



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

March 24, 2020

The Honorable Katie Hobbs
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Dear Secretary Hobbs:

I am transmitting to you the following bills from the Fifty-fourth Legislature, 2nd Regular Session, which I signed on March 24th, 2020:

- H.B. 2494 internal revenue code; conformity (Toma)
- H.B. 2625 civics celebration day; civics education (Bolick)
- H.B. 2684 crisis management team; underperforming districts (Udall)
- S.B. 1049 advisory council on aging (Brophy-McGee)
- S.B. 1050 board of athletic training; continuation (Brophy-McGee)
- S.B. 1052 homeopathic board; continuation (Brophy-McGee)
- S.B. 1053 psychiatric security review board; continuation (Brophy-McGee)
- S.B. 1054 psychology board; continuation (Brophy-McGee)
- S.B. 1055 hard of hearing; commission; continuation (Brophy-McGee)
- S.B. 1072 state board of investment; continuation (Leach)
- S.B. 1128 joint legislative budget committee; continuation (Gowan)
- S.B. 1130 auditor general; continuation. (Gray)
- S.B. 1275 department of gaming; continuation (Ugenti-Rita)
- S.B. 1293 DOI; DFI; omnibus (Livingston)
- S.B. 1294 insurance and financial institutions; continuation (Mesnard)
- S.B. 1295 department of revenue; continuation (Mesnard)
- S.B. 1296 internal revenue code; conformity. (Mesnard)
- S.B. 1297 legislative council; continuation (Fann)
- S.B. 1331 self-insured employers; deviation continuation(Livingston)
- S.B. 1348 tax corrections act of 2020 (Mesnard)
- S.B. 1408 ombudsman-citizens aide; continuation; reports; assistants (Farnsworth, D.)
- S.B. 1399 reviser's technical corrections; 2020 (Gray)

Sincerely,

Douglas A. Ducey
Governor
State of Arizona

cc: Senate Secretary
Chief Clerk of the House of Representatives
Arizona News Service

Senate Engrossed
FILED
KATIE HOBBS
SECRETARY OF STATE

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

CHAPTER 37
SENATE BILL 1293

AN ACT

AMENDING SECTIONS 6-101, 6-110, 6-112, 6-113, 6-638, 6-852, 6-1403, 9-951, 9-952, 11-952.01, 11-981, 12-581, 12-593, 13-3885, 15-387 AND 20-101, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-101.01; AMENDING SECTIONS 20-102, 20-108.01, 20-141, 20-142, 20-144, 20-147, 20-157.01, 20-158, 20-167, 20-169, 20-183, 20-224, 20-224.03, 20-224.06, 20-224.07, 20-237, 20-261.03, 20-265, 20-285, 20-289, 20-336.03, 20-336.04, 20-340.01, 20-340.04, 20-367 AND 20-398, ARIZONA REVISED STATUTES; REPEALING SECTION 20-400.08, ARIZONA REVISED STATUTES; AMENDING SECTIONS 20-400.10, 20-401.03, 20-401.04, 20-401.05, 20-403, 20-410, 20-422, 20-423, 20-466, 20-481.08, 20-481.25, 20-485, 20-485.09, 20-489.01, 20-612, 20-613, 20-624, 20-625, 20-662, 20-663, 20-671, 20-678, 20-683, 20-684, 20-706, 20-713, 20-714, 20-718, 20-724, 20-727, 20-729, 20-730, 20-731, 20-733, 20-735, 20-776, 20-822, 20-824, 20-835, 20-873, 20-884, 20-885, 20-893, 20-1008, 20-1051, 20-1057, 20-1098.17, 20-1098.23, 20-1379, 20-1556, 20-1603, 20-1634, 20-1652, 20-1673, 20-1691, 20-1691.04, 20-1691.06, 20-1691.08, 20-1691.11, 20-1691.12, 20-1741, 20-1742, 20-1801, 20-1808, 20-1812 AND 20-2202, ARIZONA REVISED STATUTES; REPEALING SECTION 20-2305, ARIZONA REVISED STATUTES; AMENDING SECTIONS 20-2306, 20-2310, 20-2318, 20-2402, 20-2501, 20-2533, 20-2541, 20-2802 AND 20-2901, ARIZONA REVISED STATUTES; REPEALING SECTION 20-2905, ARIZONA REVISED STATUTES; AMENDING SECTIONS 20-3251, 20-3302, 20-3459, 23-722.04, 23-901, 23-904, 23-930, 23-950, 23-961, 23-1091, 25-529, 28-667, 28-2166, 28-4007, 28-4008, 28-4038, 28-4133, 28-6923, 28-7369, 28-7704, 29-609, 29-3108, 32-1004, 32-1134, 33-1003, 33-1004, 33-1062, 33-1076, 34-201, 34-222, 34-608, 34-610, 35-457, 35-762, 36-2905, 36-2906.01, 36-2944.01 AND 36-2999.51.

ARIZONA REVISED STATUTES; AMENDING SECTION 38-871, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2019, CHAPTER 252, SECTION 48; AMENDING SECTIONS 41-621, 41-621.01, 41-1009, 41-1525, 41-2574, 41-3451, 42-1102, 43-1183, 43-1504, 44-288, 44-1273, 44-3152, 44-6951, 48-586, 48-924, 48-2054 AND 48-2842, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 6-101, Arizona Revised Statutes, is amended to
3 read:

4 6-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Automated teller machine" means an automated device that is
7 established by a bank, savings and loan association or credit union and
8 that facilitates customer-bank communications activities, including taking
9 deposits and disbursing cash drawn against a customer's deposit account or
10 a customer's preapproved loan account, at a location separate from the
11 home office or a branch.

12 2. "Bank" means a corporation that holds a banking permit issued
13 pursuant to chapter 2 of this title.

14 3. "Banking office" means any place of business of the bank at
15 which deposits are received, checks are paid or money is loaned but does
16 not include the premises used for computer operations, proofing, record
17 keeping, accounting, storage, maintenance or other administrative or
18 service functions.

19 4. "Branch" means any banking office other than the principal
20 banking office.

21 5. "Department" means the department of insurance and financial
22 institutions.

23 6. "DEPUTY DIRECTOR" OR "SUPERINTENDENT" MEANS THE DEPUTY DIRECTOR
24 OF THE FINANCIAL INSTITUTIONS DIVISION OF THE DEPARTMENT.

25 ~~6.~~ 7. "Director" has the same meaning prescribed in section
26 20-102.

27 ~~7.~~ 8. "Division" means the financial institutions division within
28 the department.

29 ~~8.~~ 9. "Enterprise" means any person under the jurisdiction of the
30 department other than a financial institution.

31 ~~9.~~ 10. "Federal deposit insurance corporation" includes any
32 successor to the corporation or other agency or instrumentality of the
33 United States that undertakes to discharge the purposes of the
34 corporation.

35 ~~10.~~ 11. "Financial institution" means banks, trust companies,
36 savings and loan associations, credit unions, consumer lenders,
37 international banking facilities and financial institution holding
38 companies under the jurisdiction of the department.

39 ~~11.~~ 12. "Home state" means the state that has granted the bank its
40 charter, permit or license to operate.

41 ~~12.~~ 13. "Host state" means the state in which a financial
42 institution is doing business and not the state that has granted the bank
43 its charter, permit or license to operate.

1 ~~13.~~ 14. "In-state financial institution" means a state or federal
2 bank, savings bank, savings and loan association or holding company with
3 its home office located in this state.

4 ~~14.~~ 15. "International banking facility" means a facility that is
5 represented by a set of asset and liability accounts segregated on the
6 books and records of a commercial bank, the principal office of which is
7 located in this state, and that is incorporated and doing business under
8 the laws of the United States or of this state, a United States branch or
9 agency of a foreign bank, an edge corporation organized under section
10 25(a) of the federal reserve act (12 United States Code sections 611
11 through 631) or an agreement corporation having an agreement or
12 undertaking with the board of governors of the federal reserve system
13 under section 25 of the federal reserve act (12 United States Code
14 sections 601 through 604(a)) that includes only international banking
15 facility time deposits and international banking facility extensions of
16 credit as defined in 12 Code of Federal Regulations part 204.

17 ~~15.~~ 16. "National credit union administration" includes any
18 successor to the organization or other agency or instrumentality of the
19 United States that undertakes to discharge the purposes of the
20 organization.

21 ~~16.~~ 17. "Out-of-state bank" means a bank, savings bank or savings
22 and loan association that is approved by the superintendent pursuant to
23 section 6-322 and that has a charter, a permit or any other license to
24 operate that is issued by a state other than this state.

25 ~~17.~~ 18. "Out-of-state financial institution" means a state or
26 federal bank, savings bank, savings and loan association or holding
27 company with its home office in a state other than this state.

28 ~~18. "Superintendent" means the superintendent of the financial
29 institutions division of the department.~~

30 19. "Title" includes this title, title 32, chapters 9 and 36 and
31 title 44, chapter 2.1.

32 Sec. 2. Section 6-110, Arizona Revised Statutes, is amended to
33 read:

34 6-110. Financial institutions division; superintendent

35 The financial institutions division is established in the
36 department. The director shall appoint a ~~superintendent~~ DEPUTY DIRECTOR
37 OF THE FINANCIAL INSTITUTIONS DIVISION OF THE DEPARTMENT to assist the
38 director with the execution of the laws of this state relating to
39 financial institutions and enterprises. THE DEPUTY DIRECTOR SERVES AT THE
40 PLEASURE OF THE DIRECTOR AND REPORTS DIRECTLY TO THE DIRECTOR.

41 Sec. 3. Section 6-112, Arizona Revised Statutes, is amended to
42 read:

43 6-112. Assistant director; examiners; personnel

44 Subject to title 41, chapter 4, article 4, the director:

1 1. Shall appoint ~~a deputy superintendent~~ AN ASSISTANT DIRECTOR who
2 shall have the power and perform the duties of the ~~superintendent~~ DEPUTY
3 DIRECTOR OF THE FINANCIAL INSTITUTIONS DIVISION OF THE DEPARTMENT. The
4 ~~deputy superintendent~~ ASSISTANT DIRECTOR shall hold ~~such~~ THE appointment
5 at the will and pleasure of the director.

6 2. May appoint ~~such~~ OTHER assistants as the director deems
7 necessary whose powers are limited to the powers, duties or functions set
8 forth in the appointment.

9 3. Shall appoint ~~such~~ examiners and other personnel as necessary.

10 Sec. 4. Section 6-113, Arizona Revised Statutes, is amended to
11 read:

12 6-113. Acts prohibited; officers; employees

13 A. The director, the ~~superintendent~~ DEPUTY DIRECTOR, the ~~deputy~~
14 ~~superintendent~~ ASSISTANT DIRECTOR and any personnel of the department may
15 not do any of the following with respect to any financial institution or
16 enterprise under the jurisdiction of the department:

17 1. Be indebted, directly or indirectly, as borrower, accommodation
18 endorser, surety or guarantor, to any ~~such~~ financial institution or
19 enterprise unless the indebtedness was contracted before becoming employed
20 by the department and is fully disclosed to the department, except that an
21 employee of the department, other than the director, the ~~superintendent~~
22 DEPUTY DIRECTOR or the ~~deputy superintendent~~ ASSISTANT DIRECTOR, may
23 become so indebted if the indebtedness is both:

24 (a) Incurred on terms not more favorable than those available to
25 the general public.

26 (b) Fully disclosed to and approved by the director before funding,
27 including the following information:

28 (i) The date of the indebtedness.

29 (ii) The amount.

30 (iii) The interest rate.

31 (iv) Other obligors.

32 (v) Security.

33 (vi) The purpose for which the monies are to be used. The borrower
34 shall not participate in any examination of the lender conducted by the
35 department.

36 2. Be an officer, director or employee of any ~~such~~ financial
37 institution or enterprise.

38 3. Own or deal in, directly or indirectly, the shares or
39 obligations of any ~~such~~ financial institution or enterprise.

40 4. Be interested in, directly or indirectly, or receive from any
41 ~~such~~ financial institution or enterprise, or any officer, director or
42 employee of the financial institution or enterprise, any salary, fee,
43 compensation or other valuable thing by way of gift, credit, compensation
44 for services or otherwise.

1 5. Be interested in or engage in the negotiation of any loan to,
2 obligation of, or accommodation for another person to or with any ~~such~~
3 financial institution or enterprise.

4 B. Notwithstanding ~~the provisions of subsection A of this section,~~
5 the director, the ~~superintendent~~ DEPUTY DIRECTOR, the ~~deputy~~
6 ~~superintendent~~ ASSISTANT DIRECTOR and any personnel of the department may:

7 1. Maintain demand, savings, time, share and trust accounts in any
8 financial institution.

9 2. Become a beneficiary of any trust or estate administered by any
10 fiduciary under the jurisdiction of the division.

11 3. Become indebted to and own and deal in shares and obligations of
12 national banks, federal savings and loan associations and federal credit
13 unions.

14 Sec. 5. Section 6-638, Arizona Revised Statutes, is amended to
15 read:

16 6-638. Other insurance

17 A. A licensee who is licensed to sell life insurance pursuant to
18 title 20 may sell and include in the principal amount of a consumer lender
19 loan the cost of the premium for life insurance that is not for credit if
20 all of the following apply:

21 1. The insurance policy or certificate is approved by the director
22 ~~of the department of insurance.~~

23 2. The purchase of the insurance is not a condition of the consumer
24 lender loan.

25 3. The consumer signs an application for the insurance that is
26 separate from the consumer lender loan application.

27 4. The licensee does not offer or discuss with the consumer the
28 option of life insurance until after the consumer lender loan application
29 is completed and the consumer lender loan is approved.

30 B. A licensee who is licensed to sell disability insurance pursuant
31 to title 20 may sell and include in the principal amount of the consumer
32 lender loan the cost of the premium for accidental death and dismemberment
33 insurance or disability income protection insurance, or both, if all of
34 the following apply:

35 1. The insurance policy or certificate is approved by the director
36 ~~of the department of insurance.~~

37 2. The purchase of the insurance is not a condition of the consumer
38 lender loan.

39 3. The consumer signs an application for the insurance that is
40 separate from the consumer lender loan application.

41 4. The licensee does not offer or discuss with the consumer the
42 option of accidental death and dismemberment insurance or disability
43 income protection insurance until after the consumer lender loan
44 application is completed and the consumer lender loan is approved.

1 C. Any insurance purchased by the consumer pursuant to this section
2 is optional and the licensee shall disclose in writing to the consumer
3 that the insurance is optional.

4 D. The consumer may cancel the insurance for any reason at any time
5 within thirty days after the date of purchase and the consumer shall
6 receive a full refund of the premium within five days ~~of~~ AFTER the date of
7 cancellation. If the consumer cancels the insurance after thirty days
8 from the date of purchase, the consumer shall receive a refund of the
9 unearned premium in accordance with the insurance policy. In the event
10 the consumer cancels the insurance, the licensee shall give the consumer
11 the amount of any refund of premium or shall credit the consumer's lender
12 loan at the option of the consumer. For the purposes of this subsection,
13 the date of cancellation is defined as the date the licensee receives the
14 receipt for the notice of cancellation for the insurance policy.

15 E. If the consumer decides to cancel the policy, the consumer shall
16 either:

17 1. Return the policy to the insurer or to the licensee at the
18 licensee's place of business.

19 2. Provide written notice of cancellation to the insurer or to the
20 licensee at the licensee's place of business.

21 F. The licensee shall give the consumer a written copy of the
22 provisions of this section.

23 Sec. 6. Section 6-852, Arizona Revised Statutes, is amended to
24 read:

25 6-852. Exemptions and allowed activities

26 A. For the purposes of this article, a person does not engage in
27 the trust business by:

28 1. Rendering services as an attorney-at-law in the performance of
29 ~~his~~ THE PERSON'S duties as such.

30 2. Acting as trustee under a deed of trust made only as security
31 for the payment of money or for the performance of another act.

32 3. Acting as a trustee in bankruptcy or as a receiver.

33 4. Holding trusts of real estate for the primary purpose of
34 subdivision, development or sale, or to facilitate any business
35 transaction with respect to such real estate, provided such person is not
36 regularly engaged in the business of acting as a trustee for such trusts.

37 5. Engaging in the business of a debt management company to the
38 extent of the activities for which it is licensed under chapter 6 of this
39 title.

40 6. Engaging in the business of an escrow agent to the extent of the
41 activities for which it is licensed under chapter 7 of this title.

42 7. Holding assets as trustee of trusts created for charitable
43 purposes.

44 8. Receiving rents and proceeds of sale as a licensed real estate
45 broker on behalf of a principal.

1 9. Engaging in securities transactions as a dealer or salesman
2 registered under title 44, chapter 12.

3 10. Acting as a guardian, conservator, special conservator, trustee
4 or personal representative pursuant to a court order under title 14 or 36.

5 B. Insurance companies licensed to write life insurance policies
6 and annuity or endowment contracts in ~~the~~ THIS state ~~of Arizona~~ and
7 subject to regulation and control of the director ~~of insurance~~ are
8 excluded from the provisions of this chapter, except the provisions of
9 section 6-860.

10 C. A bank, savings and loan association or credit union not
11 exercising trust powers may act as a trustee or custodian of individual
12 retirement accounts established pursuant to the employees retirement
13 income security act of 1974 or self-employed retirement plans established
14 pursuant to the self-employed individuals tax retirement act of 1962
15 without the prior written consent of the ~~superintendent~~ DEPUTY DIRECTOR if
16 both:

17 1. The duties of the bank, savings and loan association or credit
18 union as trustee or custodian are essentially custodial or ministerial in
19 nature.

20 2. The bank, savings and loan association or credit union is
21 required to invest the funds from such plans only in its own time or
22 savings deposits or shares.

23 Sec. 7. Section 6-1403, Arizona Revised Statutes, is amended to
24 read:

25 6-1403. Exemptions

26 A. The licensing requirements of this article do not apply to:

27 1. Any savings and loan association, bank, savings bank, trust
28 company, consumer lender or credit union authorized to do business in this
29 state.

30 2. Any agent or broker WHO IS licensed by the department ~~of~~
31 ~~insurance~~ AND who allows an insured to pay premiums on policies written by
32 the agent or broker in installments if the agent or broker receives no
33 interest or other fee, except that an agent or broker may collect a
34 service charge of not more than five ~~per cent~~ PERCENT of the total premium
35 amount and a delinquency charge as provided in section 6-1413.

36 3. Any person who purchases or otherwise acquires premium finance
37 agreements from a licensee if the licensee retains the right to service
38 the agreements and to collect payments due under the agreements and
39 remains responsible for the premium finance agreement being handled in
40 compliance with this article.

41 4. Any insurer authorized to transact insurance in this state in
42 connection with the issuance of premium finance agreements relating to
43 commercial insurance policies issued by the insurer.

1 B. The exemption from licensing as provided in subsection A of this
2 section does not authorize the financing of insurance premiums without
3 compliance with the other requirements of this article.

4 Sec. 8. Section 9-951, Arizona Revised Statutes, is amended to
5 read:

6 9-951. Disposition of fire insurance premium tax proceeds;
7 composition of fund

8 A. The proceeds of the annual tax provided by law on the gross
9 amount of all premiums received on policies and contracts of fire
10 insurance covering property within this state, after deducting
11 cancellations, return premiums, dividends and the amount received as
12 reinsurance on business in this state, are appropriated and set aside for
13 distribution to cities and towns and legally organized fire districts that
14 procure the services of private fire companies and for the payment of
15 benefits pursuant to this article, article 4 of this chapter or title 38,
16 chapter 5, article 4.

17 B. Not later than April 30 OF EACH YEAR, the office of the state
18 fire marshal shall certify to the state treasurer the incorporated cities
19 and towns that have organized fire departments, the incorporated cities
20 and towns and legally organized fire districts that procure the services
21 of a private fire company and the areas served by legally organized fire
22 districts, and the department of insurance AND FINANCIAL INSTITUTIONS
23 shall certify to the state treasurer the respective amounts of tax on fire
24 premiums paid in the previous year for properties located in this state.
25 Not later than June 15 OF EACH YEAR, the department of revenue shall
26 certify to the state treasurer the full cash value of the real property
27 and improvements for the previous year in each incorporated city and town
28 and legally organized fire district that procures the services of a
29 private fire company and in each area served by a fire department or a
30 legally organized fire district. The total amount of the tax proceeds
31 shall then be prorated among the several incorporated cities and towns and
32 legally organized fire districts in proportion to the full cash value of
33 the real property and improvements in each incorporated city and town and
34 legally organized fire district that procures the services of a private
35 fire company and in each area served by a department or a legally
36 organized fire district to the total full cash value of all incorporated
37 cities and towns and legally organized fire districts that procure the
38 services of a private fire company and incorporated cities and towns that
39 have a fire department and legally organized fire districts in this state.

40 C. Each incorporated city or town that has an organized fire
41 department and each legally organized volunteer fire district shall deduct
42 five percent from the salaries or compensation of its firefighters and add
43 a like amount from its general revenues. The employer or the employee may
44 add a contribution greater than that specified in this subsection to the
45 fire fighters' relief and pension fund. The total of the two amounts

1 shall be paid each month into the fire fighters' relief and pension fund.
2 The treasurer of each board shall keep a record of the salary deductions.
3 If a firefighter dies under circumstances that do not entitle the
4 firefighter's dependents to a benefit from the fire fighters' relief and
5 pension fund, or if the firefighter becomes separated from the service
6 voluntarily or involuntarily without having become eligible for retirement
7 benefits under the fire fighters' relief and pension fund, all deductions
8 previously made from the firefighter's salary under this article, plus
9 interest as determined by the board, are payable to the firefighter's
10 beneficiary in the event of the firefighter's death, or otherwise to the
11 firefighter.

12 D. Payroll deductions made under subsection C of this section, plus
13 any additional sums the board of trustees may add, shall be set aside in a
14 permanent reserve fund, the income of which but no part of the
15 principal, shall be used to pay retirement benefits or relief, but in
16 order to pay the refunds provided for in subsection C of this section,
17 that portion of the principal that accrues from salary deductions may be
18 drawn on when necessary.

19 E. For the purposes of this section and section 9-952, full cash
20 value of real property and improvements for the previous year with respect
21 to each incorporated city and town that procures the services of a private
22 fire company are limited to thirty percent of the amount certified by the
23 department of revenue and the percentage shall be utilized in computing
24 the entitlement of an incorporated city or town that procures the services
25 of a private fire company.

26 Sec. 9. Section 9-952, Arizona Revised Statutes, is amended to
27 read:

28 9-952. Disposition of fire insurance premium tax

29 Not later than July 31 of each year, the state treasurer, using the
30 information provided by the cities and towns and legally organized fire
31 districts, the office of the state fire marshal, the department of
32 insurance AND FINANCIAL INSTITUTIONS and the department of revenue as
33 provided in section 9-951, subsection B, shall distribute the fire
34 insurance premium tax to the respective incorporated cities and towns and
35 legally organized fire districts in proportion to the full cash value of
36 the real property and improvements in each incorporated city and town and
37 legally organized fire district that procures the services of a private
38 fire company and in each area served by a fire department or legally
39 organized fire district. The warrant issued by the state treasurer to
40 incorporated cities and towns and legally organized fire districts having
41 organized fire departments and to legally organized fire districts shall
42 be identified as "fire fighters' relief and pension fund". The warrant
43 issued by the state treasurer to an incorporated city or town or legally
44 organized fire district procuring the services of a private fire company
45 that has a pension plan covering firefighting personnel shall be

1 identified for deposit in the municipality's general fund or, in the case
2 of a fire district, in the fire fighters' relief and pension fund.

3 Sec. 10. Section 11-952.01, Arizona Revised Statutes, is amended to
4 read:

5 11-952.01. Public agency pooling of property, fidelity,
6 liability, workers' compensation, life, health,
7 accident and disability coverage; exemptions;
8 board of trustees; contract; termination; audit;
9 insolvency; definition

10 A. In addition to other authority granted pursuant to this title,
11 two or more public agencies may enter into contracts or agreements
12 pursuant to this article for the joint purchasing of insurance, including
13 prepaid legal insurance or reinsurance, or to pool retention of their
14 risks for property, fidelity and liability losses and to provide for the
15 payment of such property loss, fidelity loss, prepaid legal insurance or
16 claim of liability made against any member of the pool, including any
17 elected or appointed official, officer or employee covered by the pool, on
18 a cooperative or contract basis with one another or may jointly form a
19 nonprofit corporation or enter into a trust agreement to carry out this
20 section in their behalf directly or by contract with a private party.

21 B. In addition to other authority granted pursuant to this title,
22 two or more public agencies may enter into contracts or agreements
23 pursuant to this article to establish a workers' compensation pool to
24 provide for the payment of workers' compensation claims pursuant to title
25 23, chapter 6 on a cooperative or contract basis with one another or may
26 jointly form a nonprofit corporation or enter into a trust agreement to
27 carry out this section in their behalf directly or by contract with a
28 private party. A workers' compensation pool established pursuant to this
29 subsection may provide coverage for workers' compensation, employers'
30 liability and occupational disease claims. A workers' compensation pool
31 is subject to approval as a self-insurer by the industrial commission OF
32 ARIZONA pursuant to section 23-961, subsection A, paragraph 2 and is
33 subject to title 23, chapter 6 and rules adopted pursuant to that chapter
34 in addition to the requirements of this section. The industrial
35 commission OF ARIZONA, by rule, resolution or order, may adopt
36 requirements for the administration of a workers' compensation pool under
37 this subsection, including separation or commingling of funds, accounting,
38 auditing, reporting, actuarial standards and procedures.

39 C. In addition to other authority granted pursuant to this title,
40 two or more public agencies may enter into contracts or agreements for the
41 joint purchase of life insurance, disability insurance, accident insurance
42 or health benefits plan insurance or may pool retention of their risks of
43 loss for life, disability, health or accident claims made against any
44 public agency member of the pool or to jointly provide the health and
45 medical services authorized in section 36-2907. Public agencies may

1 establish pools for the purposes of this subsection by any of the
2 following methods:

- 3 1. On a cooperative or contract basis.
- 4 2. By the formation of a nonprofit corporation.
- 5 3. By contracts or intergovernmental agreements with the Arizona
6 health care cost containment system administration.
- 7 4. By the execution of a trust agreement directly by the agencies
8 or by contracting with a third party.

9 D. In addition to other authority granted pursuant to this title,
10 two or more public agencies may enter into contracts or agreements
11 pursuant to this article for the joint purchasing of insurance for
12 property, liability or workers' compensation losses or to pool retention
13 of their risks for property and liability loss to cover the public agency,
14 its elected officials and employees and the contractor and subcontractor
15 of every tier engaged in the performance of a construction project for the
16 public agency. Public agencies may establish pools for the purpose
17 PURPOSES of this subsection by any of the following methods:

- 18 1. On a cooperative or contract basis.
- 19 2. By the formation of a nonprofit corporation.
- 20 3. By the execution of a trust agreement directly by the agencies
21 or by contracting with a third party.

22 E. Section 10-11301 does not apply to nonprofit corporations formed
23 pursuant to this section.

24 F. Title 41, chapter 23 does not apply to the procurement of
25 insurance or reinsurance, or to the procurement of the services provided
26 for in subsection K, paragraph 8 of this section, by any pool established
27 pursuant to this section.

28 G. Title 43 does not apply to any pool established pursuant to this
29 section. Any pool established pursuant to this section is exempt from
30 taxation under title 43.

31 H. Each pool shall be operated by a board of trustees consisting of
32 at least three persons who are elected officials or employees of public
33 entities within this state. The board of trustees shall notify the
34 director of the department of insurance AND FINANCIAL INSTITUTIONS of the
35 existence of the pool and shall file with the director and with the
36 attorney general a copy of the intergovernmental agreement or contract.
37 The board of trustees of each group shall do all of the following:

- 38 1. Establish terms and conditions of coverage within the pool,
39 including exclusions of coverage.
- 40 2. Ensure that all claims are paid promptly.
- 41 3. Take all necessary precautions to safeguard the assets of the
42 group.
- 43 4. Maintain minutes of its meetings.
- 44 5. Designate an administrator to carry out the policies established
45 by the board of trustees and to provide day-to-day management of the group

1 and delineate in the written minutes of its meetings the areas of
2 authority it delegates to the administrator.

3 6. If the pool is a workers' compensation pool, file a copy of the
4 agreement with the director of the industrial commission OF ARIZONA.

5 I. If the pool includes private, nonprofit educational
6 institutions, each private, nonprofit educational institution shall post a
7 bond, cash deposit or other comparable financial security in an amount
8 that is equal to at least one and one-half times the amount of the
9 private, nonprofit educational institution's annual premium to ensure
10 payment of the school's or institution's legal liabilities and other
11 obligations if the pool is determined to be insolvent or is otherwise
12 found to be unable to discharge the pool's legal liabilities and other
13 obligations pursuant to subsection N of this section.

14 J. The board of trustees shall not:

15 1. Extend credit to individual members for payment of a premium,
16 except pursuant to payment plans established by the board.

17 2. Borrow any monies from the group or in the name of the group
18 except in the ordinary course of business.

19 K. In addition to the requirements of section 11-952, a contract or
20 agreement made pursuant to this section shall contain the following:

21 1. A provision for a system or program of loss control.

22 2. A provision for termination of membership, including either:

23 (a) Cancellation of individual members of the pool by the pool.

24 (b) Election by an individual member of the pool to terminate its
25 participation.

26 3. A provision requiring the pool to pay all claims for which each
27 member incurs liability during each member's period of membership.

28 4. A provision stating that each member is not relieved of its
29 liability incurred during the member's period of membership except through
30 the payment of losses by the pool or by the member.

31 5. A provision for the maintenance of claim reserves equal to known
32 incurred losses and an estimate of incurred but not reported claims.

33 6. A provision for a final accounting and settlement of the
34 obligations of or refunds to a terminating member to occur when all
35 incurred claims are concluded, settled or paid.

36 7. A provision that the pool may establish offices where necessary
37 in this state and employ necessary staff to carry out the purposes of the
38 pool.

39 8. A provision that the pool may retain legal counsel, actuaries,
40 auditors, engineers, private consultants and advisors.

41 9. A provision that the pool may make and alter bylaws and rules
42 pertaining to the exercise of its purpose and powers.

43 10. A provision that the pool may purchase, lease or rent real and
44 personal property it deems necessary.

1 11. A provision that the pool may enter into financial services
2 agreements with banks and other financial institutions, that it may issue
3 checks in its own name and that it may invest its monies in equity
4 securities, mutual funds and investment funds registered with the United
5 States securities and exchange commission, debt obligations and any
6 eligible investment ~~permitted~~ ALLOWED by section 35-323.

7 L. A pool or a terminating member shall provide at least ninety
8 days' written notice of the termination or cancellation. A workers'
9 compensation pool shall notify the industrial commission OF ARIZONA of the
10 termination or cancellation of a member thirty days before the termination
11 or cancellation of the member.

12 M. The pool shall be audited annually at the expense of the pool by
13 a certified public accountant, with a copy of the report submitted to the
14 governing body or chief executive officer of each member of the pool and
15 to the director of the department of insurance AND FINANCIAL INSTITUTIONS.
16 The board of trustees of the pool shall obtain an appropriate actuarial
17 evaluation of the claim reserves of the pool, including an estimate of the
18 incurred but not reported claims. The department of insurance AND
19 FINANCIAL INSTITUTIONS shall examine each public agency pool once every
20 five years. The director of the department of insurance AND FINANCIAL
21 INSTITUTIONS may examine a public agency pool sooner than five years from
22 the preceding examination if the director has reason to believe that the
23 pool is insolvent. The costs of any examination shall be paid by the pool
24 subject to the examination.

25 N. If, as a result of the annual audit or an examination by the
26 director of the department of insurance AND FINANCIAL INSTITUTIONS, it
27 appears that the assets of the pool are insufficient to enable the pool to
28 discharge its legal liabilities and other obligations, the director of the
29 department of insurance AND FINANCIAL INSTITUTIONS shall notify the
30 administrator and the board of trustees of the pool of the deficiency and
31 the director's list of recommendations to abate the deficiency, including
32 a recommendation not to add any new members until the deficiency is
33 abated. If the pool fails to comply with the recommendations within sixty
34 days after the date of the notice, the director shall notify the chief
35 executive officer or the governing bodies, if any, of the members of the
36 pool, the governor, the president of the senate and the speaker of the
37 house of representatives that the pool has failed to comply with the
38 recommendations of the director.

