organization or individual that offers an approved continuing education course and that is authorized by the contractor to offer the course to a licensee for credit toward the licensee's continuing education requirements.

4. "Continuing education review committee" means the committee appointed by the director pursuant to section 20-2905 to establish minimum standards that apply to approved providers and approved continuing education courses and minimum performance standards that apply to contractors.

5. "Contractor" means the person who has a contract with the department of insurance to approve continuing education providers and courses and to administer the continuing education program and who is paid through fees collected from approved providers when the approved providers apply for continuing education course approval.

6. "Credit hour" means the value assigned to an hour of instruction in an approved continuing education course.

7. "License period" means the period between the date an Arizona insurance license is issued or last renewed and the expiration date of the Arizona insurance license.

8. "Licensee" means an insurance producer, including a surplus lines broker, ~~or a managing general agent as defined in chapter 2, article 3.1 of this title~~ who at any time during the license period holds a current nonresident license to transact insurance in another state. Licensee does not include any firm, corporation or other similar entity or an adjuster as defined in section 20-321.

9. "Nonresident applicant" means an insurance producer or a managing general agent or service representative who holds a resident license in another state and a nonresident license in this state and who is applying for the renewal of a nonresident license in this state.

10. "Provider organization" means a person that provides continuing education courses but THAT has not yet been accepted as an approved provider pursuant to section 20-2904.

Sec. 21. License issuance; expiration

On the effective date of section 20-311.01, Arizona Revised Statutes, as amended by this act, the director shall issue to each person who holds a managing general agent license an insurance producer license for the same kind of insurance as that for which the person holds the managing general agent license, and the managing general agent license expires.

APPROVED BY THE GOVERNOR APRIL 3, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 4, 2013.

Passed the House March 28, 2013,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 28, 2013,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Assistant Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1 day of April, 2013,

at 3:45 o'clock P M.

Mikhaila Howard
Secretary to the Governor

Approved this 3rd day of

April, 2013,

at 4:25 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4th day of April, 2013,

at 8:49 o'clock a M.

Secretary of State

S.B. 1177