

Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

CHAPTER 154

HOUSE BILL 2560

AN ACT

AMENDING TITLE 20, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 23; RELATING TO THE INSURANCE COMPLIANCE SELF-EVALUATIVE PRIVILEGE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 20, Arizona Revised Statutes, is amended by adding
3 chapter 23, to read:

4 CHAPTER 23

5 INSURANCE COMPLIANCE SELF-EVALUATIVE PRIVILEGE

6 ARTICLE 1. GENERAL PROVISIONS

7 20-3301. Definitions: applicability

8 A. IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "INSURANCE COMPLIANCE AUDIT" MEANS A VOLUNTARY, INTERNAL
10 EVALUATION, REVIEW, ASSESSMENT, AUDIT OR INVESTIGATION THAT FOLLOWS ADOPTED
11 WRITTEN STANDARDS AND CRITERIA FOR THE PURPOSE OF IDENTIFYING OR PREVENTING
12 NONCOMPLIANCE WITH OR PROMOTING COMPLIANCE WITH LAWS, REGULATIONS, ORDERS OR
13 INDUSTRY OR PROFESSIONAL STANDARDS THAT IS CONDUCTED BY OR ON BEHALF OF A
14 COMPANY LICENSED OR REGULATED UNDER THIS TITLE AND SPECIFIED IN SUBSECTION B
15 OF THIS SECTION, OR THAT INVOLVES AN ACTIVITY REGULATED UNDER THIS TITLE. AN
16 AUDIT SHALL ESTABLISH A START AND END DATE.

17 2. "INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT":

18 (a) MEANS DOCUMENTS PREPARED AS A RESULT OF OR IN CONNECTION WITH AN
19 INSURANCE COMPLIANCE AUDIT AND IDENTIFIED SPECIFICALLY AS PART OF AN
20 INSURANCE COMPLIANCE AUDIT.

21 (b) INCLUDES ANY OF THE FOLLOWING:

22 (i) AN INSURANCE COMPLIANCE AUDIT REPORT PREPARED BY AN AUDITOR, WHO
23 MAY BE AN EMPLOYEE OF THE COMPANY OR AN INDEPENDENT CONTRACTOR, WHICH MAY
24 INCLUDE THE SCOPE OF THE AUDIT, THE INFORMATION GAINED IN THE AUDIT AND
25 CONCLUSIONS AND RECOMMENDATIONS, WITH EXHIBITS AND APPENDICES.

26 (ii) MEMORANDA AND DOCUMENTS ANALYZING PORTIONS OR ALL OF THE
27 INSURANCE COMPLIANCE AUDIT REPORT AND DISCUSSING POTENTIAL IMPLEMENTATION
28 ISSUES.

29 (iii) AN IMPLEMENTATION PLAN THAT ADDRESSES CORRECTING PAST
30 NONCOMPLIANCE, IMPROVING CURRENT COMPLIANCE AND PREVENTING FUTURE
31 NONCOMPLIANCE.

32 (iv) ANALYTIC DATA GENERATED IN THE COURSE OF CONDUCTING THE INSURANCE
33 COMPLIANCE AUDIT.

34 (c) MAY INCLUDE A WRITTEN RESPONSE TO THE FINDINGS OF AN INSURANCE
35 COMPLIANCE AUDIT AND FIELD NOTES AND RECORDS OF OBSERVATIONS, FINDINGS,
36 OPINIONS, SUGGESTIONS, CONCLUSIONS, DRAFTS, MEMORANDA, DRAWINGS, PHOTOGRAPHS,
37 EXHIBITS, COMPUTER-GENERATED OR ELECTRONICALLY RECORDED INFORMATION, PHONE
38 RECORDS, MAPS, CHARTS, GRAPHS AND SURVEYS IF THIS SUPPORTING INFORMATION IS
39 COLLECTED OR DEVELOPED FOR THE PRIMARY PURPOSE AND IN THE COURSE OF AN
40 INSURANCE COMPLIANCE AUDIT.

41 B. THIS ARTICLE APPLIES TO INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT
42 DOCUMENTS PREPARED AND INSURANCE COMPLIANCE AUDITS CONDUCTED BY OR ON BEHALF
43 OF AN INSURER LICENSED OR REGULATED UNDER THIS TITLE INCLUDING ANY:

44 1. STOCK, MUTUAL, RECIPROCAL OR TITLE INSURER.

1 4. DISCLOSURE OF AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT
2 DOCUMENT TO A GOVERNMENTAL AGENCY, WHETHER VOLUNTARY OR PURSUANT TO
3 COMPULSION OF LAW, DOES NOT CONSTITUTE A WAIVER OF THE PRIVILEGE SET FORTH
4 UNDER THIS SUBSECTION WITH RESPECT TO ANY OTHER PERSON OR GOVERNMENTAL
5 AGENCY.