39 O. If a pool is determined to be insolvent or is otherwise found to
40 be unable to discharge its legal liabilities and other obligations, each
41 agreement or contract shall provide that the members of the pool shall be
42 assessed on a pro rata basis as calculated by the amount of each member's
43 annual contribution in order to satisfy the amount of deficiency. The
44 assessment shall not exceed the amount of each member's annual
45 contribution to the pool.

1 P. A pool established pursuant to this section may make available
2 programs providing for insurance coverages described in subsections A, B
3 and C of this section to those charter schools governed by section 15-183,
4 subsection M and, except for a workers' compensation pool, to private,
5 nonprofit educational institutions.

6 Q. In addition to the authority set forth in this title, a pool
7 established pursuant to this section may invest public monies on behalf of
8 pool members, but any such investments shall be limited to those ~~permitted~~
9 ALLOWED by section 35-323, except as provided in section 15-1225,
10 subsection G. A pool established pursuant to this section may not invest
11 monies that are required by law to be deposited with a county treasurer.

12 R. A pool established pursuant to this section, by the adoption of
13 a resolution of continuing effect, may authorize and request the state
14 treasurer to invest funds for the pool pursuant to section 35-326.

15 S. A pool established pursuant to this section may offer services
16 on behalf of pool participants that participate in the unemployment
17 insurance program administered by the department of economic security,
18 including the option to make payments in lieu of contributions as
19 ~~permitted~~ ALLOWED by sections 23-750 and 23-751. The pool is deemed an
20 agent of the pool participants as employers for the purposes of title 23,
21 chapter 4.

22 T. For the purposes of this section, "health benefits plan" means a
23 hospital or medical service corporation policy or certificate, a health
24 care services corporation contract, a multiple employer welfare
25 arrangement or any other arrangement under which health and medical
26 benefits and services are provided to two or more persons.

27 Sec. 11. Section 11-981, Arizona Revised Statutes, is amended to
28 read:

29 11-981. Payment of benefits, losses and claims; establishment
30 of trust funds

31 A. In addition to authority granted pursuant to other provisions of
32 law or city charter, any city, town, county, any special health care
33 district organized pursuant to title 48, chapter 31 or other political
34 subdivision that is located in a county with a population of more than one
35 million persons and whose governing body is composed of members of a
36 county board of supervisors may procure insurance from any insurer
37 authorized by the director of the department of insurance AND FINANCIAL
38 INSTITUTIONS or may establish a self-insurance program for the management
39 and administration of a system for direct payment of benefits, losses or
40 claims or any combination of insurance and direct payments, and including
41 risk management consultation, to provide:

42 1. Health, accident, life or disability benefits for employees and
43 officers of the city, town, county, any special health care district
44 organized pursuant to title 48, chapter 31 or other political subdivision
45 that is located in a county with a population of more than one million

1 persons and whose governing body is composed of members of a county board
2 of supervisors and their dependents.

3 2. Payment of any property loss sustained or lawful claim of
4 liability or fortuitous loss made against the city, town, county, any
5 special health care district organized pursuant to title 48, chapter 31 or
6 other political subdivision that is located in a county with a population
7 of more than one million persons and whose governing body is composed of
8 members of a county board of supervisors or its elected or appointed
9 officials, employees or officers if such elected or appointed officials,
10 employees or officers are acting within the scope of employment or
11 authority.

12 B. If any city, town, county, any special health care district
13 organized pursuant to title 48, chapter 31 or other political subdivision
14 that is located in a county with a population of more than one million
15 persons and whose governing body is composed of members of a county board
16 of supervisors establishes a self-insurance program for the management and
17 administration of a system for direct payment of benefits, losses or
18 claims pursuant to subsection A, the governing body of such city, town,
19 county, any special health care district organized pursuant to title 48,
20 chapter 31 or other political subdivision that is located in a county with
21 a population of more than one million persons and whose governing body is
22 composed of members of a county board of supervisors shall place all funds
23 into a trust fund for the purposes of this section in amounts as
24 determined appropriate by the governing body of the city, town, county,
25 any special health care district organized pursuant to title 48, chapter
26 31 or other political subdivision that is located in a county with a
27 population of more than one million persons and whose governing body is
28 composed of members of a county board of supervisors, except that any
29 city, town, county, any special health care district organized pursuant to
30 title 48, chapter 31 or other political subdivision that is located in a
31 county with a population of more than one million persons and whose
32 governing body is composed of members of a county board of supervisors
33 establishing such a trust fund shall:

34 1. Designate a risk management consultant or insurance
35 administrator licensed pursuant to title 20, chapter 2, article 3 or 9,
36 and such license shall be verified by the governing body of the city,
37 town, county, any special health care district organized pursuant to title
38 48, chapter 31 or other political subdivision that is located in a county
39 with a population of more than one million persons and whose governing
40 body is composed of members of a county board of supervisors.

41 2. The trust shall be administered by at least five joint trustees,
42 of whom ~~no~~ NOT more than one may be a member of the governing body of the
43 city, town, county, any special health care district organized pursuant to
44 title 48, chapter 31 or other political subdivision that is located in a
45 county with a population of more than one million persons and whose

1 governing body is composed of members of a county board of supervisors and
2 ~~no~~ NOT more than one may be an employee of the city, town, county, any
3 special health care district organized pursuant to title 48, chapter 31 or
4 other political subdivision that is located in a county with a population
5 of more than one million persons and whose governing body is composed of
6 members of a county board of supervisors.

7 3. The trustees of the trust must be bonded, a stop-loss provision
8 must be incorporated in the trust agreement and an annual audit must be
9 performed by an external auditor and a copy of the report kept on file in
10 the offices of the governing body of the city, town, county, any special
11 health care district organized pursuant to title 48, chapter 31 or other
12 political subdivision that is located in a county with a population of
13 more than one million persons and whose governing body is composed of
14 members of a county board of supervisors for a period of not less than
15 five years.

16 4. Not make any expenditure from the trust fund for any purpose not
17 specified in this article.

18 C. Expenditures during the fiscal year from the trust fund and
19 monies in the trust fund at the close of the fiscal year shall not be
20 subject to the provisions of title 42, chapter 17, article 3.

21 D. In the event that such a trust fund is no longer used by the
22 city, town, county, any special health care district organized pursuant to
23 title 48, chapter 31 or other political subdivision that is located in a
24 county with a population of more than one million persons and whose
25 governing body is composed of members of a county board of supervisors for
26 the purposes herein set forth, it shall revert during that fiscal year to
27 the general fund of such city, town, county, any special health care
28 district organized pursuant to title 48, chapter 31 or other political
29 subdivision that is located in a county with a population of more than one
30 million persons and whose governing body is composed of members of a
31 county board of supervisors.

32 E. The authority granted to a city, town, county, any special
33 health care district organized pursuant to title 48, chapter 31 or other
34 political subdivision that is located in a county with a population of
35 more than one million persons and whose governing body is composed of
36 members of a county board of supervisors by this section is not subject to
37 title 20, except that any health, life, accident or disability benefit
38 plan shall conform to the benefits required by title 20.

39 F. This section ~~shall not be construed to~~ DOES NOT authorize any
40 city, town, county, any special health care district organized pursuant to
41 title 48, chapter 31 or other political subdivision that is located in a
42 county with a population of more than one million persons and whose
43 governing body is composed of members of a county board of supervisors to
44 procure insurance from any insurer not authorized by the director of the
45 department of insurance AND FINANCIAL INSTITUTIONS.

1 Sec. 12. Section 12-581, Arizona Revised Statutes, is amended to
2 read:

3 12-581. Definitions

4 In this article, unless the context otherwise requires:

5 1. "Bodily injury" means bodily harm, sickness, disease or
6 emotional or mental distress, including death resulting from any of these
7 conditions at any time, sustained by a person.

8 2. "Claimant" means a person suffering bodily injury, a person
9 claiming on behalf of or as a result of bodily injury to another person,
10 the representative of the estate of a deceased person or a beneficiary of
11 a wrongful death action.

12 3. "Costs of health care" means medical, custodial, rehabilitative
13 and related expenses.

14 4. "Economic loss" means pecuniary harm for which damages are
15 recoverable.

16 5. "Future damages" means economic loss and noneconomic loss
17 arising from bodily injury ~~which~~ THAT accrues after trial of a claim under
18 this article.

19 6. "Noneconomic loss" means nonpecuniary harm for which damages are
20 recoverable but does not include punitive or exemplary damages.

21 7. "Past damages" means economic loss and noneconomic loss arising
22 from bodily injury ~~which~~ THAT have accrued before a claim is tried under
23 this article, including punitive or exemplary damages.

24 8. "Qualified insurer" means an insurer, self-insurer, plan or
25 arrangement approved by the director of the department of insurance AND
26 FINANCIAL INSTITUTIONS.

27 Sec. 13. Section 12-593, Arizona Revised Statutes, is amended to
28 read:

29 12-593. Duties of the director of the department of insurance
30 and financial institutions and insurance companies

31 A. The director of the department of insurance AND FINANCIAL
32 INSTITUTIONS shall adopt rules:

33 1. For determining which insurers and assignees are financially
34 qualified to provide and maintain the funding required under this article
35 and to be designated as qualified insurers.

36 2. To require insurers to provide and maintain funding under
37 section 12-587 if required by court order.

38 3. For publishing and revising a list of persons who have been
39 designated by the director as qualified insurers.

40 B. The director shall annually review and evaluate the
41 effectiveness of the system of periodic payments. If pursuant to such
42 review and evaluation, the director determines that the system of periodic
43 payments is effectively reducing the cost of medical malpractice tort
44 claims for bodily injury, the director shall order appropriate actuarially
45 justified rate adjustments based on ~~such~~ THOSE findings.

1 C. In order to qualify under this section, an insurance company
2 shall:

3 1. Have at least an "A+" (superior) rating and a financial size
4 category of VIII in the current edition of Best insurance reports as
5 published by A. M. Best company.

6 2. Have no more than one ratio falling outside the usual range
7 according to the current ratio published by the national association of
8 insurance commissioners insurance regulatory information system.

9 3. Be licensed to do business in a state that has an applicable
10 insurance guaranty fund of at least ~~one hundred thousand dollars~~ \$100,000.

11 4. Meet any other standards that the director deems necessary to
12 assure that funding will be provided and maintained. A qualified insurer
13 may be a subsidiary of a parent insurance company if the parent insurance
14 company qualifies as a qualified insurer and guarantees the obligation of
15 the subsidiary.

16 Sec. 14. Section 13-3885, Arizona Revised Statutes, is amended to
17 read:

18 13-3885. Arrest of principal by surety; prohibited conduct;
19 violation; classification; definitions

20 A. For the purpose of surrendering the defendant, a surety on the
21 bail bond of a defendant may arrest the defendant before the forfeiture of
22 the undertaking or, by written authority attached to a certified copy of
23 the undertaking, may empower a bail recovery agent or a bail bond agent ~~as~~
24 ~~defined in section 20-340~~ to arrest the defendant.

25 B. A bail recovery agent or a bail bond agent shall not do any of
26 the following:

27 1. Enter an occupied residential structure without the consent of
28 the occupants who are present at the time of the entry.

29 2. Conduct a bail recovery arrest or apprehension without written
30 authorization from a bail bond agent licensed in ~~Arizona~~ THIS STATE.

31 3. Wear, carry or display any uniform, badge, shield or other
32 insignia or emblem that implies that the bail recovery agent is an
33 employee, officer or agent of this state, a political subdivision of this
34 state or the federal government. A bail recovery agent may display
35 identification that indicates the agent's status as a bail recovery agent
36 only.

37 4. Authorize or allow any ~~third party~~ THIRD-PARTY bail recovery
38 agent to undertake an apprehension or arrest if the bail recovery agent
39 has been convicted in any jurisdiction of theft or of any felony or any
40 crime involving carrying or the illegal use or possession of a deadly
41 weapon or dangerous instrument.

42 C. The surety or bail bond agent employing, hiring as an
43 independent contractor or otherwise ~~utilizing~~ USING a bail recovery agent
44 shall advise the department of insurance AND FINANCIAL INSTITUTIONS in
45 writing that the bail recovery agent is providing the services to the

1 surety or bail bond agent on a given case or cases. The written notice to
2 the department ~~of insurance~~ must be given within twenty-four hours after
3 the retention and shall include the name, date of birth, home and business
4 addresses and telephone number of the bail recovery agent. The bail
5 recovery agent identified in the written notice shall certify on the
6 written notice, under penalty of perjury, that the bail recovery agent has
7 never been convicted in any jurisdiction of theft or of any felony or any
8 crime involving carrying or the illegal use or possession of a deadly
9 weapon or dangerous instrument and that the bail recovery agent has
10 complied with section 20-340.04.

11 D. Bail bond agents shall provide an annual report to the
12 department ~~of insurance~~ listing all bail recovery agents employed, hired
13 as independent contractors or otherwise ~~utilized~~ USED by the bail bond
14 agent during the year. This report shall certify that all employees of
15 the bail bond agent have met the requirements prescribed in section
16 20-340.03 and that all bail recovery agents have complied with section
17 20-340.04. The report shall include the name, home and business
18 addresses, date of birth, telephone number, and a two-inch wide by
19 three-inch high photograph of the face of each person identified in the
20 report.

21 E. To satisfy the requirements of this section, a bail bond agent
22 who is licensed in another state but WHO is not licensed in this state
23 shall contract with a bail bond agent WHO IS licensed in this state to
24 retain the services of a bail recovery agent in this state.

25 F. ~~Any~~ A person who violates subsection B or E of this section is
26 guilty of a class 5 felony. ~~Any~~ A person who violates subsection C or D
27 of this section is subject to the provisions of section 20-295.

28 G. For the purposes of this section:

29 1. "Bail bond agent" has the same meaning prescribed in section
30 ~~20-282.01~~ 20-340.

31 2. "Bail recovery agent" means any person who has never been
32 convicted in any jurisdiction of theft or of a felony or any crime
33 involving carrying or the illegal use or possession of a deadly weapon or
34 dangerous instrument and who is employed or hired as an independent
35 contractor or otherwise ~~utilized~~ USED by a bail bond agent to assist the
36 bail bond agent in presenting a defendant in court when required, in
37 apprehending a defendant and surrendering the defendant to a court or in
38 keeping a defendant under necessary surveillance. Bail recovery agent
39 does not include an attorney or law enforcement officer who acts in an
40 official capacity and who assists a bail bond agent in the bail bond
41 agent's business.

42 3. "Occupied residential structure" means an edifice of a type that
43 is generally used to house human beings.

1 Sec. 15. Section 15-387, Arizona Revised Statutes, is amended to
2 read:

3 15-387. Procurement of insurance; eligibility of governing
4 board members, former board members and surviving
5 spouse and dependents; deposit of monies

6 A. Notwithstanding section 15-323, the governing board may procure
7 insurance from any insurer authorized by the director of the department of
8 insurance AND FINANCIAL INSTITUTIONS or may establish a self-insurance
9 program as provided in section 15-382 for the management and
10 administration of a system for direct payment of benefits, losses or
11 claims or any combination of insurance and direct payments, including risk
12 management consultation, to provide:

13 1. Health, accident, life or disability benefits for employees of
14 the school district and their dependents and for members of the governing
15 board and their dependents as provided in subsection B of this section.

16 2. Payment of any property or fidelity loss sustained, legal
17 expenses incurred or lawful claim of liability or fortuitous loss made
18 against the school district or its employees, including leased employees,
19 or officers if the employees, leased employees or officers are acting in
20 the scope of their employment or authority.

21 3. Coverage for all construction projects for purposes of general
22 liability, property damage and workers' compensation.

23 B. A governing board member is eligible to participate in an
24 insurance plan provided as an employee benefit pursuant to subsection A,
25 paragraph 1 of this section if the member pays the full premium and the
26 participation of the member does not result in an expenditure of school
27 district monies.

28 C. If the governing board allows its members to participate in the
29 insurance plan, a governing board may also adopt a policy allowing
30 participation in an insurance plan provided as an employee benefit
31 pursuant to subsection A, paragraph 1 of this section for former board
32 members and for surviving spouses and dependents of board members or
33 former board members as follows:

34 1. The board may allow a former board member to continue to
35 participate if the former board member served at least four consecutive
36 years on the board, was covered under the insurance plan while serving on
37 the board and pays the full premium and the participation does not result
38 in an expenditure of school district monies.

39 2. The board may allow the surviving spouse and dependent of the
40 board member or former board member to continue to participate in the
41 insurance plan if the surviving spouse or dependent pays the full premium
42 and the participation of the surviving spouse and dependent does not
43 result in an expenditure of school district monies and if ONE OF THE
44 FOLLOWING APPLIES:

1 (a) The deceased board member or former board member met the
2 qualifications for eligibility pursuant to paragraph 1 of this subsection.

3 (b) The deceased board member or former board member would have met
4 the qualifications for eligibility pursuant to paragraph 1 of this
5 subsection if the deceased board member or former board member had not
6 died in office.

7 D. Monies that are provided by employees, board members, former
8 board members and surviving spouses and dependents of board members or
9 former board members and that are received pursuant to this section shall
10 be deposited in an account as provided in section 15-1223.

11 Sec. 16. Section 20-101, Arizona Revised Statutes, is amended to
12 read:

13 20-101. Department of insurance and financial institutions;
14 definition

15 A. ~~There shall be a~~ THE department of insurance ~~which~~ AND FINANCIAL
16 INSTITUTIONS IS ESTABLISHED AND shall be administered by the director of
17 THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS.

18 B. THE DEPARTMENT SHALL BE KNOWN AS "DIFI".

19 ~~B.~~ C. In this title, unless the context otherwise requires,
20 "commission" OR "DEPARTMENT" means the department of insurance AND
21 FINANCIAL INSTITUTIONS.

22 Sec. 17. Title 20, chapter 1, article 1, Arizona Revised Statutes,
23 is amended by adding section 20-101.01, to read:

24 20-101.01. Deputy director

25 THE DIRECTOR SHALL APPOINT A DEPUTY DIRECTOR OF THE INSURANCE
26 DIVISION OF THE DEPARTMENT TO ASSIST THE DIRECTOR WITH THE EXECUTION OF
27 THE LAWS OF THIS STATE RELATING TO INSURANCE. THE DEPUTY DIRECTOR SERVES
28 AT THE PLEASURE OF THE DIRECTOR AND REPORTS DIRECTLY TO THE DIRECTOR.

29 Sec. 18. Section 20-102, Arizona Revised Statutes, is amended to
30 read:

31 20-102. Definition of director

32 ~~When used with reference to the administration of~~ IN this title,
33 title 6, title 32, chapters 9 and 36, title 41, chapter 31 and title 44,
34 chapter 2.1, UNLESS THE CONTEXT OTHERWISE REQUIRES: ~~;~~

35 1. "Director" or "administrator" means the director of THE
36 DEPARTMENT OF insurance and financial institutions ~~of the state~~.

37 2. When used with reference to a member of the governing body of an
38 insurer, director includes trustee.

39 Sec. 19. Section 20-108.01, Arizona Revised Statutes, is amended to
40 read:

41 20-108.01. Extended warranty insurers; deposit with state
42 treasurer; powers and duties; definition

43 A. Every extended warranty insurer shall deposit with the state
44 treasurer and maintain on deposit for the benefit and protection of any
45 person purchasing such extended warranty or guaranty in the event of

1 insolvency of the extended warranty insurer under its contract with any
2 such person either of the following:

3 1. A bond in the amount of ~~twenty-five thousand dollars~~ \$25,000
4 issued by an insurance company holding a current certificate of authority
5 issued by the ~~Arizona~~ director of insurance.

6 2. Eligible securities as defined in section 20-583 having the
7 lesser of par or market value of not less than ~~twenty-five thousand~~
8 ~~dollars~~ \$25,000.

9 B. The director ~~of insurance~~ shall adopt ~~and promulgate~~ rules and
10 regulations to enforce ~~the provisions of~~ this section.

11 C. For THE purposes of this section, "extended warranty insurer"
12 ~~means~~ HAS the same ~~as defined~~ MEANING PRESCRIBED in section 20-108.

13 Sec. 20. Section 20-141, Arizona Revised Statutes, is amended to
14 read:

15 20-141. Director of the department of insurance and financial
16 institutions; appointment; qualifications;
17 compensation

18 A. ~~There~~ THE GOVERNOR shall ~~be~~ APPOINT a director of THE DEPARTMENT
19 OF insurance ~~who shall be appointed by the governor~~ AND FINANCIAL
20 INSTITUTIONS pursuant to section 38-211.

21 B. The director shall:

22 1. Serve at the pleasure of the governor.

23 ~~C.~~ 2. ~~The director shall~~ Be a person WITH BUSINESS EXPERIENCE,
24 INCLUDING BEING well versed in insurance AND FINANCIAL INSTITUTION
25 matters.

26 ~~D.~~ 3. ~~The director shall~~ Receive compensation as determined
27 pursuant to section 38-611.

28 Sec. 21. Section 20-142, Arizona Revised Statutes, is amended to
29 read:

30 20-142. Powers and duties of director; payment of examination
31 and investigation costs; home health services

32 A. The director shall enforce ~~the provisions of~~ this title.

33 B. The director shall have powers and authority expressly conferred
34 by or reasonably implied from the provisions of this title.

35 C. The director may conduct examinations and investigations of
36 insurance matters, including examinations and investigations of adjusters,
37 ~~agents~~ PRODUCERS and brokers and any other persons who are regulated under
38 this title, in addition to examinations and investigations expressly
39 authorized, as the director deems proper in determining whether a person
40 has violated any provision of this title or for the purpose of securing
41 information useful in the lawful administration of any provision of this
42 title. The examined party shall pay the ~~cost~~ COSTS of examinations that
43 are ALLOWED PURSUANT TO SUBSECTION D OF THIS SECTION AND THAT ARE
44 conducted pursuant to this subsection except for examinations of
45 adjusters, ~~agents~~ PRODUCERS and brokers. ~~The~~ AN examined party ADJUSTER,

1 PRODUCER OR BROKER shall pay the ~~cost of examining adjusters, agents and~~
2 ~~brokers~~ COSTS ALLOWED PURSUANT TO SUBSECTION D OF THIS SECTION only if the
3 ~~party has~~ ADJUSTER, PRODUCER OR BROKER IS FOUND TO HAVE violated any
4 provision of this title. ~~The~~ THIS state shall pay the cost of ~~an~~ ANY
5 RELATED investigation.

6 D. THE DEPARTMENT SHALL PREPARE DETAILED BILLING STATEMENTS THAT
7 PROVIDE REASONABLE SPECIFICITY OF THE TIME AND EXPENSES BILLED IN
8 CONNECTION WITH AN EXAMINATION AND THAT CITE THE STATUTE OR RULE THAT
9 AUTHORIZES THE FEES BEING CHARGED. NOTWITHSTANDING ANY OTHER LAW, FROM
10 AND AFTER DECEMBER 31, 2021, A PERSON THAT IS BEING EXAMINED PURSUANT TO
11 ANY SECTION OF THIS TITLE IS RESPONSIBLE FOR ONLY THE DIRECT COSTS OF AN
12 EXAMINATION THAT ARE SUPPORTED BY A BILLING STATEMENT THAT COMPLIES WITH
13 THIS SUBSECTION.

14 ~~D.~~ E. The director shall establish guidelines for insurers on home
15 health services that shall be used by the director pursuant to sections
16 20-826, 20-1342, 20-1402 and 20-1404. The director may use home health
17 services as defined in section 36-151. Guidelines shall include ~~but not~~
18 ~~be limited to~~ THE FOLLOWING:

19 1. Home health services that are prescribed by a physician or a
20 registered nurse practitioner.

21 2. Home health services that are determined to cost less if
22 provided in the home than the average length of in-hospital service for
23 the same service.

24 3. Skilled professional care in the home that is comparable to
25 skilled professional care provided in-hospital and that is reviewed and
26 approved at ~~thirty day~~ THIRTY-DAY intervals by a physician.

27 ~~E.~~ F. Pursuant to section 41-1750, subsection G, the director may
28 receive criminal history record information in connection with the
29 issuance, renewal, suspension or revocation of a license or certificate of
30 authority or the consideration of a merger or acquisition. The director
31 may require a person to submit a full set of fingerprints to the
32 department. The department of insurance AND FINANCIAL INSTITUTIONS shall
33 submit the fingerprints to the department of public safety for the purpose
34 of obtaining a state and federal criminal records check pursuant to
35 section 41-1750 and Public Law 92-544. The department of public safety
36 may exchange this fingerprint data with the federal bureau of
37 investigation.

38 Sec. 22. Section 20-144, Arizona Revised Statutes, is amended to
39 read:

40 20-144. Seal of office

41 A. The director shall have a seal of office consisting of the
42 shield as used in the great seal of the state of Arizona encircled by the
43 words "director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS,
44 state of Arizona."

1 B. Every certificate or license issued by the director shall bear
2 ~~his~~ THE DIRECTOR'S seal.

3 Sec. 23. Section 20-147, Arizona Revised Statutes, is amended to
4 read:

5 20-147. Assistant director; chief examiner; appointment;
6 qualifications

7 A. The director shall appoint an assistant director ~~of insurance~~
8 and a chief examiner.

9 B. The assistant director ~~of insurance~~ shall be experienced in the
10 fields of life and disability and property and casualty insurance and the
11 chief examiner shall have had at least five ~~years~~ YEARS' experience as a
12 full-time examiner for a state insurance department or departments, or as
13 a full-time staff member of a public accounting or actuarial firm
14 regularly employed to conduct examinations for a state insurance
15 department.

16 Sec. 24. Section 20-157.01, Arizona Revised Statutes, is amended to
17 read:

18 20-157.01. Insurer claim files; access by director;
19 definition

20 A. Pursuant to the director's authority under sections 20-156,
21 20-157, 20-160 and 20-466, an insurer shall comply with a request to
22 produce any documents, reports or other materials, whether maintained in
23 written or electronic format, from an insurer's claim file.

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

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

43 D. SUBJECT TO THE RESTRICTIONS PRESCRIBED IN SECTION 20-299, THE
44 DIRECTOR SHALL PROVIDE AN INSURER WITH A COPY OF ANY DOCUMENT THE DIRECTOR
45 RECEIVES PURSUANT TO THIS SECTION THAT THE DIRECTOR BELIEVES SUPPORTS A

1 VIOLATION OF THIS TITLE OR THAT JUSTIFIES ANY REGULATORY OR OTHER ACTION
2 AGAINST THE INSURER. A DISCLOSURE PURSUANT TO THIS SUBSECTION IS NOT A
3 WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE
4 DISCLOSED DOCUMENT.

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

10 Sec. 25. Section 20-158, Arizona Revised Statutes, is amended to
11 read:

12 20-158. Report of examinations by director; information
13 sharing

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

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

23 C. The report, when filed, is admissible in evidence in any action
24 or proceeding brought by the director against the person examined, or its
25 officers or agents. The director or the director's examiners may at any
26 time testify and offer other proper evidence as to information secured
27 during the course of an examination, whether or not a written report of
28 the examination has at that time been either made, served or filed in the
29 director's office.

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

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

39 F. Except as provided in THIS SUBSECTION AND subsections E and I of
40 this section, documents, materials or other information, including all
41 working papers and copies thereof, created, produced or obtained by or
42 disclosed to the director or the director's deputies, assistants or
43 examiners in the course of an examination or in the course of analysis of
44 the financial condition or market conduct of an insurer are confidential
45 and privileged, are not subject to title 39, chapter 1, article 2, are not

1 subject to subpoena and are not subject to discovery or admissible in
2 evidence in a private civil action. The director may use the documents,
3 materials or other information in the furtherance of any regulatory or
4 legal action brought as part of the director's official duties. SUBJECT
5 TO THE RESTRICTIONS PRESCRIBED IN SECTION 20-299, THE DIRECTOR SHALL
6 PROVIDE AN INSURER BEING EXAMINED WITH COPIES OF ALL DOCUMENTS, MATERIALS
7 AND OTHER INFORMATION THAT THE DIRECTOR INTENDS TO RELY ON AS EVIDENCE OF
8 AN ALLEGED VIOLATION OF THIS TITLE OR THAT JUSTIFIES ANY REGULATORY OR
9 OTHER ACTION AGAINST THE INSURER TO ALLOW THE INSURER TO REVIEW THE
10 ALLEGED FINDINGS AND MAKE ANY OBJECTIONS PURSUANT TO SUBSECTION B OF THIS
11 SECTION. A DISCLOSURE PURSUANT TO THIS SUBSECTION IS NOT A WAIVER OF ANY
12 APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DISCLOSED
13 DOCUMENTS, MATERIALS OR OTHER INFORMATION.

14 G. Documents, materials or other information, including all working
15 papers and copies thereof, in the possession or control of the national
16 association of insurance commissioners or its affiliates are confidential
17 and privileged, are not subject to title 39, chapter 1, article 2, are not
18 subject to subpoena and are not subject to discovery or admissible in
19 evidence in any private civil action if the documents, materials or
20 information are either:

21 1. Created, produced or obtained by or disclosed to the national
22 association of insurance commissioners or its affiliates in the course of
23 assisting the director in the examination or analysis of the financial
24 condition or market conduct of an insurer under this title.

25 2. Disclosed to the national association of insurance commissioners
26 or its affiliates by the director under subsection E or I of this section.

27 H. The director, the director's deputies, assistants or examiners
28 and representatives of the national association of insurance commissioners
29 or its affiliates are prohibited from testifying in any private civil
30 action concerning documents, materials or other information that are
31 confidential and privileged pursuant to subsection F or G of this section.

32 I. The director may:

33 1. Share nonpublic documents, materials or other information with
34 other state, federal and international regulatory agencies, with the
35 national association of insurance commissioners and its affiliates and
36 subsidiaries and with state, federal and international law enforcement
37 authorities if the recipient agrees and warrants that it has the authority
38 to maintain the confidentiality and privileged status of the documents,
39 materials or other information.

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

1 jurisdiction that is the source of the document, material or other
2 information.

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

6 J. A disclosure to or by the director pursuant to this section or
7 as a result of sharing information pursuant to subsection I of this
8 section is not a waiver of any applicable privilege or claim of
9 confidentiality in the documents, materials or other information disclosed
10 or shared.

