

House Engrossed

**FILED**  
**MICHELE REAGAN**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fifty-second Legislature  
First Regular Session  
2015

CHAPTER 55

# **HOUSE BILL 2335**

AN ACT

AMENDING SECTIONS 20-3301 AND 20-3302, ARIZONA REVISED STATUTES; RELATING TO  
THE INSURANCE COMPLIANCE AUDIT PRIVILEGE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Heading change

3 The chapter heading of title 20, chapter 24, Arizona Revised Statutes,  
4 is changed from "INSURANCE COMPLIANCE SELF-EVALUATIVE PRIVILEGE" to  
5 "INSURANCE COMPLIANCE AUDIT PRIVILEGE".

6 Sec. 2. Section 20-3301, Arizona Revised Statutes, is amended to read:  
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.

45 2. Fraternal benefit society.

- 1           3. Health care services organization.
- 2           4. Hospital service corporation, medical service corporation, dental
- 3 service corporation, optometric service corporation or hospital, medical,
- 4 dental and optometric service corporation.
- 5           5. Prepaid dental plan organization.
- 6           6. Mechanical reimbursement reinsurer.
- 7           7. Prepaid legal plan.
- 8           8. Lloyd's association.
- 9           9. Service company as defined in this title.

10           Sec. 3. Section 20-3302, Arizona Revised Statutes, is amended to read:  
11           20-3302. Insurance compliance audit privilege; requirements

12           A. Except as provided in subsections ~~B~~ E and ~~C~~ F of this section, an  
13 insurance compliance ~~self-evaluative~~ audit document is privileged information  
14 and is not discoverable or admissible as evidence in any legal action in any  
15 civil or administrative proceeding other than a regulatory or legal action  
16 brought as part of the director's duties. This privilege is a matter of  
17 substantive law of this state and is not merely a procedural matter governing  
18 civil proceedings in the courts of this state. The following provisions  
19 apply to the privilege:

20           1. If any company, person or entity performs or directs the  
21 performance of an insurance compliance audit, an officer, employee or agent  
22 involved with the insurance compliance audit or any consultant who is hired  
23 for the purpose of performing the insurance compliance audit may not be  
24 examined in any civil or administrative proceeding as to the insurance  
25 compliance audit or any insurance compliance ~~self-evaluative~~ audit document.

26           2. In connection with examinations conducted under this title,  
27 ~~a company~~ AN INSURER may submit an insurance compliance ~~self-evaluative~~ audit  
28 document to the director or the director's designee as a confidential  
29 document without waiving the privilege set forth under this subsection to  
30 which the ~~company~~ INSURER would otherwise be entitled. Any ~~such report~~  
31 INSURANCE COMPLIANCE AUDIT DOCUMENT furnished to the director may not be  
32 provided BY THE DIRECTOR to any other person or entity and shall be accorded  
33 the same ~~confidentiality and other protections as provided for submitted~~  
34 ~~documents~~ PRIVILEGE PROVIDED UNDER THIS SUBSECTION.

35           3. If ~~a company~~ AN INSURER submits an insurance compliance  
36 ~~self-evaluative~~ audit document to the director, the document remains  
37 confidential and privileged and:

38           (a) IS subject to all applicable statutory or common law privileges,  
39 including the ~~self-critical~~ INSURANCE COMPLIANCE audit privilege, the work  
40 product doctrine, THE attorney-client privilege or the subsequent remedial  
41 measures exclusion.

42           (b) Is not subject to any further disclosure or production.

43           (c) IS not subject to title 39, chapter 1, article 2, not subject to  
44 subpoena and not subject to discovery or admissible in a private  
45 administrative proceeding ~~other than conducted by the director~~, or in a

1 private civil action, OTHER THAN IN AN ADMINISTRATIVE PROCEEDING CONDUCTED BY  
2 THE DIRECTOR.

3 4. Disclosure of an insurance compliance ~~self-evaluative~~ audit  
4 document to a governmental agency, whether voluntary or pursuant to  
5 compulsion of law, does not constitute a waiver of the privilege set forth  
6 under this subsection with respect to any other person or governmental  
7 agency.

8 ~~5. A company shall notify the director prior to the initiation of an~~  
9 ~~insurance compliance audit and, at the conclusion of the insurance compliance~~  
10 ~~audit, notify the director and make all insurance compliance audit documents~~  
11 ~~available to the director.~~ The director may obtain INSURANCE COMPLIANCE  
12 audit documents at any time.

13 ~~6.~~ The director may use the INSURANCE COMPLIANCE audit documents in  
14 the furtherance of any regulatory or legal action brought as part of the  
15 director's duties. The ~~company~~ INSURER shall comply with any compliance  
16 dates set by the director with respect to the INSURANCE COMPLIANCE audit.