6 5. A COMPANY SHALL NOTIFY THE DIRECTOR PRIOR TO THE INITIATION OF AN
7 INSURANCE COMPLIANCE AUDIT AND, AT THE CONCLUSION OF THE INSURANCE COMPLIANCE
8 AUDIT, NOTIFY THE DIRECTOR AND MAKE ALL INSURANCE COMPLIANCE AUDIT DOCUMENTS
9 AVAILABLE TO THE DIRECTOR. THE DIRECTOR MAY OBTAIN AUDIT DOCUMENTS AT ANY
10 TIME.

11 6. THE DIRECTOR MAY USE THE AUDIT DOCUMENTS IN THE FURTHERANCE OF ANY
12 REGULATORY OR LEGAL ACTION BROUGHT AS PART OF THE DIRECTOR'S DUTIES. THE
13 COMPANY SHALL COMPLY WITH ANY COMPLIANCE DATES SET BY THE DIRECTOR WITH
14 RESPECT TO THE AUDIT.

15 7. IN ORDER TO FACILITATE IDENTIFICATION, AUDIT DOCUMENTS PRODUCED FOR
16 THE AUDIT SHALL BE LABELED "COMPLIANCE REPORT: PRIVILEGED DOCUMENT."

17 8. THE PRIVILEGE DESCRIBED IN THIS ARTICLE DOES NOT APPLY TO:

18 (a) A DOCUMENT, COMMUNICATION, DATA OR REPORT OR OTHER INFORMATION
19 REQUIRED BY THE DEPARTMENT OR OTHER REGULATORY AGENCY TO BE COLLECTED,
20 DEVELOPED, MAINTAINED OR REPORTED UNDER APPLICABLE LAW.

21 (b) INFORMATION OBTAINED BY OBSERVATION, SAMPLING OR MONITORING BY THE
22 DEPARTMENT OR OTHER REGULATORY AGENCY.

23 (c) INFORMATION OBTAINED FROM A SOURCE NOT INVOLVED IN THE PREPARATION
24 OF THE INSURANCE COMPLIANCE AUDIT REPORT.

25 (d) DOCUMENTS, COMMUNICATIONS, DATA, SPREADSHEETS, REPORTS, MEMORANDA,
26 DRAWINGS, PHOTOGRAPHS, EXHIBITS, COMPUTER RECORDS, MAPS, CHARTS, GRAPHS,
27 RECORDINGS AND SURVEYS KEPT OR PREPARED IN THE ORDINARY COURSE OF BUSINESS.

28 9. IF AN AUDIT REPORT IS OBTAINED, REVIEWED OR USED IN A CRIMINAL
29 PROCEEDING, THE PRIVILEGE DESCRIBED IN THIS ARTICLE IS NOT WAIVED OR
30 ELIMINATED FOR ANY OTHER PURPOSE.

31 10. THIS ARTICLE DOES NOT PROVIDE CIVIL OR CRIMINAL IMMUNITY TO AN
32 ORGANIZATION OR TO AFFECT ANY OTHER PRIVILEGE THAT MAY BE AVAILABLE BY LAW.

33 11. A PERSON WHO CONDUCTS OR PARTICIPATES IN THE PREPARATION OF A
34 COMPLIANCE AUDIT AND WHO HAS ACTUALLY OBSERVED PHYSICAL EVENTS MAY TESTIFY
35 REGARDING THOSE EVENTS, BUT MAY NOT BE COMPELLED TO TESTIFY OR PRODUCE
36 DOCUMENTS RELATED TO ANY PRIVILEGED PART OF THE AUDIT OR ANY ITEM LISTED IN
37 SECTION 20-3301, SUBSECTION A, PARAGRAPH 2.

38 12. THE AUDIT SHALL NOT PREVENT THE DISCOVERY OF A DOCUMENT OR OTHER
39 EVIDENCE, OTHERWISE DISCOVERABLE, MAINTAINED BY AN INSURER THAT WAS NOT
40 DEVELOPED FOR THE AUDIT PURSUANT TO THIS ARTICLE.

41 B. THE PRIVILEGE SET FORTH UNDER SUBSECTION A OF THIS SECTION DOES NOT
42 APPLY UNDER THE FOLLOWING CIRCUMSTANCES:

1 1. TO THE EXTENT THAT IT IS EXPRESSLY WAIVED BY THE COMPANY THAT
2 PREPARED OR CAUSED TO BE PREPARED THE INSURANCE COMPLIANCE SELF-EVALUATIVE
3 AUDIT DOCUMENT.