11 Sec. 26. Section 20-167, Arizona Revised Statutes, is amended to
12 read:

13 20-167. Fees; definition

14 A. The director shall collect in advance the following fees, as
15 ~~adjusted pursuant to subsection E of this section~~ DETERMINED BY THE
16 DIRECTOR, which are nonrefundable on payment:

	Not Less Than:	Not More Than:
17		
18 1. For filing charter documents:		
19 (a) Original charter documents,		
20 articles of incorporation,		
21 bylaws, or record of		
22 organization of insurers,		
23 or certified copies thereof,		
24 required to be filed with		
25 the director and not also		
26 subject to filing in the		
27 office of the corporation		
28 commission	\$ 40.00	\$ 115.00
29 (b) Amended charter documents	15.00	45.00
30 (c) No charge or fee shall be		
31 required for filing with		
32 the director any of such		
33 documents also required		
34 by law to be filed in the		
35 office of the corporation		
36 commission		
37 2. Certificate of authority:		
38 (a) Issuance:		
39 Fraternal benefit societies	\$ 15.00	\$ 45.00
40 Medical or hospital service		
41 corporations, health care		
42 services organizations or		
43 prepaid dental plan		
44 organizations	40.00	115.00
45 Mechanical		

1	reimbursement reinsurers	150.00	450.00
2	All other insurers	100.00	295.00
3	(b) Renewal:		
4	Fraternal benefit societies	15.00	45.00
5	Medical or hospital service		
6	corporations, health care		
7	services organizations or		
8	prepaid dental plan		
9	organizations	40.00	115.00
10	Domestic stock life insurers,		
11	domestic stock disability		
12	insurers or domestic stock		
13	life and disability insurers	750.00	2,250.00
14	Domestic life reinsurers,		
15	domestic disability		
16	reinsurers or domestic		
17	life and disability		
18	reinsurers	2,250.00	5,500.00
19	Mechanical reimbursement		
20	reinsurers	2,250.00	5,500.00
21	All other insurers	70.00	205.00
22	3. Certificate of registration as an		
23	administrator or application for		
24	renewal under section 20-485.12	\$ 100.00	\$ 295.00
25	4. Authority to solicit applications		
26	for and issue policies by means		
27	of mechanical vending machines	\$ 30.00	\$ 90.00
28	5. Service company permit	\$ 150.00	\$ 450.00
29	6. Application for motor vehicle		
30	service contract program approval	\$ 150.00	\$ 450.00
31	7. Life care contract application		
32	or annual report	\$ 225.00	\$ 675.00
33	8. Filing annual statement	\$ 150.00	\$ 450.00
34	9. Annual statement filing for		
35	exempt insurer transacting life		
36	insurance, disability insurance		
37	or annuity business pursuant to		
38	section 20-401.05	\$ 65.00	\$ 100.00
39	10. Licenses and examinations:		
40	(a) Licenses:		
41	Surplus lines broker's license,		
42	quadrennially	\$ 600.00	\$1,000.00
43	All other licenses,		
44	quadrennially	60.00	180.00

1	(b) Examinations for license:		
2	Examination on laws and one kind		
3	of insurance	8.00	25.00
4	Examination on laws and two or		
5	more kinds of insurance	15.00	45.00
6	11. Miscellaneous:		
7	Fee accompanying service of		
8	process on director	\$ 8.00	\$ 25.00
9	Certificate of director,		
10	under seal	1.50	5.00
11	Copy of document filed in		
12	director's office, per page	0.50	0.75

13 B. Except as provided in section 20-1098.18, the director shall
 14 deposit, pursuant to sections 35-146 and 35-147, all fees collected
 15 pursuant to this section in the state general fund. A refund is not
 16 allowed for any unused portion of a fee, and the director shall not
 17 prorate fees.

18 C. The license fees prescribed by this section shall be payment in
 19 full of all demands for all state, county, district and municipal license
 20 fees, license taxes, business privilege taxes and business privilege fees
 21 and charges of every kind.

22 D. The director may contract for the examination for the licensing
 23 of adjusters, insurance producers, bail bond agents, risk management
 24 consultants and surplus lines brokers. If the director does so, the fee
 25 for examinations for licenses pursuant to this section is payable directly
 26 to the contractor by the applicant for examination. The director may
 27 agree to a reasonable examination fee to be charged by the contractor.
 28 The fee may exceed the amounts prescribed in this section.

29 ~~E. Each December 1, if the revenue collected from fees during the~~
 30 ~~prior fiscal year is less than ninety-five percent or more than one~~
 31 ~~hundred ten percent of the appropriated budget for the current fiscal~~
 32 ~~year, the director shall revise all fees within the limits prescribed by~~
 33 ~~subsection A of this section on a uniform percentage basis among all fee~~
 34 ~~categories. The director shall revise the fees in such a manner that the~~
 35 ~~revenue derived from the fees during the subsequent fiscal year equals at~~
 36 ~~least ninety-five percent but not more than one hundred ten percent of the~~
 37 ~~appropriated budget for the current fiscal year. The revised fee schedule~~
 38 ~~is effective July 1 of the subsequent fiscal year. For the purposes of~~
 39 ~~this subsection, appropriated budget does not include any appropriation~~
 40 ~~for the operation of the captive insurance program established under~~
 41 ~~chapter 4, article 14 of this title. Any fees collected from captive~~
 42 ~~insurers pursuant to subsection G of this section shall not be counted for~~
 43 ~~the purpose of meeting the requirement of this subsection to recover at~~
 44 ~~least ninety-five but not more than one hundred ten percent of the~~
 45 ~~department's appropriated budget.~~

1 ~~F.~~ E. The director may contract with a voluntary domestic
2 organization of surplus lines brokers to perform any transaction
3 prescribed in chapter 2, article 5 of this title, including the acceptance
4 or maintenance of the reports required by section 20-408. The director
5 may allow the contractor to charge a stamping fee. The surplus lines
6 broker shall pay the stamping fee established pursuant to this section
7 directly to the contractor.

8 ~~G.~~ F. Captive insurers shall pay certificate of authority issuance
9 and renewal fees as prescribed by the director.

10 ~~H.~~ G. For the purposes of ~~subsection F~~ of this section, "stamping
11 fee" means a reasonable filing fee charged by a contractor for any
12 transaction prescribed in chapter 2, article 5 of this title, including
13 the acceptance or maintenance of the reports required by section 20-408.

14 Sec. 27. Section 20-169, Arizona Revised Statutes, is amended to
15 read:

16 20-169. Supervision by director

17 ~~Any other provision of law to the contrary~~ Notwithstanding ANY OTHER
18 LAW, if ~~upon~~ ON examination pursuant to this article or at any other time
19 it appears to or is in the opinion of the director that any insurance
20 company is insolvent, or its condition is such as to render the
21 continuance of its business hazardous to the public or to holders of its
22 policies or certificates of insurance, or if ~~such~~ THE INSURANCE company
23 appears to have exceeded its powers or has failed to comply with the law,
24 or if ~~such~~ THE insurance company gives its consent, the director ~~shall~~
25 ~~upon his~~, ON THE DIRECTOR'S determination, SHALL DO ALL OF THE FOLLOWING:

26 1. Notify the insurance company of ~~his~~ THE DIRECTOR'S
27 determination. ~~;~~

28 2. Furnish to the insurance company a written list of the
29 director's requirements to abate ~~his~~ THE determination. ~~;~~ and

30 3. If the director makes a further determination to supervise ~~he~~,
31 THE DIRECTOR shall notify the insurance company that it is under the
32 supervision of the department of insurance AND FINANCIAL INSTITUTIONS and
33 that the director is applying and effecting the provisions of this
34 article. ~~Such~~ THE insurance company shall comply with the lawful
35 requirements of the director and, if placed under supervision, shall under
36 supervision have sixty days from the date of notice within which to comply
37 with the requirements of the director, subject ~~however~~ to the provisions
38 of this article. ~~in~~ IF the ~~event of such insurance company's failure~~
39 COMPANY FAILS to comply within such time, the director ~~acting for himself~~,
40 or ~~through~~ a conservator appointed by the director for that purpose, shall
41 immediately, after due and proper notice and hearing, take charge as
42 conservator of the insurance company and all of the property and effects
43 ~~thereof~~ OF THE INSURANCE COMPANY.

1 Sec. 28. Section 20-183, Arizona Revised Statutes, is amended to
2 read:

3 20-183. Report procedures and deadlines

4 A person or a legislator advocating a legislative proposal pursuant
5 to section 20-181 shall submit a written report explaining the factors
6 prescribed in section 20-182 to the joint legislative audit committee
7 established by section 41-1279. The report must be submitted on or before
8 September 1 before the start of the legislative session for which the
9 legislation is proposed. The joint legislative audit committee shall
10 assign the written report to the appropriate legislative committee of
11 reference established pursuant to section 41-2954. The legislative
12 committee of reference shall hold at least one hearing and take public
13 testimony after receiving the report. The legislative committee of
14 reference shall study the written report and deliver a report of its
15 recommendations to the joint legislative audit committee, the speaker of
16 the house of representatives, the president of the senate, the governor
17 and the director of the department of insurance AND FINANCIAL INSTITUTIONS
18 on or before December 1 of the year in which the report is submitted.

19 Sec. 29. Section 20-224, Arizona Revised Statutes, is amended to
20 read:

21 20-224. Premium tax; reports

22 A. On or before March 1 of each year, each authorized domestic
23 insurer, each other insurer and each formerly authorized insurer referred
24 to in section 20-206, subsection B shall file with the director a report
25 in a form prescribed by the director showing total direct premium income
26 including policy membership and other fees and all other considerations
27 for insurance from all classes of business whether designated as a premium
28 or otherwise received by it during the preceding calendar year on account
29 of policies and contracts covering property, subjects or risks located,
30 resident or to be performed in this state, after deducting from such total
31 direct premium income applicable cancellations, returned premiums, the
32 amount of reduction in or refund of premiums allowed to industrial life
33 policyholders for payment of premiums direct to an office of the insurer
34 and all policy dividends, refunds, savings coupons and other similar
35 returns paid or credited to policyholders within this state and not
36 reapplied as premiums for new, additional or extended insurance. No
37 deduction shall be made of the cash surrender values of policies or
38 contracts. Considerations received on annuity contracts, as well as the
39 unabsorbed portion of any premium deposit, shall not be included in total
40 direct premium income, and neither shall be subject to tax. The report
41 shall separately indicate the total direct fire insurance premium income
42 received from property located in the incorporated cities and towns
43 certified by the office of the state fire marshal pursuant to section
44 9-951, subsection B, as procuring the services of a private fire company.

1 B. Coincident with the filing of the tax report, each insurer shall
2 pay to the director for deposit, pursuant to sections 35-146 and 35-147, a
3 tax on such net premiums at the following rates:

4 1. For fire insurance:

5 (a) On property located in a city or town certified by the office
6 of the state fire marshal pursuant to section 9-951, subsection B, as
7 procuring the services of a private fire company, .66 percent.

8 (b) On all other property, 2.2 percent.

9 2. For disability insurance, 2.0 percent.

10 3. For health care service plans, the rates prescribed under
11 sections 20-837, 20-1010 and 20-1060.

12 4. For other insurance:

13 (a) For premiums received in calendar year 2016, 1.95 percent.

14 (b) For premiums received in calendar year 2017, 1.90 percent.

15 (c) For premiums received in calendar year 2018, 1.85 percent.

16 (d) For premiums received in calendar year 2019, 1.80 percent.

17 (e) For premiums received in calendar year 2020, 1.75 percent.

18 (f) For premiums received in calendar year 2021 and for each
19 subsequent calendar year, 1.70 percent.

20 C. Any payments of tax pursuant to subsection F of this section
21 shall be deducted from the tax payable pursuant to subsection B of this
22 section. Each insurer shall reflect the cost savings attributable to the
23 lower tax in fire insurance premiums charged on property located in an
24 incorporated city or town certified by the office of the state fire
25 marshal pursuant to section 9-951, subsection B, as procuring the services
26 of a private fire company. No insurer shall be liable to the state or to
27 any other person, or shall be subject to regulatory action, relating to
28 the calculation or submittal of fire insurance premium taxes based in good
29 faith on the office of the state fire marshal's certification.

30 D. Eighty-five percent of the tax paid under this section by an
31 insurer on account of premiums received for fire insurance shall be
32 separately specified in the report and shall be apportioned in the manner
33 provided by sections 9-951, 9-952 and 9-972, except that all of the tax so
34 allocated to a fund of a municipality or fire district that has no
35 volunteer firefighters or pension obligations to volunteer firefighters
36 shall be appropriated to the account of the municipality or fire district
37 in the public safety personnel retirement system and all of the tax so
38 allocated to a fund of a municipality or fire district that has both
39 full-time paid firefighters and volunteer firefighters or pension
40 obligations to full-time paid firefighters or volunteer firefighters shall
41 be appropriated to the account of the municipality or fire district in the
42 public safety personnel retirement system where it shall be reallocated by
43 actuarial procedures proportionately to the municipality or fire district
44 for the account of the full-time paid firefighters and to the municipality
45 or fire district for the account of the volunteer firefighters. A

1 municipality or fire district shall provide to the public safety personnel
2 retirement system all information that the system deems necessary to
3 perform the reallocation prescribed by this section. A full accounting of
4 the reallocation shall be forwarded to the municipality or fire district
5 and its local boards.

6 E. This section ~~shall~~ DOES not apply to title insurance. ~~and such~~
7 TITLE insurers shall be taxed as provided in section 20-1566.

8 F. Any insurer that paid or is required to pay a tax of ~~fifty~~
9 ~~thousand dollars~~ \$50,000 or more on net premiums received during the
10 preceding calendar year, pursuant to subsection B of this section and
11 sections 20-224.01, 20-837, 20-1010, 20-1060 and 20-1097.07, shall file on
12 or before the fifteenth day of each month from March through August a
13 report for that month, on a form prescribed by the director, accompanied
14 by a payment in an amount equal to fifteen percent of the amount paid or
15 required to be paid during the preceding calendar year pursuant to
16 subsection B of this section and sections 20-224.01, 20-837, 20-1010,
17 20-1060 and 20-1097.07. The payments are due and payable on or before the
18 fifteenth day of each month and shall be made to the director for deposit,
19 pursuant to sections 35-146 and 35-147.

20 G. Except for the tax paid on fire insurance premiums pursuant to
21 subsections B and D of this section, an insurer may claim a premium tax
22 credit if the insurer qualifies for a credit pursuant to section
23 20-224.03, 20-224.06 or 20-224.07.

24 H. On receipt of a properly documented claim, a refund shall be
25 provided to an insurer from available funds for the excess amount of any
26 fire insurance premium improperly paid by the insurer. The insurer shall
27 reflect the refund in the fire insurance premiums charged on the property
28 that was charged the excessive amount.

29 I. On or before September 30 of each year, the director of THE
30 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS shall report to the
31 directors of the joint legislative budget committee and the governor's
32 office of strategic planning and budgeting on the amount of insurance
33 premium tax credits established by sections 20-224.03, 20-224.05,
34 20-224.06 and 20-224.07 that were used during the previous fiscal year.

35 J. For the purposes of:

36 1. Subsection B of this section, fire insurance is one hundred
37 percent of fire lines, forty percent of commercial multiple peril
38 nonliability lines, thirty-five percent of homeowners' multiple peril
39 lines, twenty-five percent of farm owners' multiple peril lines and twenty
40 percent of allied lines.

41 2. Section 20-416, fire insurance is eighty-five percent of fire
42 and allied lines.

43 K. From and after December 31, 2017, the director may require that
44 reports and payments under this section be submitted electronically. If
45 the director requires electronic submission, the director shall include on

1 the department's official website a list of one or more acceptable
2 third-party services through which an insurer must submit reports and
3 payments.

4 Sec. 30. Section 20-224.03, Arizona Revised Statutes, is amended to
5 read:

6 20-224.03. Premium tax credit for new employment

7 A. For taxable years beginning from and after June 30, 2011, a
8 credit is allowed against the premium tax liability imposed pursuant to
9 section 20-224, 20-837, 20-1010, 20-1060 or 20-1097.07 for net increases
10 in full-time employees residing in this state and hired in qualified
11 employment positions in this state as computed and certified by the
12 Arizona commerce authority pursuant to section 41-1525. For the purposes
13 of this section and section 41-1525:

14 1. A tax credit is not allowed against the portion of the tax
15 payable to the fire fighters' relief and pension fund pursuant to section
16 20-224 or the portion of the tax payable to the public safety personnel
17 retirement system pursuant to section 20-224.01.

18 2. A reciprocal insurer and its attorney-in-fact are considered to
19 be the same entity for the purposes of calculating the tax credit under
20 this section.

21 B. Subject to subsection F of this section, the amount of the tax
22 credit is equal to:

23 1. ~~Three thousand dollars~~ \$3,000 for each full-time employee hired
24 in a qualified employment position in the first year or partial year of
25 employment. Employees hired in the last ninety days of the taxable year
26 are excluded for that taxable year and are considered to be new employees
27 in the following taxable year.

28 2. ~~Three thousand dollars~~ \$3,000 for each full-time employee in a
29 qualified employment position for the full taxable year in the second year
30 of continuous employment.

31 3. ~~Three thousand dollars~~ \$3,000 for each full-time employee in a
32 qualified employment position for the full taxable year in the third year
33 of continuous employment.

34 C. The capital investment and the new qualified employment
35 positions requirements of section 41-1525, subsection B must be
36 accomplished within twelve months after the start of the required capital
37 investment. A credit may not be claimed until both requirements are met.
38 A business that meets the requirements of section 41-1525, subsection B
39 for a location is eligible to claim first year credits for three years
40 beginning with the taxable year in which those requirements are completed.
41 Employees hired at the location before the beginning of the taxable year
42 but during the twelve-month period allowed in this subsection are
43 considered to be new employees for the taxable year in which all of those
44 requirements are completed. The employees that are considered to be new
45 employees for the taxable year under this subsection shall not be included

1 in the average number of full-time employees during the immediately
2 preceding taxable year until the taxable year in which all of the
3 requirements of section 41-1525, subsection B are completed. An employee
4 working at a temporary worksite in this state while the designated
5 location is under construction is considered to be working at the
6 designated location if all of the following occur:

7 1. The employee is hired after the start of the required investment
8 at the designated location.

9 2. The employee is hired to work at the designated location after
10 it is completed.

11 3. The payroll for the employees destined for the designated
12 location is segregated from other employees.

13 4. The employee is moved to the designated location within thirty
14 days after its completion.

15 D. To qualify for a credit under this section, the insurer and the
16 employment positions must meet the requirements prescribed by section
17 41-1525.

18 E. A credit is allowed for employment in the second and third year
19 only for qualified employment positions for which a credit was claimed and
20 allowed in the first year.

21 F. The net increase in the number of qualified employment positions
22 is the lesser of the total number of filled qualified employment positions
23 created at the designated location or locations during the taxable year or
24 the difference between the average number of full-time employees in this
25 state in the current taxable year and the average number of full-time
26 employees in this state during the immediately preceding taxable year.
27 The net increase in the number of qualified employment positions computed
28 under this subsection may not exceed the difference between the average
29 number of full-time employees in this state in the current taxable year
30 and the average number of full-time employees in this state during the
31 immediately preceding taxable year.

32 G. If the allowable tax credit exceeds the state premium tax
33 liability, the amount of the claim not used as an offset against the state
34 premium tax liability may be carried forward as a tax credit against
35 subsequent years' state premium tax liability for a period not exceeding
36 five taxable years.

37 H. If the business is sold or changes ownership through
38 reorganization, stock purchase or merger, the new taxpayer may claim first
39 year credits only for the qualified employment positions that it created
40 and filled with an eligible employee after the purchase or reorganization
41 was complete. If a person purchases a taxpayer that had qualified for
42 first or second year credits or if an insurance business changes ownership
43 through reorganization, stock purchase or merger, the new taxpayer may
44 claim the second or third year credits if it meets other eligibility
45 requirements of this section. Credits for which a taxpayer qualified

1 before the changes described in this subsection are terminated and lost at
2 the time the changes are implemented.

3 I. An insurer that claims a tax credit against state premium tax
4 liability is not required to pay any additional retaliatory tax imposed
5 pursuant to section 20-230 as a result of claiming that tax credit.

6 J. A failure to timely report and certify to the Arizona commerce
7 authority the information prescribed by section 41-1525, subsection E and
8 in the manner prescribed by section 41-1525, subsection F disqualifies the
9 insurer from the credit under this section. The department of insurance
10 AND FINANCIAL INSTITUTIONS shall require written evidence of the timely
11 report to the Arizona commerce authority.

12 K. A tax credit under this section is subject to recovery for a
13 violation described in section 41-1525, subsection H.

14 L. The department may adopt rules necessary for the administration
15 of this section.

16 M. For the purposes of subsection B, paragraphs 2 and 3 of this
17 section, if a full-time employee in the qualified employment position
18 leaves during the taxable year, the employee may be replaced with another
19 new full-time employee in the same employment position and the new
20 employee will be treated as being in the employee's second or third full
21 year of continuous employment for the purposes of the credit under this
22 section if BOTH OF THE FOLLOWING APPLY:

23 1. The total time the position was vacant from the date the
24 employment position was originally filled to the end of the current tax
25 year totals ninety days or less.

26 2. The new employee meets all of the same requirements as the
27 original employee was required to meet.

28 Sec. 31. Section 20-224.06, Arizona Revised Statutes, is amended to
29 read:

30 20-224.06. Premium tax credit for contributions to school
31 tuition organization; low-income scholarships

32 A. A credit is allowed against the premium tax liability incurred
33 by an insurer pursuant to section 20-224, 20-837, 20-1010, 20-1060 or
34 20-1097.07 for the amount of voluntary cash contributions made by the
35 insurer during the tax year to a school tuition organization.

36 B. The amount of the credit is the total amount of the insurer's
37 contributions for the tax year under subsection A of this section that is
38 preapproved by the department of revenue pursuant to section 43-1183,
39 subsection D.

40 C. The procedures, conditions, limitations, definitions and other
41 requirements prescribed by section 43-1183 and title 43, chapter 15 apply
42 to THE FOLLOWING:

43 1. Insurers that claim a credit under this section.

44 2. Claims for credit under this section.

1 D. If the allowable amount of a credit under this section exceeds
2 the insurer's state premium tax liability, the amount of the claim not
3 used to offset the premium tax liability may be carried forward as a
4 credit against the insurer's subsequent years' premium tax liability for a
5 period not to exceed five taxable years.

6 E. A credit is not allowed if the insurer designates the
7 contribution for the direct benefit of any specific student.

8 F. An insurer that claims a tax credit against state premium tax
9 liability is not required to pay any additional retaliatory tax imposed
10 pursuant to section 20-230 as a result of claiming that tax credit.

11 G. The department of insurance AND FINANCIAL INSTITUTIONS, with the
12 cooperation of the department of revenue, shall adopt rules necessary for
13 the administration of this section.

14 Sec. 33. Section 20-237, Arizona Revised Statutes, is amended to
15 read:

16 20-237. Failure to provide information; penalty

17 If after a hearing and certification by the department of
18 transportation the director of THE DEPARTMENT OF insurance AND FINANCIAL
19 INSTITUTIONS finds that an insurer has failed to comply with ~~the~~
20 ~~provisions of~~ section 28-4148, the director of THE DEPARTMENT OF insurance
21 AND FINANCIAL INSTITUTIONS shall impose a civil penalty for each violation
22 of not more than ~~two hundred fifty dollars~~ \$250 per day for each day the
23 insurer is in violation of section 28-4148. The director of THE
24 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS also may suspend the
25 insurer's certificate of authority until the insurer complies with ~~the~~
26 ~~provisions of~~ section 28-4148. No penalty shall be imposed pursuant to
27 this section if noncompliance is determined by the director of THE
28 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS to have been
29 inadvertent or accidental. The burden of proving that the noncompliance
30 was inadvertent or accidental shall be on the insurer.

31 Sec. 34. Section 20-261.03, Arizona Revised Statutes, is amended to
32 read:

33 20-261.03. Qualified United States financial institution;
34 definitions

35 A. For the purposes of section 20-261.02, subsection B and section
36 20-261.06, subsection B, "qualified United States financial institution"
37 means an institution that:

38 1. Is organized, or in the case of a United States office of a
39 foreign banking organization, licensed, under the laws of the United
40 States or any state of the United States.

41 2. Is regulated, supervised and examined by federal or state
42 authorities having regulatory authority over banks and trust companies.

43 3. According to the director of THE DEPARTMENT OF insurance AND
44 FINANCIAL INSTITUTIONS or the securities valuation office of the national
45 association of insurance commissioners, meets the standards of financial

1 condition and standing that are considered necessary and appropriate to
2 regulate the quality of financial institutions whose letters of credit
3 will be acceptable to the director.

4 B. For the purposes of this article, except for the purposes of
5 section 20-261.02, subsection B and section 20-261.06, subsection B,
6 "qualified United States financial institution" means an institution that:

7 1. Is organized, or in the case of a United States branch or agency
8 office of a foreign banking organization, licensed, under the laws of the
9 United States or any state of the United States that has been granted
10 authority to operate with fiduciary powers.

11 2. Is regulated, supervised and examined by federal or state
12 authorities having regulatory authority over banks and trust companies.

13 Sec. 35. Section 20-265, Arizona Revised Statutes, is amended to
14 read:

15 20-265. Motor vehicle insurance; premium and fee comparisons
16 and complaint ratios

17 The department of insurance AND FINANCIAL INSTITUTIONS shall compile
18 comparisons of ~~premium~~ PREMIUMS and fees charged at policy inception and
19 complaint ratios for motor vehicle insurance policies that insure six or
20 fewer motor vehicles. The comparisons shall reflect premiums and fees
21 associated with the inception of a policy for not fewer than five
22 hypothetical insureds for urban areas and five hypothetical insureds for
23 rural areas. The department of insurance AND FINANCIAL INSTITUTIONS shall
24 forward copies of the comparisons of ~~premium~~ PREMIUMS and fees charged at
25 policy inception and complaint ratios to the department of transportation.
26 The director of the department of transportation in consultation with the
27 director of the department of insurance AND FINANCIAL INSTITUTIONS shall
28 make the copies available to the public. The department of insurance AND
29 FINANCIAL INSTITUTIONS may include in the ~~premium~~ comparison information
30 consumer information that describes the nature of bodily injury coverage,
31 property damage coverage, collision coverage, comprehensive coverage,
32 medical payment coverage, uninsured motorist coverage and underinsured
33 motorist coverage.

34 Sec. 36. Section 20-285, Arizona Revised Statutes, is amended to
35 read:

36 20-285. Application for license

37 A. A person who applies for a resident insurance producer license
38 shall apply to the director on a form prescribed by the director and shall
39 declare under penalty of denial, suspension or revocation of the license
40 that the statements made in the application are true, correct and complete
41 to the best of the knowledge and belief of the applicant or the
42 applicant's duly authorized representative. The applicant shall provide
43 information concerning the applicant's identity, personal history,
44 business record and experience in insurance and any other pertinent fact
45 the director requires.

1 B. Before the director approves the application of the individual,
2 the director shall find that the individual:

- 3 1. Is at least eighteen years of age.
4 2. Has not committed any act that is a ground for denial,
5 suspension or revocation prescribed in section 20-295.
6 3. Has paid the fees prescribed in section 20-167.
7 4. Has successfully passed the examinations for the lines of
8 authority for which the individual has applied.

9 C. Before the director approves the application of a business
10 entity, the director shall find that the business entity:

- 11 1. Has paid the fees prescribed in section 20-167.
12 2. Will be acting within the scope of its partnership agreement,
13 articles of incorporation or other chartering documents when the business
14 entity transacts business under the license.
15 3. Has designated an individually licensed insurance producer who
16 is responsible for the business entity's compliance with the insurance
17 laws of this state.

18 D. The application of a business entity shall also include the
19 names of all members, officers and directors of the business entity. For
20 any individual who is identified pursuant to this subsection and pursuant
21 to subsection C, paragraph 3 of this section, the director may require the
22 applicant to provide the information required for a license as an
23 individual.

24 E. Before the director grants a license, the director may require
25 the applicant to:

- 26 1. Provide any document that is reasonably necessary to verify the
27 information that is contained in an application and other information
28 including prior criminal records.
29 2. Submit a full set of fingerprints to the department. The
30 department of insurance AND FINANCIAL INSTITUTIONS shall submit the
31 fingerprints to the department of public safety for the purpose of
32 obtaining a state and federal criminal records check pursuant to section
33 41-1750 and Public Law 92-544. The department of public safety may
34 exchange this fingerprint data with the federal bureau of investigation.

35 F. A nonresident person who is licensed as an insurance producer in
36 another state, who becomes a resident of this state and who continues to
37 act as an insurance producer shall apply to become a resident licensee
38 pursuant to this section within ninety days.

39 Sec. 37. Section 20-289, Arizona Revised Statutes, is amended to
40 read:

41 20-289. Expiration; surrender; renewal

42 A. Any license that is issued pursuant to this article, other than
43 a temporary license, continues in force until it expires or the director
44 suspends, revokes or terminates the license. The license is also subject
45 to renewal pursuant to this section.

1 B. A license that is issued or renewed pursuant to this article or
2 a license that is issued or renewed pursuant to chapter 6, article 9 of
3 this title expires quadrennially as follows:

4 1. If the licensee is an individual, on the last day of the month
5 of the licensee's birthday, but not less than three years and not more
6 than four years after the last day of the month in which the license is
7 issued or is required to be renewed.

8 2. If the licensee is a business entity, on the last day of the
9 same month four years after the issuance or renewal due date of the
10 license as provided pursuant to this article.

11 C. The director may renew a license if the director receives from
12 the licensee all of the following on or before the license expiration
13 date:

14 1. An application on a form approved by the director.

15 2. The license fee prescribed in section 20-167.

16 3. Evidence that the licensee has complied with the continuing
17 education requirements prescribed in chapter 18 of this title.

18 D. Before renewing a license, the director may require the
19 applicant to:

20 1. Provide all documents that are reasonably necessary to verify
21 the information that is contained in the application and any other
22 information including prior criminal records.

23 2. Submit a full set of fingerprints to the department. The
24 department of insurance AND FINANCIAL INSTITUTIONS shall submit the
25 fingerprints to the department of public safety for the purpose of
26 obtaining a state and federal criminal records check pursuant to section
27 41-1750 and Public Law 92-544. The department of public safety may
28 exchange this fingerprint data with the federal bureau of investigation.

29 E. Any license for which the director does not receive timely
30 application for renewal and full payment of fees expires at midnight on
31 the renewal date. During the year after the expiration of a license under
32 this section, a person who otherwise meets the qualifications for a
33 license may renew an expired license by filing with the director a renewal
34 application, the quadrennial license fee and an additional ~~one hundred~~
35 ~~dollars~~ \$100 as a late renewal fee. Any application that is received
36 during this ~~one year~~ ONE-YEAR period for the same license that expired
37 under this section is deemed a renewal application. Any application that
38 is received after the ~~one year~~ ONE-YEAR period for the same license that
39 expired under this section is deemed a new application.

40 F. On the written request of a person who is licensed pursuant to
41 this article, the director may accept the voluntary surrender of the
42 person's authority to transact one or more lines of insurance or of the
43 person's entire license. A person who surrenders an authority or a
44 license under this subsection shall not reapply for the same authority or
45 license for at least one year after the date of the surrender.

1 Sec. 38. Section 20-336.03, Arizona Revised Statutes, is amended to
2 read:

3 20-336.03. Navigators; licensing

4 A. A person who applies for a navigator license shall apply to the
5 director on a form prescribed by the director and shall declare under
6 penalty of license denial, suspension or revocation that the statements
7 made in the application are true, correct and complete to the best of the
8 knowledge and belief of the applicant or the applicant's duly authorized
9 representative. The applicant shall provide information concerning the
10 applicant's identity, personal history, business record and experience in
11 insurance and any other pertinent fact the director requires.

12 B. Before the director approves an individual's navigator
13 application, the director shall find that the individual:

14 1. Is at least eighteen years of age.

15 2. Has not committed any act that is a ground for license denial,
16 suspension or revocation as prescribed in section 20-295 and has not been
17 convicted of a misdemeanor involving fraud or dishonesty.

18 3. Has provided evidence of navigator certification from the United
19 States department of health and human services.

20 4. Has submitted a full set of fingerprints to the director and
21 successfully completed a criminal history records check in a manner
22 prescribed by the director.

23 5. Has identified the entity with which it is affiliated and
24 supervised.

25 C. A business entity that acts as a navigator, supervises the
26 activities of individual navigators or receives funding to perform
27 navigator activities shall obtain a navigator entity license. Before the
28 director approves a business entity's navigator application, the director
29 shall find that the business entity:

30 1. Has not committed any act that is a ground for license denial,
31 suspension or revocation as prescribed in section 20-295 and has not been
32 convicted of a misdemeanor involving fraud or dishonesty.

33 2. Has designated an individually licensed navigator who is
34 responsible for the business entity's compliance with the insurance laws
35 of this state.

36 D. A business entity's navigator application shall also include the
37 names of all members, officers and directors of the business entity. For
38 any individual who is identified pursuant to this subsection, the director
39 may require the applicant to provide the information required for a
40 license as an individual.

41 E. The department of insurance AND FINANCIAL INSTITUTIONS shall
42 submit the fingerprints received pursuant to subsection B of this section
43 to the department of public safety for the purpose of obtaining a state
44 and federal criminal records check pursuant to section 41-1750 and Public
45 law 92-544. The department of public safety may exchange the fingerprint

1 data it receives pursuant to this subsection with the federal bureau of
2 investigation.

3 F. Unless the person is licensed for that line of authority
4 pursuant to this title, a navigator may not:

5 1. Sell, solicit or negotiate insurance in this state for any class
6 or classes of insurance.