17 ~~7.~~ 6. In order to facilitate identification, audit documents produced  
18 ~~for the~~ AS A RESULT OF AN INSURANCE COMPLIANCE audit shall be labeled  
19 "compliance report: privileged document".

20 7. A PERSON WHO CONDUCTS OR PARTICIPATES IN THE PREPARATION OF AN  
21 INSURANCE COMPLIANCE AUDIT AND WHO HAS OBSERVED PHYSICAL EVENTS MAY TESTIFY  
22 REGARDING THOSE EVENTS, BUT MAY NOT BE COMPELLED TO TESTIFY OR PRODUCE  
23 DOCUMENTS RELATED TO ANY PRIVILEGED PART OF THE INSURANCE COMPLIANCE AUDIT OR  
24 ANY INSURANCE COMPLIANCE AUDIT DOCUMENT.

25 8. THE INSURANCE COMPLIANCE AUDIT DOES NOT PREVENT THE DISCOVERY OF A  
26 DOCUMENT OR OTHER EVIDENCE, OTHERWISE DISCOVERABLE, THAT IS MAINTAINED BY AN  
27 INSURER AND THAT WAS NOT DEVELOPED FOR THE INSURANCE COMPLIANCE AUDIT  
28 PURSUANT TO THIS ARTICLE.

29 ~~8.~~ B. The privilege described in this article does not apply to:

30 ~~(a)~~ 1. A document, communication, data or report or other information  
31 required by the department or other regulatory agency to be collected,  
32 developed, maintained or reported under applicable law.

33 ~~(b)~~ 2. Information obtained by observation, sampling or monitoring by  
34 the department or other regulatory agency.

35 ~~(c)~~ 3. Information obtained from a source not involved in the  
36 preparation of the insurance compliance audit report.

37 ~~(d)~~ 4. Documents, communications, data, spreadsheets, reports,  
38 memoranda, drawings, photographs, exhibits, computer records, maps, charts,  
39 graphs, recordings and surveys kept or prepared in the ordinary course of  
40 business.

41 ~~9.~~ C. If an INSURANCE COMPLIANCE audit ~~report~~ DOCUMENT is obtained,  
42 reviewed or used in a criminal proceeding, the privilege described in this  
43 article is not waived or eliminated for any other purpose.

44 ~~10.~~ D. This article does not provide civil or criminal immunity to an  
45 organization or ~~to~~ affect any other privilege that may be available by law.

1       ~~11. A person who conducts or participates in the preparation of a~~  
2 ~~compliance audit and who has actually observed physical events may testify~~  
3 ~~regarding those events, but may not be compelled to testify or produce~~  
4 ~~documents related to any privileged part of the audit or any item listed in~~  
5 ~~section 20-3301, subsection A, paragraph 2.~~

6       ~~12. The audit shall not prevent the discovery of a document or other~~  
7 ~~evidence, otherwise discoverable, maintained by an insurer that was not~~  
8 ~~developed for the audit pursuant to this article.~~

9       ~~B. E.~~ E. The privilege set forth under subsection A of this section does  
10 not apply under the following circumstances:

11       1. To the extent that it is expressly waived by the ~~company~~ INSURER  
12 that prepared or caused to be prepared the insurance compliance  
13 ~~self-evaluative~~ audit document.

14       2. IF, AFTER AN IN CAMERA REVIEW, A COURT OF RECORD in a civil or  
15 administrative proceeding other than IN a regulatory or legal action brought  
16 as part of the director's duties, ~~a court of record, after an in camera~~  
17 ~~review, may require disclosure of material for which the privilege set forth~~  
18 ~~under subsection A of this section is asserted if the court determines one of~~  
19 ~~the following:~~

20           (a) The privilege is asserted for a fraudulent purpose.

21           (b) The ~~material~~ DOCUMENT is not subject to the privilege.

22           (c) The privileged ~~material~~ DOCUMENT shows evidence of noncompliance  
23 with applicable state or federal laws, rules, regulations or orders of the  
24 department and the ~~company~~ INSURER, person or entity fails to undertake  
25 corrective action or eliminate the noncompliance within the compliance date  
26 set by the director.

27       ~~C. F. Except for the director's authority under sections 20-156,~~  
28 ~~20-157, 20-157.01, 20-160 and 20-466, within thirty~~ WITHIN SIXTY days after  
29 an insurer is served a written request by certified mail for disclosure of an  
30 insurance compliance ~~self-evaluative~~ audit document, the insurer may file  
31 with the appropriate court a petition requesting an ~~in camera~~ A hearing on  
32 whether the insurance compliance ~~self-evaluative~~ audit document or portions  
33 of the document are privileged under this section or subject to disclosure.  
34 The court ~~has jurisdiction over a petition filed by a company under this~~  
35 ~~subsection requesting an in camera hearing on~~ SHALL CONDUCT AN IN CAMERA  
36 REVIEW OF THE INSURANCE COMPLIANCE AUDIT DOCUMENT AND SHALL DETERMINE whether  
37 ALL OR A PORTION OF the insurance compliance ~~self-evaluative~~ audit document  
38 ~~or portions of the document are~~ IS privileged or subject to disclosure. The  
39 ~~company's~~ INSURER'S failure to file a petition ~~waives~~ FOR A HEARING DOES NOT  
40 WAIVE the privilege ~~for this~~ IN CONNECTION WITH ANY OTHER request ~~only~~ FOR  
41 DISCLOSURE OF THE INSURANCE COMPLIANCE AUDIT DOCUMENT. If a ~~company~~ AN  
42 INSURER files a petition for an in camera hearing pursuant to this  
43 subsection, the following apply:

44       1. The petition shall include all of the information set forth in  
45 paragraph ~~4- 3~~ of this subsection.

1           2. ~~The court shall issue an order scheduling an in camera hearing to~~  
2 ~~determine whether the insurance compliance self-evaluative audit document or~~  
3 ~~portions of the document are privileged under this section or subject to~~  
4 ~~disclosure.~~

5           ~~3.~~ 2. After CONDUCTING an in camera review, the court may require  
6 disclosure of material for which the privilege under subsection A of this  
7 section is asserted ALL OR A PORTION OF THE INSURANCE COMPLIANCE AUDIT  
8 DOCUMENT if the court determines, based on its in camera review, that any one  
9 of the conditions set forth in subsection B- E, paragraph 2 OF THIS SECTION  
10 applies to a civil or administrative proceeding. On making this  
11 determination, the court may only compel the disclosure of those portions of  
12 an insurance compliance self-evaluative audit document that are relevant to  
13 issues in dispute in the underlying proceeding. Any compelled disclosure  
14 will not be considered to be a public document or be deemed to be a waiver of  
15 the privilege for any other civil or administrative proceeding. A party AN  
16 INSURER unsuccessfully opposing disclosure may apply to the court for an  
17 appropriate order protecting the document from further disclosure.

18           ~~4.~~ 3. At the time of filing an objection to the disclosure A REQUEST  
19 FOR A HEARING, the ~~company~~ INSURER shall provide all of the following  
20 information:

21           (a) The date of the insurance compliance self-evaluative audit  
22 document.

23           (b) The identity of the entity conducting the INSURANCE COMPLIANCE  
24 audit.

25           (c) The general nature of the activities covered by the insurance  
26 compliance audit.

27           (d) An identification of the portions of the insurance compliance  
28 self-evaluative audit document for which the privilege is being asserted.

29           ~~D. G. A company~~ AN INSURER asserting the insurance compliance  
30 self-evaluative privilege set forth under subsection A of this section has  
31 the burden of demonstrating the applicability of the privilege. Once  
32 a company AN INSURER has established the applicability of the privilege, the  
33 party seeking disclosure under subsection B, paragraph 2, subdivision (a) of  
34 this section has the burden of proving that the INAPPLICABILITY OF THE  
35 privilege. is asserted for a fraudulent purpose. The director or attorney  
36 general seeking disclosure under subsection B, paragraph 3 of this section  
37 has the burden of proving the elements set forth in subsection B, paragraph 3  
38 of this section.

39           ~~E. H.~~ H. At any time, the parties TO A CIVIL OR ADMINISTRATIVE  
40 PROCEEDING OTHER THAN A REGULATORY OR LEGAL ACTION BROUGHT AS A PART OF THE  
41 DIRECTOR'S DUTIES may stipulate in proceedings under subsection B of this  
42 section to entry of an order directing that specific information contained in  
43 an insurance compliance self-evaluative audit document is or is not subject  
44 to the privilege provided under subsection A of this section. The

1 stipulation may be limited to the instant proceeding and, absent specific  
2 language to the contrary, is not applicable to any other proceeding.

3 ~~F.~~ I. This section or the release of any self-evaluative INSURANCE  
4 COMPLIANCE audit document under this section does not limit, waive or  
5 abrogate the scope or nature of any statutory or common law privilege  
6 including the work product doctrine, the attorney-client privilege or the  
7 subsequent remedial measures exclusion.

8 J. THIS ARTICLE DOES NOT LIMIT THE DIRECTOR'S AUTHORITY UNDER SECTIONS  
9 20-156, 20-157, 20-157.01, 20-160 AND 20-466.

APPROVED BY THE GOVERNOR MARCH 23, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 23, 2015.

Passed the House February 17, 2015

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

Passed the Senate March 7, 2015

by the following vote: 98 Ayes,

0 Nays, 0 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

19th day of March, 20 15

at 8:35 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 23rd day of

March

at 11:15 o'clock A. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 23rd day of March, 20 15

at 4:34 o'clock P. M.

[Signature]  
Secretary of State

H.B. 2335