4 2. IN A CIVIL OR ADMINISTRATIVE PROCEEDING OTHER THAN A REGULATORY OR
5 LEGAL ACTION BROUGHT AS PART OF THE DIRECTOR'S DUTIES, A COURT OF RECORD,
6 AFTER AN IN CAMERA REVIEW, MAY REQUIRE DISCLOSURE OF MATERIAL FOR WHICH THE
7 PRIVILEGE SET FORTH UNDER SUBSECTION A OF THIS SECTION IS ASSERTED IF THE
8 COURT DETERMINES ONE OF THE FOLLOWING:

9 (a) THE PRIVILEGE IS ASSERTED FOR A FRAUDULENT PURPOSE.

10 (b) THE MATERIAL IS NOT SUBJECT TO THE PRIVILEGE.

11 (c) THE PRIVILEGED MATERIAL SHOWS EVIDENCE OF NONCOMPLIANCE WITH
12 APPLICABLE STATE OR FEDERAL LAWS, RULES, REGULATIONS OR ORDERS OF THE
13 DEPARTMENT AND THE COMPANY, PERSON OR ENTITY FAILS TO UNDERTAKE CORRECTIVE
14 ACTION OR ELIMINATE THE NONCOMPLIANCE WITHIN THE COMPLIANCE DATE SET BY THE
15 DIRECTOR.

16 C. EXCEPT FOR THE DIRECTOR'S AUTHORITY UNDER SECTIONS 20-156, 20-157,
17 20-157.01, 20-160 AND 20-466, WITHIN THIRTY DAYS AFTER AN INSURER IS SERVED A
18 WRITTEN REQUEST BY CERTIFIED MAIL FOR DISCLOSURE OF AN INSURANCE COMPLIANCE
19 SELF-EVALUATIVE AUDIT DOCUMENT, THE INSURER MAY FILE WITH THE APPROPRIATE
20 COURT A PETITION REQUESTING AN IN CAMERA HEARING ON WHETHER THE INSURANCE
21 COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT OR PORTIONS OF THE DOCUMENT ARE
22 PRIVILEGED UNDER THIS SECTION OR SUBJECT TO DISCLOSURE. THE COURT HAS
23 JURISDICTION OVER A PETITION FILED BY A COMPANY UNDER THIS SUBSECTION
24 REQUESTING AN IN CAMERA HEARING ON WHETHER THE INSURANCE COMPLIANCE
25 SELF-EVALUATIVE AUDIT DOCUMENT OR PORTIONS OF THE DOCUMENT ARE PRIVILEGED OR
26 SUBJECT TO DISCLOSURE. THE COMPANY'S FAILURE TO FILE A PETITION WAIVES THE
27 PRIVILEGE FOR THIS REQUEST ONLY. IF A COMPANY FILES A PETITION FOR AN IN
28 CAMERA HEARING PURSUANT TO THIS SUBSECTION, THE FOLLOWING APPLY:

29 1. THE PETITION SHALL INCLUDE ALL OF THE INFORMATION SET FORTH IN
30 PARAGRAPH 4 OF THIS SUBSECTION.

31 2. THE COURT SHALL ISSUE AN ORDER SCHEDULING AN IN CAMERA HEARING TO
32 DETERMINE WHETHER THE INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT OR
33 PORTIONS OF THE DOCUMENT ARE PRIVILEGED UNDER THIS SECTION OR SUBJECT TO
34 DISCLOSURE.

35 3. AFTER AN IN CAMERA REVIEW, THE COURT MAY REQUIRE DISCLOSURE OF
36 MATERIAL FOR WHICH THE PRIVILEGE UNDER SUBSECTION A OF THIS SECTION IS
37 ASSERTED IF THE COURT DETERMINES, BASED ON ITS IN CAMERA REVIEW, THAT ANY ONE
38 OF THE CONDITIONS SET FORTH IN SUBSECTION B, PARAGRAPH 2 APPLIES TO A CIVIL
39 OR ADMINISTRATIVE PROCEEDING. ON MAKING THIS DETERMINATION, THE COURT MAY
40 ONLY COMPEL THE DISCLOSURE OF THOSE PORTIONS OF AN INSURANCE COMPLIANCE
41 SELF-EVALUATIVE AUDIT DOCUMENT THAT ARE RELEVANT TO ISSUES IN DISPUTE IN THE
42 UNDERLYING PROCEEDING. ANY COMPELLED DISCLOSURE WILL NOT BE CONSIDERED TO BE
43 A PUBLIC DOCUMENT OR BE DEEMED TO BE A WAIVER OF THE PRIVILEGE FOR ANY OTHER
44 CIVIL OR ADMINISTRATIVE PROCEEDING. A PARTY UNSUCCESSFULLY OPPOSING

1 DISCLOSURE MAY APPLY TO THE COURT FOR AN APPROPRIATE ORDER PROTECTING THE
2 DOCUMENT FROM FURTHER DISCLOSURE.

3 4. AT THE TIME OF FILING AN OBJECTION TO THE DISCLOSURE, THE COMPANY
4 SHALL PROVIDE ALL OF THE FOLLOWING INFORMATION:

5 (a) THE DATE OF THE INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT
6 DOCUMENT.