7 2. Recommend, endorse or offer opinions about the benefits, terms
8 and features of a particular health benefit plan or offer an opinion about
9 which health benefit plan is better or worse for a particular individual
10 or employer.

11 3. Provide any information or services related to a health benefit
12 plan or another product not offered in the exchange.

13 4. Engage in any unfair method of competition or any fraudulent,
14 deceptive or dishonest act or practice.

15 G. The expiration date for a navigator license issued to a person
16 who also holds a license pursuant to this title is the same as the
17 expiration date for the insurance producer license.

18 Sec. 39. Section 20-336.04, Arizona Revised Statutes, is amended to
19 read:

20 20-336.04. Certified application counselors; licensing

21 A. An individual who applies for a certified application counselor
22 license shall apply to the director on a form prescribed by the director
23 and shall declare under penalty of license denial, suspension or
24 revocation that the statements made in the application are true, correct
25 and complete to the best of the knowledge and belief of the applicant or
26 the applicant's duly authorized representative. The applicant shall
27 provide information concerning the applicant's identity, personal history,
28 business record and experience in insurance and any other pertinent fact
29 the director requires.

30 B. Before the director approves an individual's certified
31 application counselor application, the director shall find that the
32 individual:

33 1. Is at least eighteen years of age.

34 2. Has not committed any act that is a ground for license denial,
35 suspension or revocation as prescribed in section 20-295 and has not been
36 convicted of a misdemeanor involving fraud or dishonesty.

37 3. Has met the standards and provided evidence of certification as
38 prescribed by 45 Code of Federal Regulations section 155.225.

39 4. Has submitted a full set of fingerprints to the director and
40 successfully completed a criminal history records check in a manner
41 prescribed by the director.

42 5. Has identified the entity with which the individual is
43 affiliated and supervised.

44 C. The department of insurance AND FINANCIAL INSTITUTIONS shall
45 submit the fingerprints received pursuant to subsection B of this section

1 to the department of public safety for the purpose of obtaining a state
2 and federal criminal records check pursuant to section 41-1750 and Public
3 Law 92-544. The department of public safety may exchange the fingerprint
4 data it receives pursuant to this subsection with the federal bureau of
5 investigation.

6 D. Unless the person is licensed for that line of authority
7 pursuant to this title, a certified application counselor may not:

8 1. Sell, solicit or negotiate insurance in this state for any class
9 or classes of insurance.

10 2. Recommend, endorse or offer opinions about the benefits, terms
11 and features of a particular health benefit plan or offer an opinion about
12 which health benefit plan is better or worse for a particular individual
13 or employer.

14 3. Provide any information or services related to a health benefit
15 plan or another product not offered in the exchange.

16 4. Engage in any unfair method of competition or any fraudulent,
17 deceptive or dishonest act or practice.

18 E. The expiration date for a certified application counselor
19 license issued to a person who also holds a license pursuant to this title
20 is the same as the expiration date for the insurance producer license.

21 Sec. 40. Section 20-340.01, Arizona Revised Statutes, is amended to
22 read:

23 20-340.01. Bail bond agents; licensure; business entities;
24 place of business; receipt; maintenance of
25 records

26 A. A person shall not act as a bail bond agent in this state unless
27 the person is licensed by the director in accordance with this article.
28 An applicant for a bail bond agent license shall submit an affidavit
29 attesting to the applicant's residency in this state for at least one year
30 immediately preceding the date of application.

31 B. Each applicant for a bail bond agent license shall submit a full
32 set of fingerprints to the department of insurance AND FINANCIAL
33 INSTITUTIONS for the purpose of obtaining a state and federal criminal
34 records check pursuant to section 41-1750 and Public Law 92-544. The
35 department of public safety may exchange this fingerprint data with the
36 federal bureau of investigation. The department of insurance AND
37 FINANCIAL INSTITUTIONS shall not issue a license until it receives the
38 state and federal criminal history records check and the applicant is
39 qualified for licensure.

40 C. The director shall not license a resident business entity as a
41 bail bond agent unless each owner and shareholder is individually licensed
42 as a bail bond agent.

43 D. A person who is licensed as a bail bond agent in this state is
44 not authorized in this state to transact civil bonds in connection with
45 contracts, administrative proceedings or other noncriminal matters on

1 behalf of a surety insurer unless the bail bond agent is also licensed as
2 a casualty producer in this state.

3 E. Each bail bond agent shall have and maintain a place of business
4 in this state that is accessible to the public and where the bail bond
5 agent principally conducts transactions under the agent's license.

6 F. As a minimum requirement for permanent office records, each bail
7 bond agent and general lines agent who is engaged in the bail bond
8 business shall maintain a daily bond register that is the original and
9 permanent record of all bonds or undertakings executed by the licensee and
10 that states ALL OF the FOLLOWING:

- 11 1. THE number of the power of attorney form.
- 12 2. THE date the bond was executed.
- 13 3. THE name of the principal.
- 14 4. THE amount of the bond.
- 15 5. THE premium charged.
- 16 6. THE premium reported to the surety company.
- 17 7. THE security or collateral received.
- 18 8. THE date the security or collateral was received and the date
19 released.
- 20 9. THE indemnity agreements.
- 21 10. THE disposition of the bond.
- 22 11. THE date of disposition.

23 G. Each bail bond agent and general lines agent who is engaged in
24 the bail bond business and who accepts monies or any other consideration
25 for any bail bond undertaking shall for each payment received give to the
26 person paying the monies or giving the consideration a prenumbered receipt
27 as evidence of payment. The receipt must state the date, the name of the
28 principal, a description of the consideration or amount of monies received
29 and the purpose for which received, the number of the power of attorney
30 form attached to the bond, the penal sum of the bond, the name of the
31 person making the payment or giving the consideration and the terms under
32 which the monies or other consideration shall be released. Each bail bond
33 agent shall retain a duplicate copy of each receipt issued as part of the
34 agent's records.

35 H. The bail bond agent shall keep at the agent's place of business
36 the usual and customary records pertaining to transactions made under the
37 license. The licensee shall keep all the records as to any particular
38 transaction available and open to the inspection of the director at any
39 business time during the three years immediately after the date of
40 completion of the transaction.

41 I. The director may examine the business practices, books and
42 records of any bail bond agent as often as the director deems appropriate.
43 The bail bond agent shall pay the costs incurred for the examination.

1 Sec. 41. Section 20-340.04, Arizona Revised Statutes, is amended to
2 read:

3 20-340.04. Bail recovery agent prohibitions; criminal records
4 checks

5 A. ~~No~~ A person who has been convicted in any jurisdiction of theft,
6 any felony or any crime involving the carrying or illegal use or
7 possession of a deadly weapon or dangerous instrument may NOT act as a
8 bail recovery agent.

9 B. A person shall submit a full set of fingerprints to the
10 department before acting as a bail recovery agent and shall submit a new
11 set of fingerprints on or before September 1 of every third year after
12 initial identification by the bail bond agent in the report that is filed
13 with the director pursuant to section 13-3885, subsection C. The
14 department of insurance AND FINANCIAL INSTITUTIONS shall submit the
15 fingerprints to the department of public safety for the purpose of
16 obtaining a state and federal criminal records check pursuant to section
17 41-1750 and Public Law 92-544. The fingerprint processing fee collected
18 by the department shall be an amount that does not exceed the cost to the
19 department that is charged by the federal bureau of investigation for the
20 fingerprint processing to obtain federal criminal history record
21 information. The department of public safety may exchange this
22 fingerprint data with the federal bureau of investigation. The department
23 of public safety shall provide the criminal history record information to
24 the director pursuant to section 41-1750.

25 C. Any person who acts as a bail recovery agent on behalf of any
26 bail bond agent and any person who conducts any action relating to a bail
27 recovery or apprehension must be identified by the bail bond agent in the
28 report that is filed with the director pursuant to section 13-3885,
29 subsections C and D.

30 D. A bail bond agent may not employ a bail recovery agent who does
31 not comply with this section and who has not been identified by the bail
32 bond agent in the report that is filed with the director pursuant to
33 section 13-3885, subsection C. A bail bond agent who is not licensed in
34 this state shall contract with a bail bond agent in this state to retain
35 the services of a bail recovery agent in this state.

36 Sec. 42. Section 20-367, Arizona Revised Statutes, is amended to
37 read:

38 20-367. Workers' compensation appeals board; composition

39 A. A workers' compensation appeals board is established in the
40 department.

41 B. The ~~board~~ DIRECTOR shall ~~have~~ APPOINT at least nine but not more
42 than eleven members ~~who are appointed by~~ TO the ~~director~~ BOARD. The
43 members shall serve ~~three year~~ THREE-YEAR terms. A member shall not serve
44 more than two consecutive terms.

1 C. The board shall be comprised of at least:

2 1. The following voting members:

3 (a) Five representatives of insurers, one of which is the insurer
4 with the largest Arizona workers' compensation market share as reported by
5 the department of insurance AND FINANCIAL INSTITUTIONS in its latest
6 annual report. Any licensed rating organization that meets the
7 requirements prescribed in section 20-363, subsection E may nominate from
8 its membership in this state one representative for each complete twenty
9 ~~per cent~~ PERCENT share of the total statewide workers' compensation net
10 written premium for the preceding calendar year attributable to its
11 membership. The director shall appoint any remaining insurer
12 representatives needed to constitute five members as ratably as possible
13 based on distribution of the total statewide workers' compensation net
14 written premium for the preceding calendar year.

15 (b) Four representatives of the public. At least two shall be
16 representatives of employers, and the remaining public members shall be
17 persons who are knowledgeable about workers' compensation insurance.

18 2. One representative from any designated statistical agent who
19 shall serve as a nonvoting advisory member.

20 D. The board members shall select a chairperson who shall call
21 meetings as needed to consider requests made pursuant to section 20-367.01
22 or on request of the director.

23 E. The board shall submit to the director a plan of operation and
24 all amendments that are necessary or suitable to ensure the fair,
25 reasonable and equitable administration of the appeals process. The plan
26 of operation and all amendments are effective on approval by the director.

27 F. Subject to the powers of the director, the board shall review
28 appeals that are filed pursuant to section 20-367.01. The board may
29 affirm the action of the rating organization or insurer or direct any
30 rating organization or insurer to modify or reverse its application of the
31 rating system that resulted in the appeal.

32 G. Members of the board are not eligible to receive compensation or
33 travel expenses under title 38, chapter 4, article 2.

34 Sec. 43. Section 20-398, Arizona Revised Statutes, is amended to
35 read:

36 20-398. Policy forms; approval or disapproval; exemption

37 A. Except for fidelity, surety or guaranty bonds or industrial
38 insurance as provided in section 20-400.10, except for any portion of a
39 property insurance policy that contains wildfire protection services, and
40 except as to inland marine risks that by general custom of the business
41 are not written according to manual rates or rating plans, ~~no~~ A policy
42 form applying to insurance on risks or operations covered by this article
43 may NOT be delivered or issued for delivery unless the form has been filed
44 with the director and either the director has issued, within thirty days,
45 an order affirmatively approving or disapproving the form or, the

1 thirty-day period has elapsed and the director has not disapproved the
2 form as ambiguous, misleading or deceptive. On written notice given
3 within the thirty-day period to the person making the filing, the director
4 may extend the period for up to fifteen additional days to enable the
5 director to complete the review of the filing.

6 B. The director ~~may~~, by order, MAY exempt from the requirements of
7 this section, for as long as the director deems proper, any insurance
8 document or form as specified in the order, to which, in the director's
9 opinion, this section may not practicably be applied, or the filing and
10 approval of which are, in the director's opinion, not desirable or
11 necessary for the protection of the public.

12 C. Any property insurance policy containing wildfire protection
13 services, including wildfire mitigation and wildfire suppression services
14 conducted by a private entity, that is issued for delivery to an insured
15 in this state, shall contain a conspicuously stamped or written notice in
16 bold-faced type that states that the wildfire protection services are not
17 subject to review by the department ~~of insurance~~.

18 Sec. 44. Repeal

19 Section 20-400.08, Arizona Revised Statutes, is repealed.

20 Sec. 45. Section 20-400.10, Arizona Revised Statutes, is amended to
21 read:

22 20-400.10. Industrial insureds

23 A. An industrial insured as defined in section 20-401.07 may
24 purchase and an admitted insurer may sell to an industrial insured a
25 policy of insurance that is subject to article 4.1 of this chapter and
26 that is on a form that has not been filed for review or approval by the
27 director pursuant to article 4.1 of this chapter. The admitted insurer
28 may use rates for a policy provided pursuant to this section that have not
29 been filed for review or approval by the director pursuant to article 4.1
30 of this chapter.

31 B. At the inception of each new policy and at the time of each
32 renewal, but not less than annually during the term of the policy, each
33 industrial insured that purchases a policy as provided in this section
34 shall certify to the insurer on a form prescribed by the director that the
35 insured meets the definition of industrial insured prescribed in section
36 20-401.07.

37 C. Except as otherwise provided in section 20-407, subsection B,
38 the insurer shall maintain the certification described in subsection B of
39 this section in the insurer's policy file.

40 D. The following provisions do not apply to insurance issued to
41 industrial insureds pursuant to this section:

- 42 1. Section 20-229.
- 43 2. Section 20-400.
- 44 3. Sections 20-400.01 through 20-400.05 and 20-400.07.
- 45 4. Section 20-448, subsection C.

- 1 5. Section 20-451.
- 2 6. Section 20-452.
- 3 7. Section 20-465.
- 4 8. Sections 20-1111 through 20-1117.
- 5 9. Sections 20-1120, 20-1121 and 20-1122.
- 6 10. ~~Chapter 2~~, Article 4.1 of this ~~title~~ CHAPTER.
- 7 11. Chapter 3, article 6 of this title.
- 8 12. Chapter 6, articles 7 and 14 of this title.

9 E. Any policy issued for delivery to an industrial insured in this
10 state by an insurer pursuant to this section shall contain a conspicuously
11 stamped or written notice in bold-faced type that states:

12 Pursuant to Arizona Revised Statutes section 20-400.10, this
13 policy and the rates charged for it have not been filed with
14 or approved by the director of the Arizona department of
15 insurance AND FINANCIAL INSTITUTIONS. Certain provisions of
16 Arizona law, specified in Arizona Revised Statutes section
17 20-400.10, do not apply to this policy. If the insurer that
18 issued this policy becomes insolvent, insureds or claimants
19 will not be eligible for insurance guaranty fund protection
20 pursuant to Arizona Revised Statutes title 20.

21 F. An insurer shall annually file with the insurer's annual
22 statement filed pursuant to section 20-223 on a form prescribed by the
23 director the following information for the prior year ending December 31
24 for all policies issued to industrial insureds pursuant to this section:

- 25 1. The total number of policies written.
- 26 2. The total premiums written.
- 27 3. The total premiums earned.
- 28 4. The total losses paid.
- 29 5. The total losses incurred.
- 30 6. The total number of claims incurred.
- 31 7. Any other information the director deems appropriate.

32 Sec. 46. Section 20-401.03, Arizona Revised Statutes, is amended to
33 read:

34 20-401.03. Service of process in an action by the director

35 A. Any act of transacting an insurance business in violation of
36 section 20-401.01 by any unauthorized insurer is equivalent to and ~~shall~~
37 ~~constitute~~ CONSTITUTES an irrevocable appointment by such insurer, binding
38 ~~upon him, his~~ ON THE INSURER, THE INSURER'S executor or administrator, or
39 successor in interest if a corporation, of the secretary of state or ~~his~~
40 THE SECRETARY OF STATE'S successor in office to be the true and lawful
41 attorney of such insurer ~~upon~~ ON whom may be served all lawful process in
42 any action, suit or proceeding in any court by the director ~~of insurance~~,
43 through the attorney general, and ~~upon~~ ON whom may be served any notice,
44 order, pleading or process in any proceeding before the director ~~of~~
45 ~~insurance~~ and which arises out of transacting an insurance business in

1 this state by such insurer. Any act of transacting an insurance business
2 in this state by any unauthorized insurer shall be signification of its
3 agreement that any such lawful process in such court action, suit or
4 proceedings and any such notice, order, pleading or process in such
5 administrative proceeding before the director ~~of insurance~~ so served shall
6 be of the same legal force and validity as personal service of process in
7 this state ~~upon~~ ON such insurer.

8 B. Service of process in an action prescribed by subsection A of
9 this section shall be made by delivering to and leaving with the secretary
10 of state, or some person in apparent charge of ~~his~~ THE SECRETARY OF
11 STATE'S office, two copies of such process. Service ~~upon~~ ON the secretary
12 of state as such attorney shall be service ~~upon~~ ON the principal.

13 C. The secretary of state shall ~~forthwith~~ IMMEDIATELY forward, by
14 registered or certified mail, one copy of such process or such notice,
15 order, pleading or process in proceedings before the director to the
16 defendant in such court proceeding ~~or~~ to whom the notice, order, pleading
17 or process in such administrative proceeding is addressed or directed at
18 its last known principal place of business and shall keep a record of all
19 process so served on ~~him~~ THE SECRETARY OF STATE which shall show the day
20 and hour of service. Such service shall be sufficient, provided:

21 1. Notice of such service and a copy of the court process or the
22 notice, order, pleading or process in such administrative proceeding are
23 sent within ten days thereafter by registered or certified mail by the
24 director ~~of insurance~~ or the attorney general in the court proceeding or
25 by the director ~~of insurance~~ in the administrative proceeding to the
26 defendant in the court proceeding or to whom the notice, order, pleading
27 or process in such administrative proceeding is addressed or directed at
28 the last known principal place of business of the defendant in the court
29 or administrative proceeding.

30 2. The defendant's receipt or receipts, issued by the post office
31 with which the letter is registered or certified, showing the name of the
32 sender of the letter and the name and address of the person or insurer to
33 whom the letter is addressed, and an affidavit of the director ~~of~~
34 ~~insurance~~ or the attorney general in court proceeding or of the director
35 ~~of insurance~~ in administrative proceeding, showing compliance therewith,
36 are filed with the clerk of the court in which such action, suit or
37 proceeding is pending or with the director in administrative proceedings,
38 on or before the date the defendant in the court or administrative
39 proceeding is required to appear or respond thereto, or within such
40 further time as the court or director ~~of insurance~~ may allow.

41 D. The director ~~of insurance~~ or the attorney general shall not be
42 entitled to a judgment or a determination by default in any court or
43 administrative proceeding in which court process or notice, order,
44 pleading or process in proceedings before the director ~~of insurance~~ is

1 served under this section until the expiration of thirty days from the
2 date of filing of the affidavit of compliance.

3 E. ~~Nothing in~~ This section ~~shall~~ DOES NOT limit or affect the right
4 to serve any process, notice, order or demand ~~upon~~ ON any person or
5 insurer in any other manner now or hereafter ~~permitted~~ ALLOWED by law or
6 rules of the courts.

7 Sec. 47. Section 20-401.04, Arizona Revised Statutes, is amended to
8 read:

9 20-401.04. Action by attorney general to enforce order or
10 decision of court or director; foreign decrees

11 A. The attorney general ~~upon~~, ON request of the director, may
12 proceed in the courts of this state or any reciprocal state to enforce an
13 order or decision in any court proceeding, ~~in~~ OR any administrative
14 proceeding before the director ~~of insurance~~ or any foreign decree.

15 B. The director ~~of insurance of this state~~ shall determine which
16 states and territories qualify as reciprocal states and shall maintain at
17 all times an up-to-date list of ~~such~~ THOSE states.

18 C. A copy of any foreign decree authenticated as provided by the
19 laws of this state may be filed in the office of the clerk of any superior
20 court ~~of~~ IN this state. The clerk, ~~upon~~ ON verifying with the director ~~of~~
21 ~~insurance~~ that the decree or order qualified as a foreign decree, shall
22 treat the foreign decree in the same manner as a decree of a superior
23 court ~~of~~ IN this state. A foreign decree so filed has the same effect and
24 shall be deemed as a decree of a superior court ~~of~~ IN this state, and is
25 subject to the same procedures, defenses and proceedings for reopening,
26 vacating, ~~or~~ staying as a decree of a superior court ~~of~~ IN this state and
27 may be enforced or satisfied in like manner.

28 D. At the time of the filing of the foreign decree, the attorney
29 general shall make and file with the clerk of the court an affidavit
30 setting forth the name and last known post office address of the
31 defendant.

32 E. Promptly ~~upon~~ ON the filing of the foreign decree and the
33 affidavit, the clerk shall mail notice of the filing of the foreign decree
34 to the defendant at the address given and to the director ~~of insurance of~~
35 ~~this state~~ and shall make a note of the mailing in the docket. In
36 addition, the attorney general may mail a notice of the filing of the
37 foreign decree to the defendant and to the director ~~of insurance of this~~
38 ~~state~~ and may file proof of mailing with the clerk. Lack of mailing
39 notice of filing by the clerk ~~shall~~ DOES not affect the enforcement
40 proceedings if proof of mailing by the attorney general has been filed.

41 F. ~~No~~ AN execution or other process for enforcement of a foreign
42 decree filed under this section shall NOT issue until thirty days after
43 the date the decree is filed.

44 G. If the defendant shows the superior court that an appeal from
45 the foreign decree is pending or will be taken, or that a stay of

1 execution has been granted, the court shall stay enforcement of the
2 foreign decree until the appeal is concluded, the time for appeal expires,
3 or the stay of execution expires or is vacated, ~~upon~~ ON proof that the
4 defendant has furnished the security for the satisfaction of the decree
5 required by the state in which it was rendered.

6 H. If the defendant shows the superior court any ground ~~upon~~ ON
7 which enforcement of a decree of any superior court ~~of~~ IN this state would
8 be stayed, the court shall stay enforcement of the foreign decree for an
9 appropriate period, ~~upon~~ ON requiring the same security for satisfaction
10 of the decree ~~which~~ THAT is required in this state.

11 Sec. 48.. Section 20-401.05, Arizona Revised Statutes, is amended to
12 read:

13 20-401.05. Certificate of exemption; definitions

14 A. On July 1 of each year, the director shall grant a certificate
15 of exemption to any insurer, employee benefit trust or voluntary
16 employees' beneficiary association transacting life insurance, disability
17 insurance or annuity business, or providing other health or welfare
18 benefits, under the laws of its domicile that:

19 1. Is organized and operated without profit to any person, firm,
20 partnership, association, corporation or other entity.

21 2. Is organized and operated exclusively for either of the
22 following purposes:

23 (a) Aiding educational or scientific institutions that are also
24 organized and operated without profit to any person, firm, partnership,
25 association, corporation or other entity.

26 (b) Aiding agricultural institutions if the grantee is subject to
27 regulation either as an insurer, a multiple employer welfare arrangement
28 or an employee benefit trust by its state of domicile.

29 3. Serves a purpose prescribed in paragraph 2 OF THIS SUBSECTION by
30 issuing insurance, annuity and employee benefits contracts only to or for
31 the benefit of the educational, scientific or agricultural institutions or
32 their respective members or to individuals engaged in the service of those
33 institutions.

34 4. Appoints the secretary of state, and the secretary of state's
35 successors in office, as its true and lawful attorney on whom may be
36 served all lawful process in any action, suit or proceeding in any court
37 by the director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS,
38 through the attorney general, or any action or proceeding against the
39 insurer, employee benefit trust or voluntary employees' beneficiary
40 association brought by someone other than the director of THE DEPARTMENT
41 OF insurance AND FINANCIAL INSTITUTIONS, which appointment is irrevocable,
42 binds the insurer, employee benefit trust or voluntary employees'
43 beneficiary association or any successor in interest, remains in effect as
44 long as there is in force in this state any contract or policy made or
45 issued by the insurer, employee benefit trust or voluntary employees'

1 beneficiary association or any obligation arising therefrom and must be
2 processed in accordance with sections 20-401.03 and 20-403.

3 5. Is fully and legally organized and qualified to do business and
4 has been actively doing business under the laws of the state of its
5 domicile for a period of at least twenty years before its application for
6 a certificate of exemption.

7 6. Files with the director for the director's approval a copy of
8 any policy or contract form issued to residents of this state.

9 7. Files with the director on or before March 1 of each year a copy
10 of its annual statement prepared pursuant to the laws of its state of
11 domicile, as well as any other financial material as may be requested,
12 including the annual statement or such other financial materials as may be
13 requested relating to any subsidiary or other legal entity operated by the
14 insurer, employee benefit trust or voluntary employees' beneficiary
15 association under a management contract or other form of agreement, and
16 coincident with the filing of its annual statement, pays the filing fee
17 prescribed in section 20-167.

18 8. Agrees to submit to periodic examinations as may be deemed
19 necessary by the director.

20 B. On or before March 1 of each year, any insurer holding a
21 certificate of exemption shall file with the director a form of premium
22 tax return prescribed by the director and shall pay the premium tax
23 imposed by section 20-224 on all policies of life insurance and disability
24 insurance in force with residents of this state.

25 C. After a hearing, the director may refuse to renew, or may revoke
26 or suspend, a certificate of exemption if the director finds that the
27 insurer, employee benefit trust or voluntary employees' beneficiary
28 association no longer meets the requirements of this section, or finds
29 that the insurer, employee benefit trust or voluntary employees'
30 beneficiary association has violated any ~~provisions~~ PROVISION of article 6
31 of this chapter.

32 D. For the purposes of this section:

33 1. "Agricultural institutions" means agricultural growers,
34 shippers, packers, brokers, distributors, wholesalers, receivers and
35 jobbers, or affiliated, associated and related suppliers, industries or
36 firms.

37 2. "Voluntary employees' beneficiary association" means an
38 association described in 26 United States Code section 501(c)(9).

39 Sec. 49. Section 20-403, Arizona Revised Statutes, is amended to
40 read:

41 20-403. Service of process in an action by someone other than
42 the director

43 A. The transaction of an insurance business in this state, as
44 provided in section 20-106, by, or on behalf of, an unauthorized
45 nonresident insurer shall be deemed to constitute an appointment by the

1 insurer of the director and ~~his~~ THE DIRECTOR'S successors in office as its
2 attorney, ~~upon~~ ON whom may be served all lawful process issued within this
3 state in any action or proceeding against such insurer brought by someone
4 other than the director ~~of insurance~~ and arising out of any such
5 transaction.

6 B. Such service of process shall be made by delivering to and
7 leaving with the director two copies thereof. At the time of service the
8 plaintiff shall pay ~~five dollars~~ \$5 to the director, taxable as costs in
9 the action. The director shall ~~forthwith~~ IMMEDIATELY mail by registered
10 or certified mail one of the copies of process to the defendant at its
11 principal place of business as last known to the director, and shall keep
12 a record of all process so served.

13 C. Notice of service and a copy of process shall be sent by THE
14 plaintiff's attorney to THE defendant insurer at its last known principal
15 place of business by registered or certified mail. THE defendant
16 insurer's receipt, or registry receipt as to the mailing issued by the
17 post office where registered or certified, showing the name of the sender
18 and name and address of the addressee, and the affidavit of plaintiff's
19 attorney showing compliance with this subsection, shall be filed in the
20 court in which the action is pending on or before the date the defendant
21 insurer is required to appear, or within such further time as the court
22 may allow. ~~No~~ A judgment by default against the insurer may NOT be taken
23 under this section until the expiration of thirty days ~~from~~ AFTER THE date
24 of filing of the affidavit of compliance.

25 D. Service of process in ~~such~~ an action or proceeding against an
26 unauthorized resident insurer shall be valid if served ~~upon~~ ON any person
27 within this state who transacts an insurance business in this state on
28 behalf of such insurer. ~~The requirements of Subsection C of this section~~
29 ~~shall likewise apply~~ APPLIES with respect to ~~such~~ service of process.

30 E. Service of process ~~upon such~~ ON an insurer in accordance with
31 this section shall be as valid and effective as if served ~~upon~~ ON a
32 defendant personally present in this state.

33 F. Means provided in this section for service of process ~~upon~~ ON
34 the insurer shall not be deemed to prevent service of process ~~upon~~ ON the
35 insurer by any other lawful means.

36 G. An insurer ~~which~~ THAT has been so served with process, subject
37 to section 20-405, shall have the right to appear in and defend the action
38 and employ attorneys and other persons in this state to assist in ~~its~~ THE
39 ACTION'S defense ~~thereto~~ or settlement ~~thereof~~.

40 Sec. 50. Section 20-410, Arizona Revised Statutes, is amended to
41 read:

42 20-410. Validity of surplus lines insurance; disclosure;
43 policy fees

44 A. Insurance contracts procured as surplus lines coverage are fully
45 valid and enforceable as to all parties and shall be recognized in all

1 matters in the same manner as like contracts issued by authorized
2 insurers.

3 B. Any policy and any evidence of surplus lines coverage that ~~is~~
4 ARE issued by an unauthorized insurer pursuant to this article and that ~~is~~
5 ARE issued for delivery to the insured shall contain a conspicuously
6 stamped or written notice in bold-faced type that states one of the
7 following:

8 1. If the surplus lines policy ~~or~~ AND ANY evidence of coverage ~~is~~
9 ARE issued by a surplus lines insurer that is not a domestic surplus lines
10 insurer:

11 Pursuant to section 20-401.01, subsection B, paragraph 1,
12 Arizona Revised Statutes, this policy is issued by an insurer
13 that does not possess a certificate of authority from the
14 director of the Arizona department of insurance AND FINANCIAL
15 INSTITUTIONS. If the insurer that issued this policy becomes
16 insolvent, insureds or claimants will not be eligible for
17 insurance guaranty fund protection pursuant to title 20,
18 Arizona Revised Statutes.

19 2. If the surplus lines policy ~~or~~ AND ANY evidence of coverage ~~is~~
20 ARE issued by a domestic surplus lines insurer:

21 If the insurer that issued this policy becomes insolvent,
22 insureds or claimants will not be eligible for insurance
23 guaranty fund protection pursuant to title 20, Arizona Revised
24 Statutes.

25 C. A surplus lines broker may charge and receive a fee in addition
26 to the premium for services provided in the transaction of surplus lines
27 insurance if before effecting any coverage both of the following
28 conditions are met:

29 1. The service fees and the specific services for which the fees
30 are charged are disclosed to the insured or the insured's representative
31 and are agreed to in writing by the insured or the insured's
32 representative.

33 2. The taxes prescribed in section 20-416 are paid on any fees
34 charged to the insured.

35 Sec. 51. Section 20-422, Arizona Revised Statutes, is amended to
36 read:

37 20-422. Alien insurance for coverage in Mexico

38 A. A person shall not solicit or accept applications in this state
39 for insurance or collect a commission on a policy that is to be effective
40 in Mexico and only outside the geographical limits of this state and that
41 is to be issued by an alien insurer or insurers not authorized to transact
42 insurance in this state, unless that person is licensed pursuant to
43 section 20-411, 20-411.01 or 20-411.02 or any agent or employee of that
44 licensed person or any other authorized insurance producer in this state

1 provided that the insurance producer obtains the coverage through that
2 licensed person.

3 B. Except for sections 20-411, 20-411.01, 20-411.02, 20-414 and
4 20-418, the insurance prescribed in this section is not subject to this
5 article.

6 C. Any policy and any evidence of coverage that ~~is~~ ARE issued by an
7 alien insurer and that ~~is~~ ARE issued pursuant to this section for delivery
8 to the insured in this state shall contain a conspicuously stamped or
9 written notice in bold-faced type that states:

10 This policy is issued by an insurance company that is not
11 regulated by the Arizona department of insurance AND FINANCIAL
12 INSTITUTIONS. The insurance company may not provide claims
13 service and may not be subject to service of process in
14 Arizona. If the insurance company becomes insolvent, insureds
15 or claimants will not be eligible for protection under Arizona
16 law.

17 Sec. 52. Section 20-423, Arizona Revised Statutes, is amended to
18 read:

19 20-423. Voluntary domestic organization of surplus lines
20 brokers; membership; stamping fee collection;
21 meetings; definition

22 A. A voluntary domestic organization of surplus lines brokers that
23 contracts with the director pursuant to section 20-167, subsection ~~G~~ F
24 shall be incorporated in this state as a nonprofit corporation. A surplus
25 lines broker who is licensed and in good standing in this state may be a
26 member in the organization if the broker pays any required membership fee
27 and dues required to be paid by all members.

28 B. The organization may collect stamping fees pursuant to section
29 20-167 from any of the following:

30 1. A member of the organization.

31 2. A licensed surplus lines broker who is not a member of the
32 organization.

33 3. A person who is no longer a licensed surplus lines broker if the
34 stamping fee is paid in connection with transactions that the person
35 effectuated while licensed as a surplus lines broker.

36 C. The organization shall hold an annual meeting of its members and
37 may hold special meetings of its members. Members may participate in
38 annual and special member meetings through the use of any means of
39 communication if the communication allows all members participating in the
40 meeting to simultaneously hear each other during the meeting and the
41 organization provides a meeting notice that specifies how members can
42 participate. Any member participating by this alternate means of
43 communication is deemed to be present in person at the meeting for
44 purposes of determining a quorum and voting and for any other purpose
45 authorized or required by law.

1 D. Two percent of the total membership of the organization present
2 in person or by proxy and entitled to vote at a meeting constitutes a
3 quorum for the transaction of business at the meeting.

4 E. For the purposes of this section, "stamping fee" has the same
5 meaning prescribed in section 20-167.

6 Sec. 53. Section 20-466, Arizona Revised Statutes, is amended to
7 read:

8 20-466. Fraud unit; investigators; peace officer status;
9 powers; information sharing; assessment

10 A. ~~A~~ THE fraud unit is established in the department of insurance
11 AND FINANCIAL INSTITUTIONS. THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
12 AND FINANCIAL INSTITUTIONS SHALL APPOINT AN INDIVIDUAL TO OPERATE THE
13 FRAUD UNIT IN CONJUNCTION WITH OPERATING THE AUTOMOBILE THEFT AUTHORITY
14 ESTABLISHED BY SECTION 41-3451.

15 B. The fraud unit shall work in conjunction with the department of
16 public safety.

17 C. The director may investigate any act or practice of fraud
18 prohibited by section 20-466.01 and any other act or practice of fraud
19 against an insurer or entity licensed under this title. The director
20 shall administer the fraud unit.

21 D. The director may employ investigators for the fraud unit. A
22 fraud unit investigator has and shall exercise the law enforcement powers
23 of a peace officer of this state but only while acting in the course and
24 scope of employment for the department. The director shall adopt
25 guidelines for the conduct of investigations that are substantially
26 similar to the investigative policy and procedural guidelines of the
27 department of public safety for peace officers. Fraud unit investigators
28 shall not preempt the authority and jurisdiction of other law enforcement
29 agencies of this state or its political subdivisions. Fraud unit
30 investigators:

31 1. Shall have at least the qualifications prescribed by the Arizona
32 peace officer standards and training board pursuant to section 41-1822.

33 2. Are not eligible to participate in the public safety personnel
34 retirement system established by title 38, chapter 5, article 4 due solely
35 to employment as fraud unit investigators.

36 E. The director may request the submission of papers, documents,
37 reports or other evidence relating to an investigation under this section.
38 The director may issue subpoenas and take other actions pursuant to
39 section 20-160. The materials are privileged and confidential until the
40 director completes the investigation. Any documents, materials or other
41 information that is provided to the director pursuant to this section is
42 not subject to discovery or subpoena until opened for public inspection by
43 the director or, after notice and a hearing, a court determines that the
44 director would not be unduly burdened by compliance with the subpoena.
45 The director shall keep the identity of an informant confidential,

1 including any information that might identify the informant, unless the
2 request for information is made by a law enforcement agency, the attorney
3 general or a county attorney for purposes of a criminal investigation or
4 prosecution. The director may use the documents, materials or other
5 information in the furtherance of any regulatory or legal action brought
6 as a part of the director's official duties.

7 F. If the documents, materials or other information the director
8 seeks to obtain by request is located outside this state, the person
9 requested to provide the documents, materials or other information shall
10 arrange for the fraud unit or a representative, including an official of
11 the state in which the documents, materials or other information is
12 located, to examine the documents, materials or other information where it
13 is located. The director may respond to similar requests from other
14 states.

15 G. An insurer that believes a fraudulent claim has been or is being
16 made shall send to the director, on a form prescribed by the director,
17 information relative to the claim including the identity of parties
18 claiming loss or damage as a result of an accident and any other
19 information the fraud unit may require. The director shall review the
20 report and determine if further investigation is necessary. If the
21 director determines that further investigation is necessary, the director
22 may conduct an independent investigation to determine if fraud, deceit or
23 intentional misrepresentation in the submission of the claim exists. If
24 the director is satisfied that fraud, deceit or intentional
25 misrepresentation of any kind has been committed in the submission of a
26 claim, the director may report the violations of the law to the reporting
27 insurer, to the appropriate licensing agency as defined in section
28 20-466.04 and to the appropriate county attorney or the attorney general
29 for prosecution.

30 H. The director may:

31 1. Share nonpublic documents, materials or other information with
32 other state, federal and international regulatory agencies, with the
33 national association of insurance commissioners and its affiliates and
34 subsidiaries and with state, federal and international law enforcement
35 authorities if the recipient agrees and warrants that it has the authority
36 to maintain the confidentiality and privileged status of the documents,
37 materials or other information.

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

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

4 I. A disclosure to or by the director pursuant to this section or
5 as a result of sharing information pursuant to subsection ~~G~~ H of this
6 section is not a waiver of any applicable privilege or claim of
7 confidentiality in the documents, materials or other information disclosed
8 or shared.

9 J. The director shall annually assess each insurer as defined in
10 section 20-441, subsection B authorized to transact business in this state
11 up to ~~one thousand fifty dollars~~ \$1,050, as annually adjusted pursuant to
12 this subsection for the administration and operation of the fraud unit and
13 the prosecution of fraud pursuant to this section. Monies collected shall
14 be deposited, pursuant to sections 35-146 and 35-147, in the state general
15 fund. ~~The director shall annually revise the assessment amount in such a~~
16 ~~manner that the revenue derived from the assessment equals at least~~
17 ~~ninety-five per cent but not more than one hundred ten per cent of the~~
18 ~~appropriated budget of the fraud unit for the prior fiscal year.~~ MONIES
19 APPROPRIATED TO THE DEPARTMENT FOR THE FRAUD UNIT SHALL BE INCLUDED AS A
20 SEPARATE LINE ITEM IN THE GENERAL APPROPRIATIONS ACT. THE DEPARTMENT
21 SHALL USE ALL APPROPRIATED MONIES EXCLUSIVELY TO OPERATE THE FRAUD UNIT.

22 K. A person, or an officer, employee or agent of the person acting
23 within the scope of employment or agency of that officer, employee or
24 agent, who in good faith files a report or provides other information to
25 the fraud unit pursuant to this section is not subject to civil or
26 criminal liability for reporting that information to the fraud unit.

27 Sec. 54. Section 20-481.08, Arizona Revised Statutes, is amended to
28 read:

29 20-481.08. Appointment of director as agent for service of
30 process; forwarding of process; consent to
31 jurisdiction

32 Any person who is not a resident, domiciled in this state, or
33 authorized to do business in this state and WHO files a statement as
34 required by section 20-481.02 shall be deemed to have:

35 1. Consented to the jurisdiction of the courts of this state for
36 all actions arising under ~~the provisions of~~ this article.

37 2. Appointed the director ~~of insurance~~ as ~~his~~ THE PERSON'S lawful
38 agent for the purpose of accepting service of process in any action, suit
39 or proceeding that may arise under this article. Copies of all ~~such~~
40 lawful process accepted by the director as an agent shall be transmitted
41 by the director by registered or certified mail to ~~such~~ THE person at ~~his~~
42 THE PERSON'S last known address.

1 Sec. 55. Section 20-481.25, Arizona Revised Statutes, is amended to
2 read:

3 20-481.25. Acquisitions involving insurers not otherwise
4 covered; anticompetitive considerations; civil
5 penalty; definitions

6 A. Except as provided in subsection B of this section, this section
7 applies to any acquisition in which there is a change in control of an
8 insurer authorized to do business in this state.

9 B. This section does not apply to the following, except as provided
10 under subsections C and D of this section:

11 1. A purchase of securities solely for investment purposes as long
12 as the securities are not used by voting or otherwise to cause or attempt
13 to cause the substantial lessening of competition in any insurance market
14 in this state. If a purchase of securities results in a presumption of
15 control as defined in section 20-481, the purchase of securities is not
16 solely for investment purposes unless the INSURANCE director ~~of insurance~~
17 of the insurer's state of domicile accepts a disclaimer of control or
18 affirmatively finds that control does not exist and the disclaimer action
19 or affirmative finding is communicated by the domiciliary insurance
20 director to the director of THE DEPARTMENT OF insurance AND FINANCIAL
21 INSTITUTIONS of this state.

22 2. The acquisition of a person by another person if both persons
23 are neither directly nor through affiliates primarily engaged in the
24 business of insurance and if preacquisition notification is filed with the
25 director pursuant to subsection C of this section thirty days before the
26 proposed effective date of the acquisition. Preacquisition notification
27 is not required if the acquisition would otherwise be excluded from this
28 section by any other provision of this subsection.

29 3. The acquisition of already affiliated persons.

30 4. If, as an immediate result of an acquisition, the combined
31 market share of the involved insurers in any market would not exceed five
32 ~~per cent~~ PERCENT of the total market, there would not be an increase in
33 any market share or the combined market share of the involved insurers in
34 any market would not exceed twelve ~~per cent~~ PERCENT of the total market
35 and the market share increases by more than two ~~per cent~~ PERCENT of the
36 total market. For the purposes of this paragraph, "market" means direct
37 written insurance premiums in this state for a line of business as
38 contained in the annual statement required to be filed by insurers
39 licensed to do business in this state.

40 5. An acquisition for which a preacquisition notification is
41 required pursuant to this section because of the resulting effect on the
42 ocean marine insurance line of business.

43 6. An acquisition of an insurer whose domiciliary INSURANCE
44 director ~~of insurance~~ finds that the insurer is failing, that there is no
45 feasible alternative to improve the insurer's condition and that the

1 public benefits that would result from improving the insurer's condition
2 through the acquisition exceed the public benefits that would result from
3 not lessening competition and the domiciliary INSURANCE director ~~of~~
4 ~~insurance~~ communicates these findings to the director of THE DEPARTMENT OF
5 insurance AND FINANCIAL INSTITUTIONS of this state.

6 C. An acquisition under subsection B of this section may be subject
7 to an order pursuant to subsection F of this section unless the acquiring
8 person files a preacquisition notification and the waiting period has
9 expired. The acquired person may file a preacquisition notification.
10 Information submitted under this subsection is confidential. The
11 preacquisition notification shall be in a form and contain the information
12 that is prescribed by the national association of insurance commissioners
13 relating to those markets that are not exempt from the provisions of this
14 section. The director may require additional material and information
15 that the director deems necessary in order to determine if the proposed
16 acquisition, if consummated, would lessen competition or tend to create a
17 monopoly. The information may include an economist's opinion on the
18 competitive impact of the acquisition in this state and a summary of the
19 economist's education and experience that indicates the economist's
20 ability to render an informed opinion. The waiting period begins on the
21 date the director receives a preacquisition notification and ends thirty
22 days after the date of receipt or on termination of the waiting period by
23 the director, whichever is earlier. Before the waiting period ends, the
24 director on a one-time basis may require the submission of additional
25 information that is relevant to the proposed acquisition. The waiting
26 period shall end thirty days after the director receives the additional
27 information or terminates the waiting period, whichever is earlier.

28 D. ~~No~~ AN acquisition subject to the provisions of this section
29 shall NOT substantially lessen competition in any line of insurance in
30 this state or tend to create a monopoly. The director may enter a cease
31 and desist order under subsection F of this section if there is
32 substantial evidence that the effect of the acquisition may be to
33 substantially lessen competition in any line of insurance in this state or
34 may tend to create a monopoly or if the insurer fails to file adequate
35 information pursuant to subsection C of this section. The director has
36 the burden of showing prima facie evidence of a violation of this
37 subsection. In determining if a proposed acquisition would lessen
38 competition or tend to create a monopoly, the director shall consider the
39 following:

40 1. An acquisition covered under subsection B of this section that
41 involves two or more insurers competing in the same market is prima facie
42 evidence of a violation of this subsection if:

1 (a) The market is highly concentrated and the involved insurers
2 possess the following market shares:

	<u>Insurer A</u>	<u>Insurer B</u>
3		
4	(i) four per cent PERCENT	four per cent PERCENT or more
5	(ii) ten per cent PERCENT	two per cent PERCENT or more
6	(iii) fifteen per cent PERCENT	one per cent PERCENT or more

7 (b) The market is not highly concentrated and the involved insurers
8 possess the following market shares:

	<u>Insurer A</u>	<u>Insurer B</u>
9		
10	(i) five per cent PERCENT	five per cent PERCENT or more
11	(ii) ten per cent PERCENT	four per cent PERCENT or more
12	(iii) fifteen per cent PERCENT	three per cent PERCENT or more
13	(iv) nineteen per cent PERCENT	one per cent PERCENT or more

14 A highly concentrated market is a market in which the share of the four
15 largest insurers is seventy-five ~~per cent~~ PERCENT or more of the market.
16 Percentages not shown in the tables are interpolated proportionately to
17 the percentages that are shown. If more than two insurers are involved,
18 exceeding the total of the two columns in the table is prima facie
19 evidence of a violation of this subsection. For the purposes of this
20 paragraph, the insurer with the largest market share is deemed to be
21 insurer A.

22 2. A significant trend toward increased concentration exists if the
23 aggregate market share of any grouping of the largest insurers in the
24 market, from the two largest to the eight largest, has increased by seven
25 ~~per cent~~ PERCENT or more of the market over a period of time that extends
26 from a base year five to ten years before the acquisition up to the time
27 of the acquisition. Any acquisition or merger under subsection B of this
28 section that involves two or more insurers competing in the same market is
29 prima facie evidence of a violation of this subsection if:

30 (a) There is a significant trend toward increased concentration in
31 the market.

32 (b) One of the insurers involved is one of the insurers in a
33 grouping of large insurers whose market share has increased by seven ~~per~~
34 ~~cent~~ PERCENT or more.

35 (c) Another involved insurer's market is two ~~per cent~~ PERCENT or
36 more.

37 E. If an acquisition is not prima facie evidence of a violation of
38 subsection D of this section, the director may establish the requisite
39 anticompetitive effect based on other substantial evidence. If an
40 acquisition is prima facie evidence of a violation of subsection D of this
41 section, a party may establish the absence of the requisite
42 anticompetitive effect based on other substantial evidence. Relevant
43 factors in making a determination under this subsection include market
44 shares, volatility of ranking of market leaders, number of competitors,

1 concentration, trend of concentration in the industry and ease of entry
2 into and exit from the market.

3 F. If an acquisition violates this section, the director may enter
4 an order:

5 1. Requiring an involved insurer to cease and desist from doing
6 business in this state with respect to the line or lines of insurance
7 involved in the violation.

8 2. Denying the application of an acquired or acquiring insurer for
9 a license to do business in this state.

10 G. The director shall not enter an order pursuant to subsection F
11 of this section unless a hearing is held and notice of the hearing is
12 issued before the end of the waiting period prescribed in subsection C of
13 this section and not less than fifteen days before the hearing. The
14 hearing shall be concluded and the order shall be issued ~~no~~ NOT later than
15 sixty days after the end of the waiting period. The director shall
16 include with each order a written decision setting forth the director's
17 findings of fact and conclusions of law. The order does not become final
18 earlier than thirty days after it is issued. Before the order becomes
19 final the involved insurer may submit a plan to remedy within a reasonable
20 time the anticompetitive impact of the acquisition. Based on the
21 submitted plan or other information, the director shall specify the
22 conditions, if any, that would remedy the aspects of the acquisition
23 causing the violation and shall vacate or modify the order. An order does
24 not apply if the acquisition is not consummated.

25 H. An order shall not be entered under subsection F of this section
26 if:

27 1. The acquisition will yield substantial economies of scale or
28 economies in resource utilization that cannot be achieved feasibly in any
29 other way and the public benefits that would arise from the economies
30 exceed the public benefits that would arise from not lessening
31 competition.

32 2. The acquisition will increase substantially the availability of
33 insurance and the public benefits of the increase exceed the public
34 benefits that would arise from not lessening competition.

35 I. The director, after notice and a hearing, may impose one or more
36 of the following civil penalties against a person who violates a cease and
37 desist order that is in effect:

38 1. Up to and including ~~ten thousand dollars~~ \$10,000 for every day
39 of violation.

40 2. Suspension or revocation of the person's license.

41 J. An insurer or other person who fails to make a filing required
42 by this section and who fails to demonstrate a good faith effort to comply
43 with the filing requirement is subject to a civil penalty of not more than
44 ~~fifty thousand dollars~~ \$50,000.

1 K. For the purposes of subsection D of this section:

2 1. "Insurer" means a company or group of companies under common
3 management, ownership or control.

4 2. "Market" means the relevant product and geographical markets.
5 In determining the relevant product and geographical markets, the director
6 shall consider the definitions or guidelines adopted by the national
7 association of insurance commissioners and to information submitted by the
8 parties to the acquisition. In the absence of sufficient information to
9 the contrary, the relevant product market is assumed to be the direct
10 written insurance premium for a line of business that is used in the
11 annual statement required to be filed by insurers doing business in this
12 state. The relevant geographical market is this state.

13 L. For the purposes of this section:

14 1. "Acquisition" means any agreement, arrangement or activity that
15 results in a person acquiring directly or indirectly the control of
16 another person, including the acquisition of voting securities, assets,
17 bulk reinsurance and mergers.

18 2. "Involved insurer" means an insurer that acquires or is
19 acquired, is affiliated with an acquirer or acquired or is the result of a
20 merger.

21 Sec. 56. Section 20-485, Arizona Revised Statutes, is amended to
22 read:

23 20-485. Definitions; scope

24 A. In this article, unless the context otherwise requires:

25 1. "Administrator" means any person who collects charges or
26 premiums from or paid on behalf of, or who adjusts or settles claims by,
27 residents of this state in connection with life or health insurance
28 coverage or annuities other than any of the following:

29 (a) An employer on behalf of the employer's employees or the
30 employees of one or more subsidiary or affiliated corporations of the
31 employer.

32 (b) A union on behalf of its members.

33 (c) An insurer authorized to transact insurance in this state,
34 including its employees and sales representatives, to the extent that it
35 collects charges or premiums from or paid on behalf of, or adjusts or
36 settles claims by, residents of this state in connection with life or
37 health insurance coverage or annuities lawfully issued and delivered or
38 assumed in this state and pursuant to the laws of this state or another
39 state and for which the insurer or an affiliated insurer is presently
40 directly liable.

41 (d) An insurer authorized to transact insurance in this state,
42 including its employees and sales representatives, to the extent that it
43 collects charges or premiums from or paid on behalf of, or adjusts or
44 settles claims by, residents of this state in connection with life or
45 health insurance coverage or annuities lawfully issued and delivered or

1 assumed in this state and pursuant to the laws of this state or another
2 state and for which an unaffiliated insurer is presently directly liable.

3 (e) A person other than an insurer, to the extent that the person's
4 activities are limited to the collection of charges or premiums from or
5 paid on behalf of, or the adjustment or settlement of claims by, residents
6 of this state in connection with life and health insurance coverage issued
7 and delivered or assumed by an affiliated insurer authorized to transact
8 insurance in this state and for which the affiliated insurer is presently
9 directly liable.

10 (f) A life or disability insurance producer who is licensed in this
11 state or an employee of a licensed producer working at the direction and
12 under the supervision of a licensed producer if the producer or the
13 producer's employee does not adjust or settle claims.

14 (g) A creditor on behalf of the creditor's debtors with respect to
15 insurance covering a debt between the creditor and its debtors.

16 (h) A trust and its trustees, agents and employees acting pursuant
17 to the trust established in conformity with 29 United States Code section
18 186.

19 (i) A trust exempt from taxation under section 501(a) of the
20 internal revenue code and its trustees and employees acting pursuant to
21 the trust, or a custodian and its agents and employees acting pursuant to
22 a custodian account that meets the requirements of section 401(f) of the
23 internal revenue code.

24 (j) A financial institution or money transmitter that is subject to
25 supervision or examination by federal or state banking authorities if the
26 financial institution or money transmitter does not adjust or settle
27 claims.

28 (k) A credit card issuing company that advances for and collects
29 premiums or charges from its credit card holders who have authorized such
30 collection, if the company does not adjust or settle claims.

31 (l) A person who adjusts or settles claims in the normal course of
32 the person's practice or employment as an attorney and who does not
33 collect charges or premiums in connection with life or health insurance
34 coverage or annuities.

35 (m) An adjuster who is licensed in this state while acting in
36 accordance with an adjuster's license.

37 (n) A person who acts only as an administrator of one or more bona
38 fide employee benefit plans established by an employer or an employee
39 organization, or both, for which the insurance laws of this state are
40 preempted pursuant to the employee retirement income security act of 1974
41 (P.L. 93-406; 88 Stat. 829; 29 United States Code sections 1001 through
42 1461).

43 (o) A credit card processing company that processes payments or
44 charges for premiums if the company does not adjust or settle claims.

1 (p) A qualified marketplace platform on behalf of qualified
2 marketplace contractors that have executed a written contract with the
3 qualified marketplace platform that complies with the requirements of
4 section 23-1603, subsection A.

5 (q) An employee of the group policyholder who collects or remits
6 premiums for group life insurance, group annuities or group or blanket
7 disability insurance if the person does not adjust claims or receive any
8 commissions.

9 (r) An administrator of a trust that was established to provide
10 life insurance, disability insurance or annuities to participants in the
11 trust and that is also a group policyholder. The administrator may act
12 only as an administrator of the trust and may not adjust or settle claims.

13 2. "Affiliate" or "affiliated" means a person who directly, or
14 indirectly through one or more intermediaries, controls, is controlled by
15 or is under common control with a specified person.

16 3. "CHARGES" MEANS COST SHARING REQUIREMENTS, INCLUDING APPLICABLE
17 COINSURANCE, COPAYMENTS, DEDUCTIBLES OR OTHER AMOUNTS PAYABLE BY AN
18 INSURED UNDER THE TERMS OF AN INSURANCE CONTRACT.

19 ~~3.~~ 4. "Control" means the direct or ultimate possession of the
20 power to direct or cause the direction of the management and policies of a
21 person whether through voting rights, contracts, other than commercial
22 contracts for goods or nonmanagement services, or otherwise, unless the
23 power is the result of an official position or corporate office. Control
24 exists if any person, directly or indirectly, owns, controls, holds with
25 the power to vote or holds proxies representing ten percent or more of the
26 voting rights of any other person, including the right to elect or appoint
27 the officers or directors of a nonprofit corporation.

28 ~~4.~~ 5. "Insurer" means any person who provides life or health
29 insurance coverage in this state or who transacts annuity business in this
30 state. Insurer includes an authorized insurer, hospital, medical, dental
31 or optometric service corporation or health care services organization or
32 any other person providing a plan of insurance subject to the laws of
33 insurance of this state. Insurer does not include a self-insured or a
34 self-funded employee benefit plan if regulation of that plan is preempted
35 pursuant to section 1144(a) of the employee retirement income security act
36 of 1974 (29 United States Code section 1144(a)) but does include an
37 insurer who provides coverage as part of an employee benefit plan.

38 ~~5.~~ 6. "Principal" means a person who has the authority to enter
39 into written agreements on behalf of the administrator pursuant to section
40 20-485.01.

1 ADMINISTRATOR MAY NOT COLLECT CHARGES THAT HAVE REMAINED UNPAID ON AN
2 ACCOUNT THAT HAS BEEN INACTIVE FOR MORE THAN TWELVE MONTHS.

3 Sec. 58. Section 20-489.01, Arizona Revised Statutes, is amended to
4 read:

5 20-489.01. Application of other laws

6 To the extent ~~permitted~~ ALLOWED by this article, section 20-142,
7 subsection ~~E~~ F applies to this article.

8 Sec. 59. Section 20-612, Arizona Revised Statutes, is amended to
9 read:

10 20-612. Delinquency proceedings; jurisdiction; venue; nature
11 of remedy; appeal

12 A. The superior court is vested with exclusive original
13 jurisdiction of delinquency proceedings under this article, ~~and~~ and is
14 authorized to make all necessary and proper orders to carry out the
15 purposes of this article.

16 B. The venue of delinquency proceedings against a domestic, foreign
17 or alien insurer shall be in Maricopa county.

18 C. Delinquency proceedings pursuant to this article ~~shall~~
19 constitute the sole and exclusive method of liquidating, rehabilitating,
20 reorganizing or conserving an insurer, and ~~no~~ A court shall NOT entertain
21 a petition for the commencement of such proceedings unless it has been
22 filed in the name of the state on the relation of the director of THE
23 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS.

24 D. An appeal shall lie to the supreme court from an order granting
25 or refusing rehabilitation, liquidation or conservation, ~~and~~ and from every
26 other order in delinquency proceedings having the character of a final
27 order as to the particular portion of the proceedings embraced therein.

28 Sec. 60. Section 20-613, Arizona Revised Statutes, is amended to
29 read:

30 20-613. Commencement of delinquency proceedings

31 A. The director ~~of insurance~~ shall commence any ~~such~~ DELINQUENCY
32 proceeding, the attorney general representing ~~him~~ THE DIRECTOR, by an
33 application to the court for an order directing the insurer to show cause
34 why the director should not have the relief prayed for. On the return of
35 the order to show cause, ~~and~~ and after a full hearing, the court shall either
36 deny the application or grant the application, together with such other
37 relief as the nature of the case and the interests of policyholders,
38 creditors, stockholders, members, subscribers or the public requires.

39 B. The director may file with the superior court a certificate
40 stating that the delinquency proceeding is of special public importance.
41 On receipt of the certificate the presiding judge of the superior court
42 immediately shall designate a judge to hear and determine the proceeding.
43 The designated judge shall assign the proceeding for hearing at the
44 earliest practicable date and cause the proceeding to be expedited in
45 every way, including applications for temporary restraining orders,

1 preliminary injunctions and orders appointing receivers. An expedited
2 hearing under this subsection is in addition to the requirements of
3 section 20-172, subsection A.

4 C. Pending proceedings commenced under section 20-169, the director
5 is not precluded from commencing a delinquency proceeding under this
6 article. The pendency of proceedings under section 20-169 is not a ground
7 for denying an application for an order under this article.

8 Sec. 61. Section 20-624, Arizona Revised Statutes, is amended to
9 read:

10 20-624. Conduct of delinquency proceedings against domestic
11 and alien insurers

12 A. ~~When~~ IF under this article a receiver is to be appointed in
13 delinquency proceedings for a domestic or alien insurer, the court shall
14 appoint the director ~~of insurance~~ as receiver. The court shall order the
15 receiver to take immediate possession of the assets of the insurer and to
16 administer them under the orders of the court.

17 B. As domiciliary receiver, the director ~~shall be~~ IS vested by
18 operation of law with the title to all of the property, contracts and
19 rights of action and all of the books and records of the insurer, wherever
20 located, as of the date of entry of the order directing ~~him~~ THE DIRECTOR
21 to rehabilitate or liquidate a domestic insurer or to liquidate the United
22 States branch of an alien insurer domiciled in this state, and ~~he~~ THE
23 DIRECTOR shall have the right to recover the assets and reduce them to
24 possession, except that ancillary receivers in reciprocal states ~~shall~~
25 ~~have~~, as to assets located in their respective states, SHALL HAVE the
26 rights and powers ~~which~~ THAT are prescribed in this article for ancillary
27 receivers appointed in this state as to assets located in this state.

28 C. The recording of a certified copy of the order directing
29 possession to be taken in the office of the county recorder of the county
30 where the proceedings are pending shall impart the same notice as would be
31 imparted by a deed, a bill of sale or any other evidence of title duly
32 recorded or filed.

33 D. The director as domiciliary receiver shall be responsible for
34 the proper administration of all assets coming into ~~his~~ THE DIRECTOR'S
35 possession or control. The court may at any time require a bond from ~~him~~
36 THE DIRECTOR or ~~his~~ THE DIRECTOR'S deputies if deemed desirable for the
37 protection of the assets.

38 E. ~~upon~~ ON taking possession of the assets of an insurer, the
39 domiciliary receiver ~~shall~~, subject to the direction of the court, SHALL
40 immediately proceed to conduct the business of the insurer or to take such
41 steps as are authorized by this article for the purpose of rehabilitating,
42 liquidating or conserving the affairs or assets of the insurer.

1 Sec. 62. Section 20-625, Arizona Revised Statutes, is amended to
2 read:

3 20-625. Conduct of delinquency proceedings against foreign
4 insurers

5 A. ~~When~~ IF under this article an ancillary receiver is to be
6 appointed in delinquency proceedings for an insurer not domiciled in this
7 state, the court shall appoint the director ~~of insurance~~ as ancillary
8 receiver. The director shall file a petition requesting the appointment
9 on the grounds set forth in section 20-619 if ~~he~~ THE DIRECTOR finds that
10 there are sufficient assets of the insurer located in this state to
11 justify the appointment of an ancillary receiver, or if ten or more
12 persons resident in this state having claims against ~~such~~ THE insurer file
13 a petition with the director requesting the appointment of an ancillary
14 receiver.

15 B. The domiciliary receiver, for the purpose of liquidating an
16 insurer domiciled in a reciprocal state, shall be vested by operation of
17 law with the title to all of the property, contracts and rights of action
18 and all of the books and records of the insurer located in this
19 state, ~~and he~~ THE DOMICILIARY RECEIVER shall have the immediate right to
20 recover balances due from local agents and to obtain possession of any
21 books and records of the insurer found in this state. ~~He~~ THE DOMICILIARY
22 RECEIVER shall also be entitled to recover the other assets of the insurer
23 located in this state, except that ~~upon~~ ON the appointment of an ancillary
24 receiver in this state, the ancillary receiver shall during the ancillary
25 receivership proceedings have the sole right to recover such other assets.
26 The ancillary receiver ~~shall~~, as soon as practicable, SHALL liquidate from
27 ~~their~~ ITS respective securities those special deposit claims and secured
28 claims ~~which~~ THAT are proved and allowed in the ancillary proceedings in
29 this state, ~~and shall~~ pay the necessary expenses of the proceedings. ~~At~~
30 ~~remaining assets he~~ THE ANCILLARY RECEIVER shall promptly transfer ALL
31 REMAINING ASSETS to the domiciliary receiver. Subject to the foregoing
32 provisions, the ancillary receiver and ~~his~~ THE ANCILLARY RECEIVER'S
33 deputies shall have the same powers and be subject to the same duties with
34 respect to the administration of such assets as a receiver of an insurer
35 domiciled in this state.

36 C. The domiciliary receiver of an insurer domiciled in a reciprocal
37 state may sue in this state to recover any assets of the insurer to which
38 ~~he~~ THE DOMICILIARY RECEIVER may be entitled under the laws of this state.

39 Sec. 63. Section 20-662, Arizona Revised Statutes, is amended to
40 read:

41 20-662. Arizona property and casualty insurance guaranty fund

42 A. The Arizona property and casualty insurance guaranty fund is
43 established within the department ~~of insurance~~. The fund shall be
44 deposited in a depository designated by the director and shall exercise
45 its powers through a board established pursuant to section 20-663.

1 B. For the purpose of assessment, the fund shall be divided into
2 three separate accounts:

- 3 1. The automobile insurance account.
4 2. The workers' compensation insurance account.
5 3. The account for all other insurance to which this article
6 applies.

7 C. All costs, expenses and liabilities of the fund shall be paid by
8 the fund and shall not be a general obligation of ~~the~~ THIS state.

9 D. All monies placed in the accounts of the fund may be expended
10 only for the purposes of this article and only for the purposes of the
11 account into which the monies were placed. ~~No~~ Monies placed in one of the
12 three separate accounts established by this section may NOT be used
13 directly or indirectly for any other purpose, including to satisfy an
14 obligation attributable to another account.

15 Sec. 64. Section 20-663, Arizona Revised Statutes, is amended to
16 read:

17 20-663. Guaranty fund board; composition; compensation

18 A. The guaranty fund board is established within the department of
19 insurance AND FINANCIAL INSTITUTIONS consisting of eleven members who are
20 appointed by the governor. Membership on the board shall be for a term of
21 three years.