7 (b) THE IDENTITY OF THE ENTITY CONDUCTING THE AUDIT.

8 (c) THE GENERAL NATURE OF THE ACTIVITIES COVERED BY THE INSURANCE
9 COMPLIANCE AUDIT.

10 (d) AN IDENTIFICATION OF THE PORTIONS OF THE INSURANCE COMPLIANCE
11 SELF-EVALUATIVE AUDIT DOCUMENT FOR WHICH THE PRIVILEGE IS BEING ASSERTED.

12 D. A COMPANY ASSERTING THE INSURANCE COMPLIANCE SELF-EVALUATIVE
13 PRIVILEGE SET FORTH UNDER SUBSECTION A OF THIS SECTION HAS THE BURDEN OF
14 DEMONSTRATING THE APPLICABILITY OF THE PRIVILEGE. ONCE A COMPANY HAS
15 ESTABLISHED THE APPLICABILITY OF THE PRIVILEGE, THE PARTY SEEKING DISCLOSURE
16 UNDER SUBSECTION B, PARAGRAPH 2, SUBDIVISION (a) OF THIS SECTION HAS THE
17 BURDEN OF PROVING THAT THE PRIVILEGE IS ASSERTED FOR A FRAUDULENT PURPOSE.
18 THE DIRECTOR OR ATTORNEY GENERAL SEEKING DISCLOSURE UNDER SUBSECTION B,
19 PARAGRAPH 3 OF THIS SECTION HAS THE BURDEN OF PROVING THE ELEMENTS SET FORTH
20 IN SUBSECTION B, PARAGRAPH 3 OF THIS SECTION.

21 E. AT ANY TIME, THE PARTIES MAY STIPULATE IN PROCEEDINGS UNDER
22 SUBSECTION B OF THIS SECTION TO ENTRY OF AN ORDER DIRECTING THAT SPECIFIC
23 INFORMATION CONTAINED IN AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT
24 DOCUMENT IS OR IS NOT SUBJECT TO THE PRIVILEGE PROVIDED UNDER SUBSECTION A OF
25 THIS SECTION. THE STIPULATION MAY BE LIMITED TO THE INSTANT PROCEEDING AND,
26 ABSENT SPECIFIC LANGUAGE TO THE CONTRARY, IS NOT APPLICABLE TO ANY OTHER
27 PROCEEDING.

28 F. THIS SECTION OR THE RELEASE OF ANY SELF-EVALUATIVE AUDIT DOCUMENT
29 UNDER THIS SECTION DOES NOT LIMIT, WAIVE OR ABROGATE THE SCOPE OR NATURE OF
30 ANY STATUTORY OR COMMON LAW PRIVILEGE INCLUDING THE WORK PRODUCT DOCTRINE,
31 THE ATTORNEY-CLIENT PRIVILEGE OR THE SUBSEQUENT REMEDIAL MEASURES EXCLUSION.

32 Sec. 2. Applicability

33 The insurance compliance self-evaluative privilege established in title
34 20, chapter 23, Arizona Revised Statutes, as added by this act, applies to
35 all litigation and administrative proceedings pending on the effective date
36 of this act.

APPROVED BY THE GOVERNOR APRIL 22, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2014.

Passed the House March 6, 20 14

by the following vote: 34 Ayes,

23 Nays, 3 Not Voting



Speaker of the House

Pro Tempore

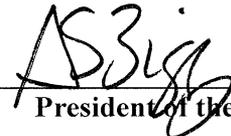
Cheryl Laube

Chief Clerk of the House

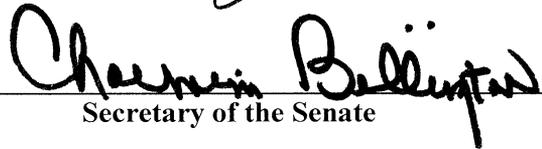
Passed the Senate April 16, 20 14

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting



President of the Senate



Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____ M.

Secretary of State

H.B. 2560

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 16, 20 14,

by the following vote: 55 Ayes,

2 Nays, 3 Not Voting


Speaker of the House


Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17th day of April, 20 14,

at 10:45 o'clock A M.


Secretary to the Governor

Approved this 22nd day of

April, 20 14,

at 3:41 o'clock P M.


Governor of Arizona

H.B. 2560

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23rd day of April, 20 14,

at 9:40 o'clock a M.


Secretary of State