22 B. The members of the board shall be appointed from a list of
23 persons submitted to the governor by the director of THE DEPARTMENT OF
24 insurance AND FINANCIAL INSTITUTIONS and shall be representative of a
25 cross section of the industry that is authorized to transact property or
26 casualty insurance within this state. The board shall be composed of:

27 1. Nine members, each representing a different insurer that is
28 authorized to transact property or casualty insurance business in this
29 state, including at least one member who represents a workers'
30 compensation insurer that has been authorized to transact workers'
31 compensation insurance business in this state for at least ten consecutive
32 years.

33 2. One member who is a casualty insurance producer residing in this
34 state.

35 3. One member who represents the general public.

36 C. The board shall conduct periodic meetings in Phoenix. Meetings
37 shall be held on the call of the director or on the written request of any
38 two members of the board.

39 D. Subject to the powers of the director, the board shall
40 administer, operate and manage the fund pursuant to this article. The
41 board shall advise and counsel ~~with~~ the director on matters relating to
42 the solvency of insurers.

43 E. Members of the board ~~shall receive no~~ ARE NOT ENTITLED TO
44 RECEIVE compensation and ~~shall not be entitled to~~ travel expenses as
45 authorized by title 38, chapter 4, article 2, but ~~shall be~~ ARE entitled to

1 be reimbursed for expenses incurred by them as members of the board from
2 the assets of the fund.

3 Sec. 65. Section 20-671, Arizona Revised Statutes, is amended to
4 read:

5 20-671. Special meetings closed

6 Notwithstanding any ~~provision~~ of law to the contrary, special
7 meetings of the board in which the financial condition of any member
8 insurer is discussed, shall not be open to the public and only members of
9 the board, the director of THE DEPARTMENT OF insurance AND FINANCIAL
10 INSTITUTIONS and other persons specifically authorized by the board may
11 attend such meetings.

12 Sec. 66. Section 20-678, Arizona Revised Statutes, is amended to
13 read:

14 20-678. Examination of the fund; annual report

15 The fund ~~shall be~~ IS subject to examination by the director. The
16 fund shall, annually, report its financial condition for the preceding
17 year, to the legislature, member insurers and the director. At the
18 conclusion of the fund's handling of each insolvency, an audit of the
19 financial transactions relating to such insolvency shall be made by the
20 director ~~of insurance~~ or an independent accounting firm.

21 Sec. 67. Section 20-683, Arizona Revised Statutes, is amended to
22 read:

23 20-683. Life and disability insurance guaranty fund

24 A. The life and disability insurance guaranty fund is established
25 in the department ~~of insurance~~. The fund shall be deposited in a
26 depository designated by the director. All member insurers shall be
27 members of the fund as a condition of their authority to transact
28 insurance or a health care services organization business in this state.
29 For the purposes of administration and assessment, the fund shall maintain
30 three accounts:

- 31 1. The disability account.
- 32 2. The life insurance account.
- 33 3. The annuity account.

34 B. The fund is under the immediate supervision of the director and
35 is subject to the applicable provisions of the insurance laws of this
36 state.

37 C. All costs, expenses and liabilities of the fund shall be paid by
38 the fund and shall not be a general obligation of the state.

39 D. All monies placed in the accounts of the fund may be expended
40 for the purposes of this article.

1 Sec. 68. Section 20-684, Arizona Revised Statutes, is amended to
2 read:

3 20-684. Life and disability insurance guaranty fund board;
4 composition; compensation

5 A. Subject to the powers of the director, the life and disability
6 insurance guaranty fund shall be administered by a board of eleven
7 members. Each member of the board shall serve for a term of three years.
8 Of the members first appointed, three shall serve for terms of one year,
9 three shall serve for terms of two years and three shall serve for terms
10 of three years.

11 B. The members of the board shall be appointed by the governor from
12 a list of persons submitted to the governor by the director of THE
13 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS. In submitting
14 selections for the board, the director shall consider whether all member
15 insurers are fairly represented.

16 C. Members of the board are not entitled to receive compensation
17 and travel expenses as authorized by title 38, chapter 4, article 2 but
18 are entitled to be reimbursed for expenses incurred by them as members of
19 the board from the assets of the fund.

20 Sec. 69. Section 20-706, Arizona Revised Statutes, is amended to
21 read:

22 20-706. Filing and publication of articles; appointment of
23 agent to receive process; issuance of certificate

24 A. The articles of incorporation shall be filed in the office of
25 the corporation commission, ~~and certified copies thereof~~ OF THE ARTICLES
26 OF INCORPORATION shall be filed with the director of THE DEPARTMENT OF
27 insurance AND FINANCIAL INSTITUTIONS.

28 B. The articles of incorporation shall be published as required by
29 title 10.

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

36 D. The corporation shall not transact business as an insurer until
37 it has applied for and received from the director a certificate of
38 authority as provided by this title.

39 Sec. 70. Section 20-713, Arizona Revised Statutes, is amended to
40 read:

41 20-713. Bylaws of mutual insurer

42 A. The initial board of directors of a domestic mutual insurer
43 shall adopt original bylaws for the government of the corporation and
44 conduct of its business. The bylaws shall be subject to the approval of
45 the insurer's members at the next succeeding annual meeting of members,

1 and no bylaw provision shall thereafter be effective ~~which~~ THAT is not so
2 approved. Bylaws shall be revoked or modified only by vote of the
3 insurer's members at a meeting of which notice was given as provided in
4 the bylaws.

5 B. The bylaws shall provide that each member of the insurer is
6 entitled to one vote in the election of corporate directors and on all
7 matters coming before membership meetings, and that ~~such~~ EACH vote may be
8 exercised in person or by proxy.

9 C. The insurer shall promptly file with the director of THE
10 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS a copy, certified by
11 the insurer's secretary, of ~~such~~ THE bylaws and of every modification
12 ~~thereof~~ OF or ~~of~~ addition ~~thereto~~ TO THE BYLAWS. The director shall
13 disapprove any bylaw provision deemed by ~~him~~ THE DIRECTOR to be unlawful,
14 inadequate, unfair or detrimental to the proper interests and protection
15 of the insurer's members or any class ~~thereof~~ OF THE INSURER'S MEMBERS.
16 The insurer shall not, after receiving written notice of such disapproval
17 and during the existence thereof, effectuate any DISAPPROVED bylaw
18 provision ~~so disapproved~~.

19 Sec. 71. Section 20-714, Arizona Revised Statutes, is amended to
20 read:

21 20-714. Quorum of members of mutual insurer

22 A domestic mutual insurer may in its bylaws adopt a reasonable
23 provision for determining a quorum of members at any meeting ~~thereof~~ OF
24 THE INSURER, but no provision recognizing a quorum of fewer than a simple
25 majority of all the insurer's members shall be effective unless approved
26 as reasonable by the director of THE DEPARTMENT OF insurance AND FINANCIAL
27 INSTITUTIONS. This section ~~shall~~ DOES not affect any other ~~provision~~ of
28 law requiring A vote of a larger percentage of members for a specified
29 purpose.

30 Sec. 72. Section 20-718, Arizona Revised Statutes, is amended to
31 read:

32 20-718. Enforcement of contingent liability

33 A. If at any time the assets of a domestic mutual insurer are less
34 than its liabilities and the minimum amount of surplus required of it by
35 this title for authority to transact the kinds of insurance being
36 transacted, and the deficiency is not cured from other sources, its
37 directors shall levy an assessment only ~~upon~~ ON its members who, at any
38 time within the twelve months immediately preceding the date notice of
39 such assessment was mailed to them, held policies providing for contingent
40 liability, and such members shall be liable to the insurer for the amount
41 so assessed.

42 B. The assessment shall be for such an amount as is required to
43 cure such deficiency and to provide a reasonable amount of working funds
44 above such minimum amount of surplus, but such working funds so provided

1 shall not exceed five ~~per cent~~ PERCENT of the insurer's liabilities as of
2 the date ~~upon~~ ON which the amount of such deficiency was determined.

3 C. No one policy or member as to such policy shall be assessed or
4 charged with an aggregate of contingent liability as to obligations
5 incurred by the insurer in any one calendar year, in excess of the number
6 of times the premium as stated in the policy as computed solely ~~upon~~ ON
7 premium earned on such policy during that year.

8 D. No member shall have an offset against any assessment for which
9 ~~he~~ THE MEMBER is liable, on account of any claim for unearned premium or
10 loss payable.

11 E. As to life insurance, any part of such an assessment ~~upon~~ ON a
12 member ~~which~~ THAT remains unpaid following notice of assessment, demand
13 for payment and lapse of a reasonable waiting period as specified in such
14 notice, ~~may~~, if approved by the director of THE DEPARTMENT OF insurance
15 AND FINANCIAL INSTITUTIONS as being in the best interests of the insurer
16 and its members, MAY be secured by placing a lien ~~upon~~ ON the cash
17 surrender values and accumulated dividends held by the insurer to the
18 credit of such member.

19 Sec. 73. Section 20-724, Arizona Revised Statutes, is amended to
20 read:

21 20-724. Illegal dividends; violation; classification

22 A. Any director of a domestic stock or mutual insurer who knowingly
23 votes for or concurs in declaration or payment of an illegal dividend to
24 stockholders or members is guilty of a class 2 misdemeanor, and is
25 jointly and severally liable, together with other such directors, for any
26 loss thereby sustained by the insurer.

27 B. The stockholders or members knowingly receiving such an illegal
28 dividend shall be liable in the amount ~~thereof~~ OF THE ILLEGAL DIVIDEND to
29 the insurer.

30 C. The director of THE DEPARTMENT OF insurance AND FINANCIAL
31 INSTITUTIONS may revoke or suspend the certificate of authority of an
32 insurer ~~which~~ THAT has declared or paid an illegal dividend.

33 Sec. 74. Section 20-727, Arizona Revised Statutes, is amended to
34 read:

35 20-727. Management and exclusive agency contracts

36 A. ~~No~~ A domestic stock or mutual insurer shall NOT make any
37 contract whereby any person or persons are granted or are to enjoy in fact
38 the management of the insurer to the substantial exclusion of its board of
39 directors, or are to have the controlling or preemptive right to produce
40 substantially all insurance business for the insurer, unless ~~such~~ THE
41 contract is filed with the director of THE DEPARTMENT OF insurance AND
42 FINANCIAL INSTITUTIONS and ~~he~~ IS subject to ~~his~~ THE DIRECTOR'S approval.
43 The contract shall be deemed approved unless disapproved by the director
44 within twenty days after date of filing, subject to such reasonable
45 extension of time as the director may require by notice given within such

1 twenty days. Any disapproval shall be delivered to the insurer in
2 writing, stating the grounds ~~therefor~~ FOR THE DISAPPROVAL.

3 B. The director shall disapprove any such contract if ~~he~~ THE
4 DIRECTOR finds that it:

- 5 1. Subjects the insurer to excessive charges.
- 6 2. Is to extend for an unreasonable length of time.
- 7 3. Does not contain fair and adequate standards of performance.
- 8 4. Contains other inequitable provisions or provisions ~~which~~ THAT
9 impair the proper interests of stockholders or members of the insurer.

10 Sec. 75. Section 20-729, Arizona Revised Statutes, is amended to
11 read:

12 20-729. Conversion of stock insurer to mutual insurer

13 A. A domestic stock insurer other than a title insurer may become a
14 domestic mutual insurer pursuant to such plan and procedure as may be
15 approved in advance by the director ~~of insurance~~.

16 B. The director shall not approve any such plan, procedure or
17 mutualization unless:

- 18 1. It is equitable to both stockholders and policyholders.
- 19 2. It is subject to approval by a vote of the holders of not less
20 than three-fourths of the insurer's capital stock having voting rights and
21 by a vote of not less than two-thirds of the insurer's policyholders who
22 vote on such plan in person, by proxy or by mail pursuant to such notice
23 and procedure as may be approved by the director.
- 24 3. If a life insurer, the right to vote thereon is limited to those
25 policyholders whose policies have face amounts of not less than ~~one~~
26 ~~thousand dollars~~ \$1,000 and have been in force for one year or more.
- 27 4. Mutualization will result in retirement of shares of the
28 insurer's capital stock at a price not in excess of the fair market value
29 thereof as determined by competent disinterested appraisers.
- 30 5. The plan provides for the purchase of the shares of any
31 ~~non-consenting~~ NONCONSENTING stockholder in accordance with ~~the provisions~~
32 ~~of~~ title 10, chapter 13 and such nonconsenting stockholders shall have all
33 the rights and restrictions applicable under such section to stockholders
34 of a private corporation who do not consent to the agreed manner of
35 converting the shares of stock of such private corporation ~~upon~~ ON
36 proposal for consolidation.
- 37 6. The plan provides for definite conditions to be fulfilled by a
38 designated early date ~~upon~~ ON which such mutualization will be deemed
39 effective.
- 40 7. The mutualization leaves the insurer with surplus funds
41 reasonably adequate for the security of its policyholders and to continue
42 successfully in business in the states in which it is then authorized to
43 transact insurance, and for the kinds of insurance included in its
44 certificate of authority.

1 C. This section ~~shall~~ DOES not apply to mutualization under order
2 of court pursuant to rehabilitation or reorganization of an insurer under
3 ~~article 4 of chapter 3, ARTICLE 4 of this title.~~

4 Sec. 76. Section 20-730, Arizona Revised Statutes, is amended to
5 read:

6 20-730. Conversion of mutual insurer to stock insurer

7 A. A domestic mutual insurer may become a domestic stock insurer
8 pursuant to such plan ~~and~~ OR procedure as ~~it~~ IS approved in advance by the
9 director ~~of insurance.~~

10 B. The director shall not approve any such plan or procedure
11 unless:

12 1. IT IS equitable to the insurer's members.

13 2. IT IS subject to approval by vote of not less than ~~three fourths~~
14 THREE-FOURTHS of the insurer's current members voting thereon in person,
15 by proxy, ~~or~~ or by mail at a meeting of members called for the purpose
16 pursuant to such notice and procedure as may be approved by the
17 director. If a life insurer, the right to vote may be limited to members
18 whose policies have face amounts of not less than ~~one thousand dollars~~
19 \$1,000 and have been in force one year or more.

20 3. The equity of each policyholder in the insurer is determinable
21 under a fair formula approved by the director, which ~~equity~~ shall be based
22 ~~upon~~ ON not less than the insurer's entire surplus, after deducting
23 contributed or borrowed surplus funds, plus a reasonable present equity in
24 its reserves and in all nonadmitted assets.

25 4. The policyholders entitled to participate in the purchase of
26 stock or distribution of assets ~~shall~~ include all current policyholders
27 and all existing persons who had been a policyholder of the insurer within
28 three years ~~prior to~~ BEFORE the date such plan was submitted to the
29 director.

30 5. The plan gives to each policyholder of the insurer as specified
31 in paragraph 4 of this ~~section~~ SUBSECTION a preemptive right to acquire
32 ~~his~~ THE POLICYHOLDER'S proportionate part of all of the proposed capital
33 stock of the insurer, within a designated reasonable period, and to apply
34 ~~upon~~ ON the purchase thereof the amount of ~~his~~ THE POLICYHOLDER'S equity
35 in the insurer as determined under paragraph 3 of this ~~section~~ SUBSECTION.

36 6. Shares are so offered to policyholders at a price not greater
37 than that thereafter offered to others nor at more than double the par
38 value of the shares.

39 7. The plan provides for payment to each policyholder not electing
40 to apply ~~his~~ THE POLICYHOLDER'S equity in the insurer for or ~~upon~~ ON the
41 purchase price of stock to which preemptively entitled, of cash in the
42 amount of not less than fifty ~~per cent~~ PERCENT of the amount of ~~his~~ THE
43 POLICYHOLDER'S equity not so used for the purchase of stock, and which
44 cash payment together with stock so purchased, if any, shall constitute

1 full payment and discharge of the policyholder's equity as an owner of
2 such mutual insurer.

3 8. The plan, when completed, would provide for the converted
4 insurer paid-in capital stock in an amount not less than the minimum
5 paid-in capital required of a domestic stock insurer transacting like
6 kinds of insurance, together with surplus funds in amount not less than
7 ~~one half~~ ONE-HALF of such required capital.

8 Sec. 77. Section 20-731, Arizona Revised Statutes, is amended to
9 read:

10 20-731. Merger or consolidation of stock insurers; hearings;
11 notice

12 A. Any domestic stock insurer except a title insurer may merge or
13 consolidate with another domestic or foreign stock insurer by complying
14 with the provisions of general law governing the merger or consolidation
15 of stock corporations formed for profit, but subject to subsection B of
16 this section.

17 B. ~~No~~ A merger or consolidation is NOT effective under this section
18 unless in advance of the merger or consolidation the plan and agreement
19 have been filed with and approved in writing by the director ~~of~~
20 ~~insurance~~. The director may hold a public hearing on the plan and
21 agreement as prescribed in section 20-161, and the director shall approve
22 the merger or consolidation unless the director finds the plan or
23 agreement:

24 1. Is contrary to law.

25 2. Is unfair in the terms and conditions of the issuance and
26 exchange of securities.

27 3. Would substantially reduce the security of and service to be
28 rendered to policyholders of the domestic insurer in this state or
29 elsewhere.

30 C. Any public hearing referred to in subsection B of this section
31 shall be held within thirty days after the plan and agreement of merger is
32 filed, and at least twenty-five days' written notice thereof shall be
33 given by the director to the insurer corporations involved. Not less than
34 ten days' written notice of the hearing shall be given by the insurer
35 corporations to their shareholders. The insurers filing the plan and
36 agreement, shareholders, any person to whom written notice of hearing was
37 sent and any other person whose interest may be affected thereby shall
38 have the right to present evidence, examine and cross-examine the
39 witnesses and offer oral and written arguments at the hearing. The
40 director shall make a determination within thirty days after the
41 conclusion of the hearing. Except as otherwise provided in this
42 subsection, ~~the provisions of~~ title 41, chapter 6, article 10 shall apply
43 to hearings, orders and appeals.

1 D. A domestic title insurer may merge or consolidate with another
2 domestic or foreign title insurer by complying with ~~the provisions of~~
3 section 20-1576.

4 Sec. 78. Section 20-733, Arizona Revised Statutes, is amended to
5 read:

6 20-733. Merger or consolidation of mutual insurers

7 A. A domestic mutual insurer shall not merge or consolidate with a
8 stock insurer.

9 B. A domestic mutual insurer may merge or consolidate with another
10 mutual insurer in accordance with procedures prescribed by general laws
11 applying to corporations formed for profit, except as provided by this
12 section.

13 C. The plan and agreement for merger or consolidation shall be
14 submitted to and approved by at least ~~two thirds~~ TWO-THIRDS of the members
15 of each mutual insurer involved voting thereon at meetings called for the
16 purpose pursuant to such reasonable notice and procedure as has been
17 approved by the director of THE DEPARTMENT OF insurance AND FINANCIAL
18 INSTITUTIONS. If a life insurer, the right to vote may be limited to
19 members whose policies are in A face amount of not less than ~~one thousand~~
20 ~~dollars~~ \$1,000 and have been in force one year or more.

21 D. ~~No such~~ A merger or consolidation shall NOT be effectuated
22 unless in advance thereof the plan and agreement therefor have been filed
23 with and approved in writing by the director of THE DEPARTMENT OF
24 insurance AND FINANCIAL INSTITUTIONS. The director shall give ~~his~~
25 approval within a reasonable time after filing unless ~~he~~ THE DIRECTOR
26 finds the plan or agreement:

27 1. Inequitable to the policyholders of any domestic insurer
28 involved.

29 2. Would substantially reduce the security of and service to be
30 rendered to policyholders of the domestic insurer in this state or
31 elsewhere.

32 E. If the director does not approve the plan or agreement ~~he~~ THE
33 DIRECTOR shall so notify the insurer in writing specifying ~~his~~ THE reasons
34 ~~therefor~~ FOR THE DISAPPROVAL.

35 Sec. 79. Section 20-735, Arizona Revised Statutes, is amended to
36 read:

37 20-735. Distribution of assets of mutual insurer on
38 liquidation

39 A. ~~Upon~~ ON any liquidation of a domestic mutual insurer, its assets
40 remaining after discharge of its indebtedness, policy obligations,
41 repayment of contributed or borrowed surplus, if any, and expenses of
42 administration, shall be distributed to existing persons who were its
43 members at any time within thirty-six months next preceding the date the
44 liquidation was authorized or ordered, or the date of last termination of
45 the insurer's certificate of authority, whichever date is the earliest.

1 B. The distributive share of each such member shall be in the
2 proportion that the aggregate premiums earned by the insurer on the
3 policies of the member during the combined periods of ~~his~~ THE MEMBER'S
4 membership bear to the aggregate of all premiums so earned on the policies
5 of all such members. The insurer may, and if THE INSURER IS a life
6 insurer shall, make a reasonable classification of its policies so held by
7 such members and a formula based ~~upon~~ ON such classification for
8 determining the equitable distributive share of each such member. Such
9 classification and formula shall be subject to the approval of the
10 director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS.

11 Sec. 80. Section 20-776, Arizona Revised Statutes, is amended to
12 read:

13 20-776. Service of legal process; liabilities under judgment
14 on such service

15 A. Legal process shall be served ~~upon~~ ON a domestic reciprocal
16 insurer by serving the insurer's attorney at ~~his~~ THE ATTORNEY'S principal
17 offices or by serving the director of THE DEPARTMENT OF insurance AND
18 FINANCIAL INSTITUTIONS as the insurer's attorney-in-fact.

19 B. Any judgment based ~~upon~~ ON legal process so served shall be
20 binding ~~upon~~ ON each of the insurer's subscribers as their respective
21 interests may appear, but in an amount not exceeding their respective
22 contingent liabilities, if any, the same as though personal service of
23 process was had ~~upon~~ ON each such subscriber.

24 Sec. 81. Section 20-822, Arizona Revised Statutes, is amended to
25 read:

26 20-822. Definitions

27 In this article, unless the context otherwise requires, ~~:-~~

28 1. ~~"Department" means the department of insurance.~~

29 2. ~~"Director" means the director of the department of insurance.~~

30 3. ~~"hospital service corporations", "medical service corporations",~~
31 ~~"dental service corporations", "optometric service corporations" and~~
32 ~~"hospital, medical, dental and optometric service corporations" mean~~
33 ~~corporations organized under the laws of this state for the purpose of~~
34 ~~establishing, maintaining, and operating nonprofit hospital service or~~
35 ~~medical or dental or optometric service plans, or a combination of such~~
36 ~~plans, whereby hospital, medical or dental or optometric service may be~~
37 ~~provided by hospitals, which within the meaning of this article may~~
38 ~~include extended care facilities and home health agencies, or by~~
39 ~~physicians, which within the meaning of this article may include~~
40 ~~professional and technical personnel under the direction of a physician,~~
41 ~~or by podiatrists, or by dentists which may include those engaged in the~~
42 ~~general practice of dentistry as well as the specialized or restricted~~
43 ~~practice of dentistry, or by optometrists which may include those engaged~~
44 ~~in the general practice of optometry as well as the specialized or~~
45 ~~restricted practice of optometry, with which the corporations have~~

1 contracted for such purpose, to such of the public as become subscribers
2 to the corporations under contracts ~~which~~ THAT entitle each subscriber to
3 certain hospital, medical, dental or optometric service, or in the case of
4 hospital service corporations or medical service corporations, all such
5 services, or whereby as operating expense or refunds, payments may be made
6 to subscribers with respect to any such service that is rendered by a
7 hospital, physician, podiatrist, dentist or optometrist with which the
8 corporations have not so contracted.

9 Sec. 82. Section 20-824, Arizona Revised Statutes, is amended to
10 read:

11 20-824. Application for certificate; fee

12 Such a corporation may issue contracts to its subscribers only when
13 the director ~~of insurance~~ has, by certificate of authority, authorized it
14 so to do. Application for a certificate of authority shall be made on
15 forms supplied or approved by the director containing such information as
16 ~~the~~ THE DIRECTOR deems necessary. Each application for a certificate of
17 authority shall be accompanied by the fee prescribed by ~~article 2~~ of
18 chapter 1, ARTICLE 2 of this title for medical, hospital, dental and
19 optometric service corporations and copies of the following documents:

- 20 1. Articles of incorporation.
- 21 2. Bylaws.
- 22 3. Proposed contracts between the applicant and participating
23 hospitals, physicians, dentists or optometrists showing the terms under
24 which service is to be furnished to subscribers.
- 25 4. Proposed contracts to be issued to subscribers.
- 26 5. A table of rates to be charged to subscribers.
- 27 6. Financial statement of the corporation, including the amounts of
28 contributions paid or agreed to be paid to the corporation for working
29 capital, and the name or names of each contributor and the terms of each
30 contribution.
- 31 7. A statement of the area in which the corporation proposes to
32 operate.

33 Sec. 83. Section 20-835, Arizona Revised Statutes, is amended to
34 read:

35 20-835. Judicial review of decisions of director

36 All orders of the director ~~of insurance~~ made pursuant to this
37 article ~~shall be~~ ARE subject to the ~~provisions of article 2~~ of chapter 1,
38 ARTICLE 2 of this title, including the right of hearing, rehearing and
39 appeal.

40 Sec. 84. Section 20-873, Arizona Revised Statutes, is amended to
41 read:

42 20-873. Consolidation or merger

43 A. A domestic fraternal benefit society may consolidate or merge
44 with any other society if it complies with this section. The society
45 shall file the following with the director:

1 1. A certified copy of the written contract that contains in full
2 the terms and conditions of the consolidation or merger.

3 2. A sworn statement by the president and secretary or other
4 corresponding officers of each society that shows the financial condition
5 of each society on a date designated by the director. The date shall not
6 be earlier than December 31 next preceding the date of the contract.

7 3. A verified certificate of the president and secretary or other
8 corresponding officers of each society stating that the consolidation or
9 merger has been approved by a two-thirds vote of the supreme governing
10 body of each society and that the vote was conducted at a regular or
11 special meeting of each society, or if ~~permitted~~ ALLOWED by the laws of
12 the society, by mail.

13 4. Evidence that at least sixty days before the action of the
14 supreme governing body of each society the text of the contract was
15 furnished to all members of each society either by mail or publication in
16 full in the official publication of each society. The affidavit of any
17 officer of the society or of any person who is authorized by the society
18 to mail any notice or document stating that the notice or document was
19 addressed and mailed is prima facie evidence that the notice or document
20 was furnished to the addressees.

21 B. The director shall approve the consolidation or merger and shall
22 issue a certificate of approval if the director finds that the contract
23 conforms with the requirements of this section, that the financial
24 statements are correct and that the consolidation or merger is just and
25 equitable to the members of each society. On the director's approval, the
26 contract is in full force and effect, except that if one of the parties to
27 the contract is incorporated under the laws of any other state or
28 territory, the consolidation or merger does not become effective until the
29 consolidation or merger is approved pursuant to the laws of that state or
30 territory and a certificate of approval is filed with the director of THE
31 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS in this state. If the
32 laws of the other state or territory do not provide for consolidation or
33 merger, the consolidation or merger does not become effective until it has
34 been approved by and a certificate of approval is filed with the INSURANCE
35 director ~~of insurance~~ in that state or territory.

36 C. After the consolidation or merger becomes effective, all of the
37 rights, franchises and interests of the consolidated or merged societies
38 in and to real, personal and mixed property are vested in the society
39 resulting from or remaining after the consolidation or merger. No other
40 instrument is necessary to convey any property interests, except that
41 conveyances of real property shall be evidenced by proper deeds. The
42 title to any real estate or any interest in real estate that is vested
43 under the laws of this state in any of the societies that are consolidated
44 or merged does not revert or is not impaired in any way by reason of the

1 merger or consolidation but vests absolutely in the society that results
2 from or remains after the consolidation or merger.

3 Sec. 85. Section 20-884, Arizona Revised Statutes, is amended to
4 read:

5 20-884. Valuation

6 A. The standards of valuation for certificates that are issued
7 before January 1, 1996 are the standards of valuation that were in effect
8 immediately before January 1, 1995.

9 B. The minimum standards of valuation for certificates that are
10 issued on or after January 1, 1996 shall be based on the following tables:

11 1. For certificates of life insurance: the commissioner's 1941
12 standard ordinary mortality table, the commissioner's 1941 standard
13 industrial mortality table, the commissioner's 1958 standard ordinary
14 mortality table, the commissioner's 1980 standard ordinary mortality table
15 or a more recent table that applies to life insurers.

16 2. For annuity and pure endowment certificates, total and permanent
17 disability benefits, accidental death benefits and noncancellable accident
18 and health benefits: the tables that are authorized for use by like
19 insurers in this state.

20 C. The tables listed under subsection B OF THIS SECTION shall be
21 under the valuation methods and standards, including interest assumptions,
22 that are in accordance with the laws of this state applicable to life
23 insurers issuing policies containing like benefits.

24 D. The director may accept other standards for valuation if the
25 director finds that the reserves produced by those standards will not be
26 less in the aggregate than the reserves computed in accordance with the
27 minimum valuation standards prescribed by this section. The director may
28 vary the standards of mortality that apply to all benefit contracts on
29 substandard lives or other extra hazardous lives issued by a society
30 authorized to do business in this state.

31 E. With the consent of the INSURANCE director ~~of insurance~~ in the
32 domiciliary state of the society and under any conditions that the
33 director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS in this
34 state may impose, a society may establish and maintain reserves on its
35 certificates in excess of the reserves required by the standards of
36 valuation, except that the contractual rights of a benefit member are not
37 affected by the excess reserves.

38 Sec. 86. Section 20-885, Arizona Revised Statutes, is amended to
39 read:

40 20-885. Reports

41 Each fraternal benefit society shall file reports as follows:

42 1. Unless the director extends the time for filing for good cause
43 shown, on or before March 1, each society transacting business in this
44 state shall annually file with the director a true statement of its
45 financial condition, transactions and affairs for the preceding calendar

1 year and shall pay the fee prescribed by section 20-167 for filing the
2 statement. The statement shall be in the general form and context that is
3 approved by the national association of insurance commissioners for
4 fraternal benefit societies, supplemented by any additional information
5 that the director requires.

6 2. At the time of filing its annual statement pursuant to paragraph
7 1 of this section, each society shall also file with the director a
8 valuation of its certificates in force as of the preceding December 31.
9 On a showing of good cause, the director may extend the time for filing
10 the valuation for a period of not more than two calendar months. The
11 valuation shall be conducted pursuant to section 20-884. A qualified
12 actuary shall certify the valuation and underlying data, or, at the
13 expense of the society, an actuary of the INSURANCE department ~~of~~
14 ~~insurance~~ in the domiciliary state of the society shall verify the
15 valuation and underlying data.

16 Sec. 87. Section 20-893, Arizona Revised Statutes, is amended to
17 read:

18 20-893. Exemption of societies and associations and orders
19 from insurance laws

20 A. The following fraternal benefit societies and associations or
21 orders are exempt from compliance with this article and all other
22 insurance laws of this state:

23 1. Fraternal benefit societies that were doing business in this
24 state on January 1, 1955 and that provide benefits exclusively through
25 local or subordinate lodges.

26 2. Fraternal benefit societies that admit to membership only those
27 persons who are engaged in one or more crafts or hazardous occupations, in
28 the same or similar lines of business, and that insure only their own
29 members, their families, the descendants of members and the ladies'
30 auxiliaries to those societies.

31 3. Any association or order, with respect to the sale of life
32 insurance and annuities, only if any policy or contract issued pursuant to
33 the exemption prescribed in this subsection contains a conspicuously
34 stamped or written notice in bold type that states:

35 This policy is issued by an association or order that
36 does not possess a certificate of authority from the director
37 of the Arizona department of insurance AND FINANCIAL
38 INSTITUTIONS. If the association or order that issued this
39 policy becomes insolvent, members or claimants will not be
40 eligible for insurance guaranty fund protection pursuant to
41 title 20, Arizona Revised Statutes.

42 B. Each association or order that intends on doing business in this
43 state and that is not licensed under this title shall provide proof
44 satisfactory to the department that it is a nonprofit organization that is

1 exempt from taxation under section 501(c) of the internal revenue code and
2 is subject to the following:

3 1. On or before June 1 of each preceding year, each association and
4 order shall file with the director a true and complete statement of its
5 statutory financial condition, transactions and affairs for the preceding
6 calendar year, audited by an independent certified public accountant,
7 together with an actuarial memorandum issued by a qualified actuary
8 pursuant to section 20-696.04, and shall pay a filing fee at the
9 determination of the director. The statement and actuarial memorandum are
10 approved thirty days after filing unless the director, within the
11 thirty-day period, has issued an order affirmatively approving or
12 disapproving the filing.

13 2. The director may require an association or order to file
14 financial statements on a quarterly basis and may require an association
15 or order to file financial statements on other than an annual or quarterly
16 basis due to factors or trends affecting insurers writing a particular
17 class or classes of business or because of changes in the management or
18 financial or operating condition of the association or order.

19 3. If, in the opinion of the director, an association or order does
20 not possess sufficient capital and surplus based on eligible assets
21 pursuant to chapter 3, article 2 of this title to meet its liabilities,
22 the director may order the association or order to increase its capital or
23 surplus, or both, to amounts the director deems sufficient. If the
24 association or order fails to comply with the order, the director may
25 order the association or order to cease and desist from assuming any
26 additional liabilities in this state until such time as the association or
27 order is able to comply with the capital and surplus requirements.

28 C. Except for a society prescribed by subsection A OF THIS SECTION,
29 a fraternal benefit society or association or order that is exempt from
30 the requirements of this article pursuant to this section shall not give
31 to or allow any person any compensation for procuring new members.

32 D. A society that is organized and incorporated before January 1,
33 1955, that provides for benefits in case of death or disability resulting
34 solely from an accident and that does not obligate itself to pay natural
35 death or sick benefits may secure a certificate of authority under this
36 article if it was authorized before January 1, 1955. The society has all
37 of the privileges and is subject to all of the provisions of this article,
38 except that the provisions of this article relating to medical
39 examinations, standard provisions, prohibited provisions, valuations of
40 certificates and incontestability do not apply.

41 E. The director by examination or otherwise may require any
42 information that will enable the director to determine if the society or
43 association or order is exempt from this article.

1 Sec. 88. Section 20-1008, Arizona Revised Statutes, is amended to
2 read:

3 20-1008. Examination of prepaid dental plan organization

4 A. The director may once in each six months for the first three
5 years after organization and once each year thereafter, or more often if
6 deemed necessary by the director, visit each prepaid dental plan
7 organization organized under the laws of this state and examine its
8 financial condition and its ability to meet its liabilities and its
9 compliance with the laws of this state affecting the conduct of its
10 business. The director may annually visit and examine each prepaid dental
11 plan organization not organized under the laws of this state but
12 authorized to transact business in this state.

13 B. The director may in like manner examine each prepaid dental plan
14 organization applying for an initial certificate of authority to do
15 business in this state.

16 C. In lieu of making an examination, the director may accept a full
17 report of the most recent examination of a foreign or alien prepaid dental
18 plan organization, certified to by the appropriate examining official of
19 another state, territory, commonwealth or district of the United States.

20 D. On request by the director of the department of insurance AND
21 FINANCIAL INSTITUTIONS, the director of the department of health services
22 or another person the director of the department of insurance AND
23 FINANCIAL INSTITUTIONS determines to be qualified may participate in the
24 examinations and visits described in this section to verify the existence
25 of an effective prepaid dental plan and to review the delivery of services
26 by the prepaid dental plan organization.

27 Sec. 89. Section 20-1051, Arizona Revised Statutes, is amended to
28 read:

29 20-1051. Definitions

30 In this article, unless the context otherwise requires:

- 31 ~~1. "Director" means the director of the department of insurance.~~
32 ~~2.~~ 1. "Enrollee" means an individual who has been enrolled in a
33 health care plan.
34 ~~3.~~ 2. "Evidence of coverage" means any certificate, agreement or
35 contract issued to an enrollee and setting out the coverage to which the
36 enrollee is entitled.
37 ~~4.~~ 3. "Genetic information" means information about genes, gene
38 products and inherited characteristics that may derive from the individual
39 or a family member, including information regarding carrier status and
40 information derived from laboratory tests that identify mutations in
41 specific genes or chromosomes, physical medical examinations, family
42 histories and direct analysis of genes or chromosomes.
43 ~~5.~~ 4. "Health care plan" means any contractual arrangement whereby
44 any health care services organization undertakes to provide directly or to
45 arrange for all or a portion of contractually covered health care services

1 and to pay or make reimbursement for any remaining portion of the health
2 care services on a prepaid basis through insurance or otherwise. A health
3 care plan shall include those health care services required in this
4 article or in any rule adopted pursuant to this article.

5 ~~6.~~ 5. "Health care services" means services for the purpose of
6 diagnosing, preventing, alleviating, curing or healing human illness or
7 injury.

8 ~~7.~~ 6. "Health care services organization" means any person that
9 undertakes to conduct one or more health care plans. Unless the context
10 otherwise requires, health care services organization includes a provider
11 sponsored health care services organization.

12 ~~8.~~ 7. "Health status-related factor" means any factor in relation
13 to the health of the individual or a dependent of the individual enrolled
14 or to be enrolled in a health care services organization including:

15 (a) Health status.

16 (b) Medical condition, including physical and mental illness.

17 (c) Claims experience.

18 (d) Receipt of health care.

19 (e) Medical history.

20 (f) Genetic information.

21 (g) Evidence of insurability, including conditions arising out of
22 acts of domestic violence as defined in section 20-448.

23 (h) The existence of a physical or mental disability.

24 ~~9.~~ 8. "Network plan" means health care services that are provided
25 by a health care services organization under which the financing and
26 delivery of health care services are provided, in whole or in part,
27 through a defined set of providers under contract with the health care
28 services organization.

29 ~~10.~~ 9. "Person" means any natural or artificial person
30 including, ~~but not limited to,~~ individuals, partnerships, associations,
31 providers of health care, trusts, insurers, hospital or medical service
32 corporations or other corporations, prepaid group practice plans,
33 foundations for medical care and health maintenance organizations.

34 ~~11.~~ 10. "Provider" means any physician, hospital or other person
35 that is licensed or otherwise authorized to furnish health care services
36 in this state.

37 ~~12.~~ 11. "Provider sponsored health care services organization"
38 means a provider sponsored organization that provides at least one health
39 care plan only to medicare beneficiaries under the medicare-plus-choice
40 program established under the balanced budget act of 1997 (42 United
41 States Code sections 1395w-21 through 1395w-28 and title XVIII, part C of
42 the social security act, sections 1851 through 1859).

43 ~~13.~~ 12. "Provider sponsored organization" means an entity that:

44 (a) Is a legal aggregation of providers that operate collectively to
45 provide health care services to medicare beneficiaries under the

1 medicare-plus-choice program established under the balanced budget act of
2 1997 (42 United States Code sections 1395w-21 through 1395w-28 and title
3 XVIII, part C of the social security act, sections 1851 through 1859).

4 (b) Acts through a licensed firm or corporation that has authority
5 over the entity's activities and responsibility for satisfying the
6 requirements of this article relating to the operation of a provider
7 sponsored health care services organization.

8 (c) Provides a substantial proportion of the health care services
9 required to be provided under the medicare-plus-choice program established
10 under the balanced budget act of 1997 (42 United States Code sections
11 1395w-21 through 1395w-28 and title XVIII, part C of the social security
12 act, sections 1851 through 1859) directly through providers or affiliated
13 groups of providers.

14 ~~14.~~ 13. "Registered nurse practitioner" has the same meaning
15 prescribed in section 32-1601.

16 Sec. 90. Section 20-1057, Arizona Revised Statutes, is amended to
17 read:

18 20-1057. Evidence of coverage by health care services
19 organizations; renewability; definitions

20 A. Every enrollee in a health care plan shall be issued an evidence
21 of coverage by the responsible health care services organization.

22 B. Any contract, except accidental death and dismemberment, applied
23 for that provides family coverage shall also provide, as to such coverage
24 of family members, that the benefits applicable for children shall be
25 payable with respect to a newly born child of the enrollee from the
26 instant of such child's birth, to a child adopted by the enrollee,
27 regardless of the age at which the child was adopted, and to a child who
28 has been placed for adoption with the enrollee and for whom the
29 application and approval procedures for adoption pursuant to section 8-105
30 or 8-108 have been completed to the same extent that such coverage applies
31 to other members of the family. The coverage for newly born or adopted
32 children or children placed for adoption shall include coverage of injury
33 or sickness including necessary care and treatment of medically diagnosed
34 congenital defects and birth abnormalities. If payment of a specific
35 premium is required to provide coverage for a child, the contract may
36 require that notification of birth, adoption or adoption placement of the
37 child and payment of the required premium must be furnished to the insurer
38 within thirty-one days after the date of birth, adoption or adoption
39 placement in order to have the coverage continue beyond the thirty-one day
40 period.

41 C. Any contract, except accidental death and dismemberment, that
42 provides coverage for psychiatric, drug abuse or alcoholism services shall
43 require the health care services organization to provide reimbursement for
44 such services in accordance with the terms of the contract without regard

1 to whether the covered services are rendered in a psychiatric special
2 hospital or general hospital.

3 D. No evidence of coverage or amendment to the coverage shall be
4 issued or delivered to any person in this state until a copy of the form
5 of the evidence of coverage or amendment to the coverage has been filed
6 with and approved by the director.

7 E. An evidence of coverage shall contain a clear and complete
8 statement if a contract, or a reasonably complete summary if a certificate
9 of contract, of:

10 1. The health care services and the insurance or other benefits, if
11 any, to which the enrollee is entitled under the health care plan.

12 2. Any limitations of the services, kind of services, benefits or
13 kind of benefits to be provided, including any deductible or copayment
14 feature.

15 3. Where and in what manner information is available as to how
16 services may be obtained.

17 4. The enrollee's obligation, if any, respecting charges for the
18 health care plan.

19 F. An evidence of coverage shall not contain provisions or
20 statements that are unjust, unfair, inequitable, misleading or deceptive,
21 that encourage misrepresentation or that are untrue.

22 G. The director shall approve any form of evidence of coverage if
23 the requirements of subsections E and F of this section are met. It is
24 unlawful to issue such form until approved. If the director does not
25 disapprove any such form within forty-five days after the filing of the
26 form, it is deemed approved. If the director disapproves a form of
27 evidence of coverage, the director shall notify the health care services
28 organization. In the notice, the director shall specify the reasons for
29 the director's disapproval. The director shall grant a hearing on such
30 disapproval within fifteen days after a request for a hearing in writing
31 is received from the health care services organization.

32 H. A health care services organization shall not cancel or refuse
33 to renew an enrollee's evidence of coverage that was issued on a group
34 basis without giving notice of the cancellation or nonrenewal to the
35 enrollee and, on request of the director, to the department of insurance
36 AND FINANCIAL INSTITUTIONS. A notice by the organization to the enrollee
37 of cancellation or nonrenewal of the enrollee's evidence of coverage shall
38 be mailed to the enrollee at least sixty days before the effective date of
39 such cancellation or nonrenewal. The notice shall include or be
40 accompanied by a statement in writing of the reasons as stated in the
41 contract for such action by the organization. Failure of the organization
42 to comply with this subsection shall invalidate any cancellation or
43 nonrenewal except a cancellation or nonrenewal for nonpayment of premium,
44 for fraud or misrepresentation in the application or other enrollment
45 documents or for loss of eligibility as defined in the evidence of

1 coverage. A health care services organization shall not cancel an
2 enrollee's evidence of coverage issued on a group basis because of the
3 enrollee's or dependent's age, except for loss of eligibility as defined
4 in the evidence of coverage, sex, health status-related factor, national
5 origin or frequency of utilization of health care services of the
6 enrollee. An evidence of coverage issued on a group basis shall clearly
7 delineate all terms under which the health care services organization may
8 cancel or refuse to renew an evidence of coverage for an enrollee or
9 dependent. Nothing in this subsection prohibits the cancellation or
10 nonrenewal of a health benefits plan contract issued on a group basis for
11 any of the reasons allowed in section 20-2309. A health care services
12 organization may cancel or nonrenew an evidence of coverage issued to an
13 individual on a nongroup basis only for the reasons allowed by subsection
14 N of this section.

15 I. A health care plan that provides coverage for surgical services
16 for a mastectomy shall also provide coverage incidental to the patient's
17 covered mastectomy for surgical services for reconstruction of the breast
18 on which the mastectomy was performed, surgery and reconstruction of the
19 other breast to produce a symmetrical appearance, prostheses, treatment of
20 physical complications for all stages of the mastectomy, including
21 lymphedemas, and at least two external postoperative prostheses subject to
22 all of the terms and conditions of the policy.

23 J. A contract that provides coverage for surgical services for a
24 mastectomy shall also provide coverage for mammography screening performed
25 on dedicated equipment for diagnostic purposes on referral by a patient's
26 physician, subject to all of the terms and conditions of the policy and
27 according to the following guidelines:

28 1. A baseline mammogram for a woman from age thirty-five to
29 thirty-nine.

30 2. A mammogram for a woman from age forty to forty-nine every two
31 years or more frequently based on the recommendation of the woman's
32 physician.

33 3. A mammogram every year for a woman fifty years of age and over.

34 K. Any contract that is issued to the enrollee and that provides
35 coverage for maternity benefits shall also provide that the maternity
36 benefits apply to the costs of the birth of any child legally adopted by
37 the enrollee if all the following are true:

38 1. The child is adopted within one year of birth.

39 2. The enrollee is legally obligated to pay the costs of birth.

40 3. All preexisting conditions and other limitations have been met
41 and all deductibles and copayments have been paid by the enrollee.

42 4. The enrollee has notified the insurer of the enrollee's
43 acceptability to adopt children pursuant to section 8-105 within sixty
44 days after such approval or within sixty days after a change in insurance
45 policies, plans or companies.

1 L. The coverage prescribed by subsection K of this section is
2 excess to any other coverage the natural mother may have for maternity
3 benefits except coverage made available to persons pursuant to title 36,
4 chapter 29 ~~but not including coverage made available to persons defined as~~
5 ~~eligible under section 36-2901, paragraph 6, subdivisions (b), (c), (d)~~
6 ~~and (e)~~. If such other coverage exists the agency, attorney or individual
7 arranging the adoption shall make arrangements for the insurance to pay
8 those costs that may be covered under that policy and shall advise the
9 adopting parent in writing of the existence and extent of the coverage
10 without disclosing any confidential information such as the identity of
11 the natural parent. The enrollee adopting parents shall notify their
12 health care services organization of the existence and extent of the other
13 coverage. A health care services organization is not required to pay any
14 costs in excess of the amounts it would have been obligated to pay to its
15 hospitals and providers if the natural mother and child had received the
16 maternity and newborn care directly from or through that health care
17 services organization.

18 M. Each health care services organization shall offer membership to
19 the following in a conversion plan that provides the basic health care
20 benefits required by the director:

21 1. Each enrollee including the enrollee's enrolled dependents
22 leaving a group.

23 2. Each enrollee and the enrollee's dependents who would otherwise
24 cease to be eligible for membership because of the age of the enrollee or
25 the enrollee's dependents or the death or the dissolution of marriage of
26 an enrollee.

27 N. A health care services organization shall not cancel or nonrenew
28 an evidence of coverage issued to an individual on a nongroup basis,
29 including a conversion plan, except for any of the following reasons and
30 in compliance with the notice and disclosure requirements contained in
31 subsection H of this section:

32 1. The individual has failed to pay premiums or contributions in
33 accordance with the terms of the evidence of coverage or the health care
34 services organization has not received premium payments in a timely
35 manner.

36 2. The individual has performed an act or practice that constitutes
37 fraud or the individual made an intentional misrepresentation of material
38 fact under the terms of the evidence of coverage.

39 3. The health care services organization has ceased to offer
40 coverage to individuals that is consistent with the requirements of
41 sections 20-1379 and 20-1380.

42 4. If the health care services organization offers a health care
43 plan in this state through a network plan, the individual no longer
44 resides, lives or works in the service area served by the network plan or
45 in an area for which the health care services organization is authorized

1 to transact business but only if the coverage is terminated uniformly
2 without regard to any health status-related factor of the covered
3 individual.

4 5. If the health care services organization offers health coverage
5 in this state in the individual market only through one or more bona fide
6 associations, the membership of the individual in the association has
7 ceased but only if that coverage is terminated uniformly without regard to
8 any health status-related factor of any covered individual.

9 O. A conversion plan may be modified if the modification complies
10 with the notice and disclosure provisions for cancellation and nonrenewal
11 under subsection H of this section. A modification of a conversion plan
12 that has already been issued shall not result in the effective elimination
13 of any benefit originally included in the conversion plan.

14 P. Any person who is a United States armed forces reservist, who is
15 ordered to active military duty on or after August 22, 1990 and who was
16 enrolled in a health care plan shall have the right to reinstate such
17 coverage upon ON release from active military duty subject to the
18 following conditions:

19 1. The reservist shall make written application to the health plan
20 within ninety days of discharge from active military duty or within one
21 year of hospitalization continuing after discharge. Coverage shall be
22 effective upon ON receipt of the application by the health plan.

23 2. The health plan may exclude from such coverage any health or
24 physical condition arising during and occurring as a direct result of
25 active military duty.

26 Q. The director shall adopt emergency rules that are applicable to
27 persons who are leaving active service in the armed forces of the United
28 States and returning to civilian status consistent with subsection P of
29 this section and that include:

- 30 1. Conditions of eligibility.
- 31 2. Coverage of dependents.
- 32 3. Preexisting conditions.
- 33 4. Termination of insurance.
- 34 5. Probationary periods.
- 35 6. Limitations.
- 36 7. Exceptions.
- 37 8. Reductions.
- 38 9. Elimination periods.
- 39 10. Requirements for replacement.
- 40 11. Any other conditions of evidences of coverage.

41 R. Any contract that provides maternity benefits shall not restrict
42 benefits for any hospital length of stay in connection with childbirth for
43 the mother or the newborn child to less than forty-eight hours following a
44 normal vaginal delivery or ninety-six hours following a cesarean section.
45 The contract shall not require the provider to obtain authorization from

1 the health care services organization for prescribing the minimum length
2 of stay required by this subsection. The contract may provide that an
3 attending provider in consultation with the mother may discharge the
4 mother or the newborn child before the expiration of the minimum length of
5 stay required by this subsection. The health care services organization
6 shall not:

7 1. Deny the mother or the newborn child eligibility or continued
8 eligibility to enroll or to renew coverage under the terms of the contract
9 solely for the purpose of avoiding the requirements of this subsection.

10 2. Provide monetary payments or rebates to mothers to encourage
11 those mothers to accept less than the minimum protections available
12 pursuant to this subsection.

13 3. Penalize or otherwise reduce or limit the reimbursement of an
14 attending provider because that provider provided care to any insured
15 under the contract in accordance with this subsection.

16 4. Provide monetary or other incentives to an attending provider to
17 induce that provider to provide care to an insured under the contract in a
18 manner that is inconsistent with this subsection.

19 5. Except as described in subsection S of this section, restrict
20 benefits for any portion of a period within the minimum length of stay in
21 a manner that is less favorable than the benefits provided for any
22 preceding portion of that stay.

23 S. Nothing in subsection R of this section:

24 1. Requires a mother to give birth in a hospital or to stay in the
25 hospital for a fixed period of time following the birth of the child.

26 2. Prevents a health care services organization from imposing
27 deductibles, coinsurance or other cost sharing in relation to benefits for
28 hospital lengths of stay in connection with childbirth for a mother or a
29 newborn child under the contract, except that any coinsurance or other
30 cost sharing for any portion of a period within a hospital length of stay
31 required pursuant to subsection R of this section shall not be greater
32 than the coinsurance or cost sharing for any preceding portion of that
33 stay.

34 3. Prevents a health care services organization from negotiating
35 the level and type of reimbursement with a provider for care provided in
36 accordance with subsection R of this section.

37 T. Any contract or evidence of coverage that provides coverage for
38 diabetes shall also provide coverage for equipment and supplies that are
39 medically necessary and that are prescribed by a health care provider
40 including:

41 1. Blood glucose monitors.

42 2. Blood glucose monitors for the legally blind.

43 3. Test strips for glucose monitors and visual reading and urine
44 testing strips.

45 4. Insulin preparations and glucagon.

- 1 5. Insulin cartridges.
- 2 6. Drawing up devices and monitors for the visually impaired.
- 3 7. Injection aids.
- 4 8. Insulin cartridges for the legally blind.
- 5 9. Syringes and lancets including automatic lancing devices.
- 6 10. Prescribed oral agents for controlling blood sugar that are
- 7 included on the plan formulary.
- 8 11. To the extent coverage is required under medicare, podiatric
- 9 appliances for prevention of complications associated with diabetes.
- 10 12. Any other device, medication, equipment or supply for which
- 11 coverage is required under medicare from and after January 1, 1999. The
- 12 coverage required in this paragraph is effective six months after the
- 13 coverage is required under medicare.
- 14 U. Nothing in subsection T of this section:
- 15 1. Entitles a member or enrollee of a health care services
- 16 organization to equipment or supplies for the treatment of diabetes that
- 17 are not medically necessary as determined by the health care services
- 18 organization medical director or the medical director's designee.
- 19 2. Provides coverage for diabetic supplies obtained by a member or
- 20 enrollee of a health care services organization without a prescription
- 21 unless otherwise ~~permitted~~ ALLOWED pursuant to the terms of the health
- 22 care plan.
- 23 3. Prohibits a health care services organization from imposing
- 24 deductibles, coinsurance or other cost sharing in relation to benefits for
- 25 equipment or supplies for the treatment of diabetes.
- 26 V. Any contract or evidence of coverage that provides coverage for
- 27 prescription drugs shall not limit or exclude coverage for any
- 28 prescription drug prescribed for the treatment of cancer on the basis that
- 29 the prescription drug has not been approved by the United States food and
- 30 drug administration for the treatment of the specific type of cancer for
- 31 which the prescription drug has been prescribed, if the prescription drug
- 32 has been recognized as safe and effective for treatment of that specific
- 33 type of cancer in one or more of the standard medical reference compendia
- 34 prescribed in subsection W of this section or medical literature that
- 35 meets the criteria prescribed in subsection W of this section. The
- 36 coverage required under this subsection includes covered medically
- 37 necessary services associated with the administration of the prescription
- 38 drug. This subsection does not:
- 39 1. Require coverage of any prescription drug used in the treatment
- 40 of a type of cancer if the United States food and drug administration has
- 41 determined that the prescription drug is contraindicated for that type of
- 42 cancer.
- 43 2. Require coverage for any experimental prescription drug that is
- 44 not approved for any indication by the United States food and drug
- 45 administration.

1 3. Alter any law with regard to provisions that limit the coverage
2 of prescription drugs that have not been approved by the United States
3 food and drug administration.

4 4. Notwithstanding section 20-1057.02, require reimbursement or
5 coverage for any prescription drug that is not included in the drug
6 formulary or list of covered prescription drugs specified in the contract
7 or evidence of coverage.

8 5. Notwithstanding section 20-1057.02, prohibit a contract or
9 evidence of coverage from limiting or excluding coverage of a prescription
10 drug, if the decision to limit or exclude coverage of the prescription
11 drug is not based primarily on the coverage of prescription drugs required
12 by this section.

13 6. Prohibit the use of deductibles, coinsurance, copayments or
14 other cost sharing in relation to drug benefits and related medical
15 benefits offered.

16 W. For the purposes of subsection V of this section:

17 1. The acceptable standard medical reference compendia are the
18 following:

19 (a) The American hospital formulary service drug information, a
20 publication of the American society of health system pharmacists.

21 (b) The national comprehensive cancer network drugs and biologics
22 compendium.

23 (c) Thomson Micromedex compendium DrugDex.

24 (d) Elsevier gold standard's clinical pharmacology compendium.

25 (e) Other authoritative compendia as identified by the secretary of
26 the United States department of health and human services.

27 2. Medical literature may be accepted if all of the following
28 apply:

29 (a) At least two articles from major peer reviewed professional
30 medical journals have recognized, based on scientific or medical criteria,
31 the drug's safety and effectiveness for treatment of the indication for
32 which the drug has been prescribed.

33 (b) No article from a major peer reviewed professional medical
34 journal has concluded, based on scientific or medical criteria, that the
35 drug is unsafe or ineffective or that the drug's safety and effectiveness
36 cannot be determined for the treatment of the indication for which the
37 drug has been prescribed.

38 (c) The literature meets the uniform requirements for manuscripts
39 submitted to biomedical journals established by the international
40 committee of medical journal editors or is published in a journal
41 specified by the United States department of health and human services as
42 acceptable peer reviewed medical literature pursuant to section
43 186(t)(2)(B) of the social security act (42 United States Code section
44 1395x(t)(2)(B)).

1 X. A health care services organization shall not issue or deliver
2 any advertising matter or sales material to any person in this state until
3 the health care services organization files the advertising matter or
4 sales material with the director. This subsection does not require a
5 health care services organization to have the prior approval of the
6 director to issue or deliver the advertising matter or sales material. If
7 the director finds that the advertising matter or sales material, in whole
8 or in part, is false, deceptive or misleading, the director may issue an
9 order disapproving the advertising matter or sales material, directing the
10 health care services organization to cease and desist from issuing,
11 circulating, displaying or using the advertising matter or sales material
12 within a period of time specified by the director but not less than ten
13 days and imposing any penalties prescribed in this title. At least five
14 days before issuing an order pursuant to this subsection, the director
15 shall provide the health care services organization with a written notice
16 of the basis of the order to provide the health care services organization
17 with an opportunity to cure the alleged deficiency in the advertising
18 matter or sales material within a single five day period for the
19 particular advertising matter or sales material at issue. The health care
20 services organization may appeal the director's order pursuant to title
21 41, chapter 6, article 10. Except as otherwise provided in this
22 subsection, a health care services organization may obtain a stay of the
23 effectiveness of the order as prescribed in section 20-162. If the
24 director certifies in the order and provides a detailed explanation of the
25 reasons in support of the certification that continued use of the
26 advertising matter or sales material poses a threat to the health, safety
27 or welfare of the public, the order may be entered immediately without
28 opportunity for cure and the effectiveness of the order is not stayed
29 pending the hearing on the notice of appeal but the hearing shall be
30 promptly instituted and determined.

31 Y. Any contract or evidence of coverage that is offered by a health
32 care services organization and that contains a prescription drug benefit
33 shall provide coverage of medical foods to treat inherited metabolic
34 disorders as provided by this section.

35 Z. The metabolic disorders triggering medical foods coverage under
36 this section shall:

37 1. Be part of the newborn screening program prescribed in section
38 36-694.

39 2. Involve amino acid, carbohydrate or fat metabolism.

40 3. Have medically standard methods of diagnosis, treatment and
41 monitoring including quantification of metabolites in blood, urine or
42 spinal fluid or enzyme or DNA confirmation in tissues.

43 4. Require specially processed or treated medical foods that are
44 generally available only under the supervision and direction of a
45 physician who is licensed pursuant to title 32, chapter 13 or 17 or a

1 registered nurse practitioner who is licensed pursuant to title 32,
2 chapter 15, that must be consumed throughout life and without which the
3 person may suffer serious mental or physical impairment.

4 AA. Medical foods eligible for coverage under this section shall be
5 prescribed or ordered under the supervision of a physician licensed
6 pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner
7 who is licensed pursuant to title 32, chapter 15 as medically necessary
8 for the therapeutic treatment of an inherited metabolic disease.

9 BB. A health care services organization shall cover at least fifty
10 ~~per cent~~ PERCENT of the cost of medical foods prescribed to treat
11 inherited metabolic disorders and covered pursuant to this section. An
12 organization may limit the maximum annual benefit for medical foods under
13 this section to ~~five thousand dollars~~ \$5,000, which applies to the cost of
14 all prescribed modified low protein foods and metabolic formula.

15 CC. Unless preempted under federal law or unless federal law
16 imposes greater requirements than this section, this section applies to a
17 provider sponsored health care services organization.

18 DD. For the purposes of:

19 1. This section:

20 (a) "Inherited metabolic disorder" means a disease caused by an
21 inherited abnormality of body chemistry and includes a disease tested
22 under the newborn screening program prescribed in section 36-694.

23 (b) "Medical foods" means modified low protein foods and metabolic
24 formula.

25 (c) "Metabolic formula" means foods that are all of the following:

26 (i) Formulated to be consumed or administered enterally under the
27 supervision of a physician who is licensed pursuant to title 32, chapter
28 13 or 17 or a registered nurse practitioner who is licensed pursuant to
29 title 32, chapter 15.

30 (ii) Processed or formulated to be deficient in one or more of the
31 nutrients present in typical foodstuffs.

32 (iii) Administered for the medical and nutritional management of a
33 person who has limited capacity to metabolize foodstuffs or certain
34 nutrients contained in the foodstuffs or who has other specific nutrient
35 requirements as established by medical evaluation.

36 (iv) Essential to a person's optimal growth, health and metabolic
37 homeostasis.

38 (d) "Modified low protein foods" means foods that are all of the
39 following:

40 (i) Formulated to be consumed or administered enterally under the
41 supervision of a physician who is licensed pursuant to title 32, chapter
42 13 or 17 or a registered nurse practitioner who is licensed pursuant to
43 title 32, chapter 15.

1 (ii) Processed or formulated to contain less than one gram of
2 protein per unit of serving, but does not include a natural food that is
3 naturally low in protein.

4 (iii) Administered for the medical and nutritional management of a
5 person who has limited capacity to metabolize foodstuffs or certain
6 nutrients contained in the foodstuffs or who has other specific nutrient
7 requirements as established by medical evaluation.

8 (iv) Essential to a person's optimal growth, health and metabolic
9 homeostasis.

10 2. Subsection B of this section, "child", for purposes of initial
11 coverage of an adopted child or a child placed for adoption but not for
12 purposes of termination of coverage of such child, means a person WHO IS
13 under eighteen years of age.

14 Sec. 91. Section 20-1098.17, Arizona Revised Statutes, is amended
15 to read:

16 20-1098.17. Effect of fees payment; premium tax

17 A. The fees paid by a captive insurer pursuant to section 20-167,
18 subsection ~~F~~ F are payment in full and in lieu of all other demands for
19 all state, county, district, municipal and school taxes, licenses and
20 excises of whatever kind or character, except for:

21 1. A tax on real and tangible personal property that is located
22 within this state.

23 2. The transaction privilege tax and the use tax that is imposed
24 pursuant to title 42, chapter 5, articles 1 and 4.

25 3. The transaction privilege tax and use tax that is imposed by any
26 county, city or town.

27 B. Notwithstanding subsection A of this section, an agency captive
28 insurer that insures risks on policies as specified in section 20-1098.01,
29 subsection A, paragraph 3, subdivision (b) shall pay the premium tax
30 prescribed in section 20-224 for such policies that is in excess of any
31 fees paid pursuant to section 20-167.

32 Sec. 92. Section 20-1098.23, Arizona Revised Statutes, is amended
33 to read:

34 20-1098.23. Confidentiality of information; exceptions

35 A. Notwithstanding title 39, chapter 1, information submitted
36 pursuant to this article is confidential and the director and the
37 director's employees and agents shall not provide the information to any
38 other person without the permission of the captive insurer, except that:

39 1. This section does not apply to the department's use of
40 information submitted by a captive insurer for any regulatory purpose,
41 disciplinary action or hearing. THE DIRECTOR SHALL PROVIDE THE CAPTIVE
42 INSURER WITH A COPY OF ANY DOCUMENT THAT THE DIRECTOR BELIEVES SUPPORTS A
43 VIOLATION OF THIS TITLE OR THAT JUSTIFIES ANY REGULATORY OR OTHER ACTION
44 AGAINST THE CAPTIVE INSURER. A DISCLOSURE PURSUANT TO THIS PARAGRAPH IS

1 NOT A WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN
2 THE DISCLOSED DOCUMENT.

3 2. The director shall provide information submitted by a captive
4 insurer that is required by subpoena issued in connection with an
5 administrative, civil or criminal investigation by a government agency.

6 3. The information may be discoverable by a party in a civil action
7 or contested case to which the captive insurer that submitted the
8 information is a party, if the party seeking to discover the information
9 demonstrates all of the following:

10 (a) The information sought is relevant to and necessary for the
11 furtherance of the action or case.

12 (b) The information sought is unavailable from other
13 nonconfidential sources.

14 (c) A subpoena issued by a judicial or administrative officer of
15 competent jurisdiction has been submitted to the director.

16 4. The director may disclose the information to a public official
17 that has jurisdiction over the regulation of insurance in another state if
18 the public official agrees in writing to maintain the confidentiality of
19 the information and the laws of the state in which the public official
20 serves allow or require the information to be and remain confidential.

21 5. The director may provide the information to the industrial
22 commission of Arizona. The industrial commission shall maintain the
23 confidentiality of the information pursuant to this section.

24 6. For the purpose of administering this article and promoting this
25 state's captive insurance industry, the director may disclose only the
26 following information about licensed captive insurers:

27 (a) THE name of the captive insurer.

28 (b) THE date licensed.

29 (c) THE type of captive insurer.

30 (d) THE business or industry of the owners or members.

31 (e) THE CAPTIVE INSURER'S license status.

32 B. This section does not apply to risk retention groups.

33 Sec. 93. Section 20-1379, Arizona Revised Statutes, is amended to
34 read:

35 20-1379. Guaranteed availability of individual health
36 insurance coverage; prior group coverage;
37 definitions

38 A. Every health care insurer that offers individual health
39 insurance coverage in the individual market in this state shall provide
40 guaranteed availability of coverage to an eligible individual who desires
41 to enroll in individual health insurance coverage and shall not:

42 1. Decline to offer that coverage to, or deny enrollment of, that
43 individual.

44 2. Impose any preexisting condition exclusion for that coverage.

1 B. Every health care insurer that offers individual health
2 insurance coverage in the individual market in this state shall offer all
3 policy forms of health insurance coverage that are designed for, that are
4 made generally available and actively marketed to and that enroll both
5 eligible or other individuals. A health care insurer that offers only one
6 policy form in the individual market complies with this section by
7 offering that form to eligible individuals. A health care insurer also
8 may comply with the requirements of this section by electing to offer at
9 least two different policy forms to eligible individuals as provided by
10 subsection C of this section.

11 C. A health care insurer shall meet the requirements prescribed in
12 subsection B of this section if:

13 1. The health care insurer offers at least two different policy
14 forms, both of which are designed for, are made generally available and
15 actively marketed to and enroll both eligible and other individuals.

16 2. The offer includes at least either:

17 (a) The policy forms with the largest and next to the largest
18 earned premium volume of all policy forms offered by the health care
19 insurer in this state in the individual market during a period not to
20 exceed the preceding two calendar years.

21 (b) A choice of two policy forms with representative coverage,
22 consisting of a lower level of coverage policy form and a higher level of
23 coverage policy form, each of which includes benefits that are
24 substantially similar to other individual health insurance coverage
25 offered by the health care insurer in this state and each of which is
26 covered by a method that provides for risk adjustment, risk spreading or a
27 risk spreading mechanism among the health care insurer's policies.

28 D. The health care insurer's election pursuant to subsection C of
29 this section is effective for policies offered during a period of at least
30 two years.

31 E. If a health care insurer offers individual health insurance
32 coverage in the individual market through a network plan, the health care
33 insurer may do both of the following:

34 1. Limit the individuals who may be enrolled under health insurance
35 coverage to those who live, reside or work within the service area for a
36 network plan.

37 2. Within the service area of a network plan, deny health insurance
38 coverage to individuals if the health care insurer has demonstrated, if
39 required, to the director that both:

40 (a) The health care insurer will not have the capacity to deliver
41 services adequately to additional individual enrollees because of the
42 health care insurer's obligations to existing group contract holders and
43 enrollees and individual enrollees.

44 (b) The health care insurer is applying this paragraph uniformly to
45 individuals without regard to any health status-related factor of the

1 individuals and without regard to whether the individuals are eligible
2 individuals.

3 F. A health care insurer may deny individual health insurance
4 coverage in the individual market to an eligible individual if the health
5 care insurer demonstrates to the director that the health care insurer:

6 1. Does not have the financial reserves necessary to underwrite
7 additional coverage.

8 2. Is denying coverage uniformly to all individuals in the
9 individual market in this state pursuant to state law and without regard
10 to any health status-related factor of the individuals and without regard
11 to whether the individuals are eligible individuals.

12 G. If a health care insurer denies health insurance coverage in
13 this state pursuant to subsection F of this section, the health care
14 insurer shall not offer that coverage in the individual market in this
15 state for one hundred eighty days after the date the coverage is denied or
16 until the health care insurer demonstrates to the director that the health
17 care insurer has sufficient financial reserves to underwrite additional
18 coverage, whichever is later.

19 H. An accountable health plan as defined in section 20-2301 that
20 offers conversion policies on an individual or group basis in connection
21 with a health benefits plan pursuant to this title is not a health care
22 insurer that offers individual health insurance coverage solely because of
23 the offer of a conversion policy.

24 I. Nothing in this section:

25 1. Creates additional restrictions on the amount of the premium
26 rates that a health care insurer may charge an individual for health
27 insurance coverage provided in the individual market.

28 2. Prevents a health care insurer that offers health insurance
29 coverage in the individual market from establishing premium rates or
30 modifying otherwise applicable copayments or deductibles in return for
31 adherence to programs of health promotion and disease prevention.

32 3. Requires a health care insurer that offers only short-term
33 limited duration insurance or limited benefit coverage to individuals and
34 no other coverage to individuals in the individual market to offer
35 individual health insurance coverage in the individual market.

36 4. Requires a health care insurer offering health care coverage
37 only on a group basis or through one or more bona fide associations, or
38 both, to offer health insurance coverage in the individual market.

39 J. A health care insurer shall provide, without charge, a written
40 certificate of creditable coverage as described in this section for
41 creditable coverage occurring after June 30, 1996 if the individual:

42 1. Ceases to be covered under a policy offered by a health care
43 insurer. An individual who is covered by a policy that is issued on a
44 group basis by a health care insurer, that is terminated or not renewed at
45 the choice of the sponsor of the group and where the replacement of the

1 coverage is without a break in coverage is not entitled to receive the
2 certification prescribed in this paragraph but is instead entitled to
3 receive the certification prescribed in paragraph 2 of this subsection.

4 2. Requests certification from the health care insurer within
5 twenty-four months after the coverage under a health insurance coverage
6 policy offered by a health care insurer ceases.

7 K. The certificate of creditable coverage provided by a health care
8 insurer is a written certification of the period of creditable coverage of
9 the individual under the health insurance coverage offered by the health
10 care insurer. The department may enforce and monitor the issuance and
11 delivery of the notices and certificates by health care insurers as
12 required by this section, section 20-1380, the health insurance
13 portability and accountability act of 1996 (P.L. 104-191; 110 Stat. 1936)
14 and any federal regulations adopted to implement the health insurance
15 portability and accountability act of 1996.

16 L. Any health care insurer, accountable health plan or other entity
17 that issues health care coverage in this state, as applicable, shall issue
18 and accept a certificate of creditable coverage of the individual that
19 contains at least the following information:

20 1. The date that the certificate is issued.

21 2. The name of the individual or dependent for whom the certificate
22 applies and any other information that is necessary to allow the issuer
23 providing the coverage specified in the certificate to identify the
24 individual, including the individual's identification number under the
25 policy and the name of the policyholder if the certificate is for or
26 includes a dependent.

27 3. The name, address and telephone number of the issuer providing
28 the certificate.

29 4. The telephone number to call for further information regarding
30 the certificate.

31 5. One of the following:

32 (a) A statement that the individual has at least eighteen months of
33 creditable coverage. For the purposes of this subdivision, "eighteen
34 months" means five hundred forty-six days.

35 (b) Both the date that the individual first sought coverage, as
36 evidenced by a substantially complete application, and the date that
37 creditable coverage began.

38 6. The date creditable coverage ended, unless the certificate
39 indicates that creditable coverage is continuing from the date of the
40 certificate.

41 7. The consumer assistance telephone number for the department.

42 8. The following statement in at least ~~fourteen~~ point
43 FOURTEEN-POINT type:

Important Notice!

1
2 Keep this certificate with your important personal records to
3 protect your rights under the health insurance portability and
4 accountability act of 1996 ("HIPAA"). This certificate is
5 proof of your prior health insurance coverage. You may need
6 to show this certificate to have a guaranteed right to buy new
7 health insurance ("Guaranteed issue"). This certificate may
8 also help you avoid waiting periods or exclusions for
9 preexisting conditions. Under HIPAA, these rights are
10 guaranteed only for a very short time period. After your
11 group coverage ends, you must apply for new coverage within 63
12 days to be protected by HIPAA. If you have questions, call
13 the Arizona department of insurance AND FINANCIAL
14 INSTITUTIONS.

15 M. A health care insurer has satisfied the certification
16 requirement under this section if the insurer offering the health benefits
17 plan provides the certificate of creditable coverage in accordance with
18 this section within thirty days after the event that triggered the
19 issuance of the certificate.

20 N. Periods of creditable coverage for an individual are established
21 by the presentation of the certificate described in this section and
22 section 20-2310. In addition to the written certificate of creditable
23 coverage as described in this section, individuals may establish
24 creditable coverage through the presentation of documents or other means.
25 In order to make a determination that is based on the relevant facts and
26 circumstances of the amount of creditable coverage that an individual has,
27 a health care insurer shall take into account all information that the
28 insurer obtains or that is presented to the insurer on behalf of the
29 individual.

30 O. A health care insurer shall calculate creditable coverage
31 according to the following rules:

32 1. The health care insurer shall allow an individual credit for
33 each day the individual was covered by creditable coverage.

34 2. The health care insurer shall not count a period of creditable
35 coverage for an individual enrolled under any form of health insurance
36 coverage if after the period of coverage and before the enrollment date
37 there were sixty-three consecutive days during which the individual was
38 not covered by any creditable coverage.

39 3. The health care insurer shall not include any period that an
40 individual is in a waiting period or an affiliation period for any health
41 coverage or is awaiting action by a health care insurer on an application
42 for the issuance of health insurance coverage when the health care insurer
43 determines the continuous period pursuant to paragraph 1 of this
44 subsection.

1 4. The health care insurer shall not include any period that an
2 individual is waiting for approval of an application for health care
3 coverage, provided the individual submitted an application to the health
4 care insurer for health care coverage within sixty-three consecutive days
5 after the individual's most recent creditable coverage.

6 5. The health care insurer shall not count a period of creditable
7 coverage with respect to enrollment of an individual if, after the most
8 recent period of creditable coverage and before the enrollment date,
9 sixty-three consecutive days lapse during all of which the individual was
10 not covered under any creditable coverage. The health care insurer shall
11 not include in the determination of the period of continuous coverage
12 described in this section any period that an individual is in a waiting
13 period for health insurance coverage offered by a health care insurer, is
14 in a waiting period for benefits under a health benefits plan offered by
15 an accountable health plan or is in an affiliation period.

16 6. In determining the extent to which an individual has satisfied
17 any portion of any applicable preexisting condition period the health care
18 insurer shall count a period of creditable coverage without regard to the
19 specific benefits covered during that period.

20 P. An individual is an eligible individual if, on the date the
21 individual seeks coverage pursuant to this section, the individual has an
22 aggregate period of creditable coverage as defined and calculated pursuant
23 to this section of at least eighteen months and all of the following
24 apply:

25 1. The most recent creditable coverage for the individual was under
26 a plan offered by:

27 (a) An employee welfare benefit plan that provides medical care to
28 employees or the employees' dependents directly or through insurance,
29 reimbursement or otherwise pursuant to the employee retirement income
30 security act of 1974 (P.L. 93-406; 88 Stat. 829; 29 United States Code
31 sections 1001 through 1461).

32 (b) A church plan as defined in the employee retirement income
33 security act of 1974.

34 (c) A governmental plan as defined in the employee retirement
35 income security act of 1974, including a plan established or maintained
36 for its employees by the government of the United States or by any agency
37 or instrumentality of the United States.

38 (d) An accountable health plan as defined in section 20-2301.

39 2. The individual is not eligible for coverage under:

40 (a) An employee welfare benefit plan that provides medical care to
41 employees or the employees' dependents directly or through insurance,
42 reimbursement or otherwise pursuant to the employee retirement income
43 security act of 1974.

44 (b) A health benefits plan issued by an accountable health plan as
45 defined in section 20-2301.

1 (c) Part A or part B of title XVIII of the social security act.

2 (d) Title 36, chapter 29 or any other plan established under title
3 XIX of the social security act, and the individual does not have other
4 health insurance coverage.

5 3. The most recent coverage within the coverage period was not
6 terminated based on any factor described in section 20-2309, subsection B,
7 paragraph 1 or 2 relating to nonpayment of premiums or fraud.

8 4. The individual was offered and elected the option of
9 continuation coverage under a COBRA continuation provision pursuant to the
10 consolidated omnibus budget reconciliation act of 1985 (P.L. 99-272; 100
11 Stat. 82) or a similar state program.

12 5. The individual exhausted the continuation coverage pursuant to
13 the consolidated omnibus budget reconciliation act of 1985.

14 Q. Notwithstanding subsection P of this section, an individual is
15 an eligible individual if:

16 1. The individual is an individual enrollee in a health care
17 services organization that is domiciled in this state on the date that the
18 health care services organization is declared insolvent, including any
19 health care services organization that is not an accountable health plan
20 as defined in section 20-2301.

21 2. The individual's coverage terminates during the delinquency
22 proceeding, after the health care services organization is declared
23 insolvent.

24 3. The individual satisfies the requirements of an eligible
25 individual as prescribed in this section other than the required period of
26 creditable coverage.

27 R. Notwithstanding subsection P of this section, a newborn child,
28 adopted child or child placed for adoption is an eligible individual if
29 the child was timely enrolled and otherwise would have met the definition
30 of an eligible individual as prescribed in this section other than the
31 required period of creditable coverage and the child is not subject to any
32 preexisting condition exclusion or limitation if the child has been
33 continuously covered under health insurance coverage or a health benefits
34 plan offered by an accountable health plan since birth, adoption or
35 placement for adoption.

36 S. If a health care insurer imposes a waiting period for coverage
37 of preexisting conditions, within a reasonable period of time after
38 receiving an individual's proof of creditable coverage and not later than
39 the date by which the individual must select an insurance plan, the health
40 care insurer shall give the individual written disclosure of the insurer's
41 determination regarding any preexisting condition exclusion period that
42 applies to that individual. The disclosure shall include all of the
43 following information:

44 1. The period of creditable coverage allowed toward the waiting
45 period for coverage of preexisting conditions.

1 2. The basis for the insurer's determination and the source and
2 substance of any information on which the insurer has relied.

3 3. A statement of any right the individual may have to present
4 additional evidence of creditable coverage and to appeal the insurer's
5 determination, including an explanation of any procedures for submission
6 and appeal.

7 T. This section and section 20-1380 apply to all health insurance
8 coverage that is offered, sold, issued, renewed, in effect or operated in
9 the individual market after June 30, 1997, regardless of when a period of
10 creditable coverage occurs.

11 U. For the purposes of this section and section 20-1380 as
12 applicable:

13 1. "Affiliation period" has the same meaning prescribed in section
14 20-2301.

15 2. "Bona fide association" means, for health care coverage issued
16 by a health care insurer, an association that meets the requirements of
17 section 20-2324.

18 3. "Creditable coverage" means coverage solely for an individual,
19 other than limited benefits coverage, under any of the following:

20 (a) An employee welfare benefit plan that provides medical care to
21 employees or the employees' dependents directly or through insurance,
22 reimbursement or otherwise pursuant to the employee retirement income
23 security act of 1974.

24 (b) A church plan as defined in the employee retirement income
25 security act of 1974.

26 (c) A health benefits plan issued by an accountable health plan as
27 defined in section 20-2301.

28 (d) Part A or part B of title XVIII of the social security act.

29 (e) Title XIX of the social security act, other than coverage
30 consisting solely of benefits under section 1928.

31 (f) Title 10, chapter 55 of the United States Code.

32 (g) A medical care program of the Indian health service or of a
33 tribal organization.

34 (h) A health benefits risk pool operated by any state of the United
35 States.

36 (i) A health plan offered pursuant to title 5, chapter 89 of the
37 United States Code.

38 (j) A public health plan as defined by federal law.

39 (k) A health benefit plan pursuant to section 5(e) of the peace
40 corps act (P.L. 87-293; 75 Stat. 612; 22 United States Code sections 2501
41 through 2523).

42 (l) A policy or contract, including short-term limited duration
43 insurance, issued on an individual basis by an insurer, a health care
44 services organization, a hospital service corporation, a medical service

1 corporation or a hospital, medical, dental and optometric service
2 corporation.

3 (m) A policy or contract issued by a health care insurer or an
4 accountable health plan to a member of a bona fide association.

5 4. "Delinquency proceeding" has the same meaning prescribed in
6 section 20-611.

7 5. "Different policy forms" means variations between policy forms
8 offered by a health care insurer, including policy forms that have
9 different cost sharing arrangements or different riders.

10 6. "Genetic information" means information about genes, gene
11 products and inherited characteristics that may derive from the individual
12 or a family member, including information regarding carrier status and
13 information derived from laboratory tests that identify mutations in
14 specific genes or chromosomes, physical medical examinations, family
15 histories and direct analyses of genes or chromosomes.

16 7. "Health care insurer" means a disability insurer, group
17 disability insurer, blanket disability insurer, health care services
18 organization, hospital service corporation, medical service corporation or
19 hospital, medical, dental and optometric service corporation.

20 8. "Health status-related factor" means any factor in relation to
21 the health of the individual or a dependent of the individual enrolled or
22 to be enrolled in a health care services organization including:

23 (a) Health status.

24 (b) Medical condition, including physical and mental illness.

25 (c) Claims experience.

26 (d) Receipt of health care.

27 (e) Medical history.

28 (f) Genetic information.

29 (g) Evidence of insurability, including conditions arising out of
30 acts of domestic violence as defined in section 20-448.

31 (h) The existence of a physical or mental disability.

32 9. "Higher level of coverage" means a policy form for which the
33 actuarial value of the benefits under the health insurance coverage
34 offered by a health care insurer is at least fifteen percent more than the
35 actuarial value of the health insurance coverage offered by the health
36 care insurer as a lower level of coverage in this state but not more than
37 one hundred twenty percent of a policy form weighted average.

38 10. "Individual health insurance coverage" means health insurance
39 coverage offered by a health care insurer to individuals in the individual
40 market but does not include limited benefit coverage or short-term limited
41 duration insurance. A health care insurer that offers limited benefit
42 coverage or short-term limited duration insurance to individuals and no
43 other coverage to individuals in the individual market is not a health
44 care insurer that offers health insurance coverage in the individual
45 market.

1 11. "Limited benefit coverage" has the same meaning prescribed in
2 section 20-1137.

3 12. "Lower level of coverage" means a policy form offered by a
4 health care insurer for which the actuarial value of the benefits under
5 the health insurance coverage is at least eighty-five percent but not more
6 than one hundred percent of the policy form weighted average.

7 13. "Network plan" means a health care plan provided by a health
8 care insurer under which the financing and delivery of health care
9 services are provided, in whole or in part, through a defined set of
10 providers either under contract with a health care insurer licensed
11 pursuant to chapter 4, article 3 of this title or under contract with a
12 health care insurer in accordance with the determination made by the
13 director pursuant to section 20-1053 regarding the geographic or service
14 area in which a health care insurer may operate.

15 14. "Policy form weighted average" means the average actuarial
16 value of the benefits provided by a health care insurer that issues health
17 coverage in this state that is provided by either the health care insurer
18 or, if the data are available, by all health care insurers that issue
19 health coverage in this state in the individual health coverage market
20 during the previous calendar year, except coverage pursuant to this
21 section, weighted by the enrollment for all coverage forms.

22 15. "Preexisting condition" means a condition, regardless of the
23 cause of the condition, for which medical advice, diagnosis, care or
24 treatment was recommended or received within not more than six months
25 before the date of the enrollment of the individual under the health
26 insurance policy or other contract that provides health coverage benefits.
27 A genetic condition is not a preexisting condition in the absence of a
28 diagnosis of the condition related to the genetic information and shall
29 not result in a preexisting condition limitation or preexisting condition
30 exclusion.

31 16. "Preexisting condition limitation" or "preexisting condition
32 exclusion" means a limitation or exclusion of benefits for a preexisting
33 condition under a health insurance policy or other contract that provides
34 health coverage benefits.

35 17. "Short-term limited duration insurance" has the same meaning
36 prescribed in section 20-1384 and is not intended or marketed as health
37 insurance coverage subject to guaranteed issuance or guaranteed renewal
38 provisions of the laws of this state but ~~that~~ is creditable coverage
39 within the meaning of this section and section 20-2301.

40 Sec. 94. Section 20-1556, Arizona Revised Statutes, is amended to
41 read:

42 20-1556. Contingency reserve

43 A. In addition to the paid in capital and surplus provided in
44 section 20-1542 each mortgage guaranty insurer shall establish a
45 contingency reserve after ~~establishment of~~ ESTABLISHING the unearned

1 premium reserve. The mortgage guaranty insurer shall annually contribute
2 to the contingency reserve an amount ~~which~~ THAT in the aggregate is the
3 greater of either fifty ~~per cent~~ PERCENT of the net earned premium or the
4 minimum policyholder position required by section 20-1550 divided by ten.
5 The annual contributions to the contingency reserve made during each
6 calendar year shall be maintained for a period of one hundred twenty
7 months, except that THE INSURER MAY MAKE withdrawals ~~may be made by the~~
8 ~~insurer~~ in any year in which the actual incurred losses and loss expenses
9 exceed thirty-five ~~per cent~~ PERCENT of the corresponding net earned
10 premiums, and these releases shall not be made without prior approval by
11 the INSURANCE director ~~of insurance~~ OR COMMISSIONER of the insurer's state
12 of domicile.

13 B. In addition to withdrawals made pursuant to subsection A of this
14 section, with the prior approval of the INSURANCE director or commissioner
15 ~~of the department of insurance~~ of the insurer's state of domicile, the
16 mortgage guaranty insurer may withdraw from the contingency reserve an
17 amount that is not more than the amount by which the policyholder position
18 exceeds the minimum policyholder position prescribed in section 20-1550.
19 The mortgage guaranty insurer shall provide or identify any information,
20 analysis and other necessary documentation that supports the request
21 submitted to the director or commissioner.

22 Sec. 95. Section 20-1603, Arizona Revised Statutes, is amended to
23 read:

24 20-1603. Definitions

25 In this article, unless the context otherwise requires:

26 1. "Consumer credit insurance" means any one or a combination of
27 the following:

- 28 (a) Credit life insurance.
- 29 (b) Credit disability insurance.
- 30 (c) Credit unemployment insurance.

31 2. "Credit disability insurance" means insurance on a debtor to
32 provide indemnity for payments becoming due or outstanding on a specific
33 loan or other credit transaction while the debtor ~~is a person with~~ HAS a
34 disability as defined in the policy or certificate.

35 3. "Credit life insurance" means insurance on the life of a debtor
36 pursuant to or in connection with a specific loan or other credit
37 transaction that provides for the satisfaction of a debt, in whole or in
38 part, on the death of an insured debtor.

39 ~~4. "Credit property insurance" has the same meaning prescribed in~~
40 ~~section 20-1621.01.~~

41 ~~5.~~ 4. "Credit unemployment insurance" means casualty insurance on
42 a debtor to provide indemnity for payments or debt becoming due on a
43 specific loan or other credit transaction while the debtor is
44 involuntarily unemployed as defined in the policy.

1 ~~6.~~ 5. "Creditor" means the lender of money or vendor or lessor of
2 goods, services, property, rights or privileges, including a lessor under
3 a lease intended as a security, where payment is arranged through a credit
4 transaction. "Creditor" means also any successor to the right, title or
5 interest of any such lender, vendor or lessor or an affiliate, associate
6 or subsidiary of any of them or any director, officer or employee of any
7 of them or any other person in any way associated with any of them.

8 ~~7.~~ 6. "Debtor" means a borrower of money or a person possessing a
9 commitment for a loan of certain funds or a purchaser or lessee of goods,
10 services, property, rights or privileges for which payment is arranged
11 through a credit transaction.

12 ~~8.~~ "~~Director~~" means the director of insurance.

13 ~~9.~~ 7. "Gross debt" means the sum of the remaining payments that a
14 debtor owes a creditor.

15 ~~10.~~ 8. "Identifiable charge" means a charge for a type of consumer
16 credit insurance that is made to debtors having that insurance and not
17 made to debtors not having the insurance, and that includes a charge for
18 insurance that is disclosed in the credit or other instrument furnished to
19 the debtor that states the financial elements of the credit transaction
20 and any difference in the finance, interest, service or other similar
21 charge made to debtors in like circumstances except for the insured or
22 noninsured status of the debtor or of the property used as security for
23 the credit transaction.

24 ~~11.~~ 9. "Loan" means an advance or commitment of certain funds
25 pursuant to a repayment agreement.

26 ~~12.~~ 10. "Net debt" means the amount necessary to liquidate a debt
27 in a single lump sum payment, excluding all unearned interest and other
28 unearned finance charges.

29 Sec. 96. Section 20-1634, Arizona Revised Statutes, is amended to
30 read:

31 20-1634. Immunity

32 The director ~~of insurance~~ or any person who in good faith furnishes
33 to the insured or insurer information as to reasons for cancellation or
34 ~~non-renewal~~ NONRENEWAL of a motor vehicle policy, shall not be liable to
35 any party for providing such information.

36 Sec. 97. Section 20-1652, Arizona Revised Statutes, is amended to
37 read:

38 20-1652. Grounds for valid notice of cancellation; inquiries;
39 definitions

40 A. After a policy has been in effect for sixty days or, if the
41 policy is a renewal, effective immediately, ~~no~~ A notice of cancellation
42 ~~may be~~ IS NOT effective unless it is based on the occurrence, after the
43 effective date of the policy, of one or more of the following:

- 44 1. Nonpayment of premium.

1 2. Conviction of the named insured of a crime arising out of acts
2 increasing the hazard insured against.

3 3. Acts or omissions by the insured or the insured's representative
4 constituting fraud or material misrepresentation in obtaining the policy,
5 continuing the policy or presenting a claim under the policy.

6 4. Discovery of grossly negligent acts or omissions by the insured
7 substantially increasing any of the hazards insured against.

8 5. Substantial change in the risk assumed by the insurer, since the
9 policy was issued, except to the extent that the insurer should reasonably
10 have ~~forseen~~ FORESEEN the change or contemplated the risk in writing the
11 contract.

12 6. A determination by the director ~~of insurance~~ that the
13 continuation of the policy would place the insurer in violation of the
14 insurance laws of this state.

15 7. Failure of the insured to take reasonable steps to eliminate or
16 reduce any conditions in or on the insured premises that contributed to a
17 loss in the past or will increase the probability of future losses.

18 B. ~~In the event of~~ IF nonrenewal IS based on THE condition of the
19 premises, the insured shall be given thirty days' notice to remedy the
20 identified conditions. ~~In the event that~~ IF the identified conditions are
21 remedied, coverage shall be renewed. ~~In the event that~~ IF the identified
22 conditions are not satisfactorily remedied, the insured shall be given an
23 additional thirty days, ~~upon~~ ON payment of premium, to cure the defective
24 condition. Any insured who believes nonrenewal under this subsection is
25 arbitrary or capricious may ~~utilize~~ USE the appeal procedures set forth in
26 section 20-1633.

27 C. If an insurer uses for underwriting purposes information from a
28 report provided by, or database maintained by, an insurance support
29 organization or consumer reporting agency related to the premises that is
30 the subject of the application or to the person applying for insurance,
31 the insurer shall obtain that information as soon as practicable on
32 application by a person for insurance coverage and before the issuance of
33 a binder of insurance coverage. Failure of the insurer to timely obtain
34 the information required by this subsection precludes the insurer from
35 declining insurance coverage or terminating a binder of insurance coverage
36 based on the information. This subsection does not apply to a policy
37 renewal.

38 D. This section does not affect the provisions of section 20-1120.

39 E. After thirty days from the application by an insured for
40 insurance coverage, no declination of insurance coverage or termination of
41 a binder shall be based on information from a consumer report, including a
42 consumer report provided by, or database maintained by, an insurance
43 support organization or consumer reporting agency related to the premises
44 that is the subject of the application or to the person applying for
45 insurance. Notwithstanding any other law, an insurer may decline or

1 terminate insurance coverage based on the condition of the premises as
2 determined through a physical inspection of the premises.

3 F. An insurer shall not consider as a claim any inquiry by an
4 insured into whether a policy will cover a loss or about the type or level
5 of coverage. An insurer shall not use such an inquiry, regardless of the
6 source of the information that an inquiry was made, as a basis for
7 declining, nonrenewing or canceling insurance coverage or a binder of
8 insurance coverage. An insurer shall not submit to any insurance support
9 organization or consumer reporting agency that a mere inquiry was made to
10 the insurer as to the terms or coverage of a policy of insurance. An
11 inquiry into coverage on a property insurance policy is not a claim
12 activity unless an actual claim is filed by the insured that results in an
13 investigation of the claim by the insurer.

14 G. For the purposes of this section:

15 1. "Consumer reporting agency" has the same meaning prescribed in
16 section 20-2102.

17 2. "Insurance support organization" has the same meaning prescribed
18 in section 20-2102.

19 Sec. 98. Section 20-1673, Arizona Revised Statutes, is amended to
20 read:

21 20-1673. Grounds for valid cancellation

22 A. No insurer may cancel an insurance policy before the expiration
23 of the agreed term or one year from the effective date of the policy or
24 renewal, whichever is less, if one of the following is true:

25 1. The policy has been in effect for sixty days.

26 2. The policy is a renewal, effective immediately.

27 B. Notwithstanding subsection A OF THIS SECTION, an insurer may
28 cancel a policy for either of the following:

29 1. Nonpayment of a premium.

30 2. One of the following grounds, which must be stated in the
31 policy:

32 (a) Conviction of the named insured of a crime arising out of acts
33 increasing the hazard insured against.

34 (b) Acts or omissions by the insured or ~~his~~ THE INSURED'S
35 representative constituting fraud or material misrepresentation in
36 obtaining the policy, in continuing the policy or in presenting a claim
37 under the policy.

38 (c) A substantial change in the risk assumed, except to the extent
39 that the insurer should reasonably have foreseen the change or
40 contemplated the risk in writing the contract.

41 (d) A substantial breach of contractual duties or conditions.

42 (e) Loss of reinsurance applicable to the risk insured against, but
43 only if the absence of reinsurance has resulted from termination of treaty
44 or facultative reinsurance initiated or implemented by the reinsurer or
45 reinsurers of the company issuing the policy.

1 (f) A determination by the director ~~of insurance~~ that the
2 continuation of the policy would place the insurer in violation of the
3 insurance laws of this state or would jeopardize the solvency of the
4 insurer.

5 (g) Acts or omissions by the insured or ~~his~~ THE INSURED'S
6 representative ~~which~~ THAT materially increase the hazard insured against.

7 Sec. 99. Section 20-1691, Arizona Revised Statutes, is amended to
8 read:

9 20-1691. Definitions

10 In this article, unless the context otherwise requires:

11 1. "Applicant" means:

12 (a) In the case of an individual long-term care insurance policy,
13 the person who seeks to contract for such benefits.

14 (b) In the case of a group long-term care insurance policy, the
15 proposed certificate holder.

16 2. "Certificate" means a certificate issued under a group long-term
17 care insurance policy, which ~~group policy~~ has been delivered or issued for
18 delivery in this state.

19 3. "Chronically ill individual" means any individual who has been
20 certified by a licensed health care practitioner as meeting the definition
21 of illness established by title III of the health insurance portability
22 and accountability act of 1996 (P.L. 104-191; 110 STAT. 1936).

23 ~~4. "Director" means the director of the department of insurance.~~

24 ~~5.~~ 4. "Group" means any of the following:

25 (a) One or more employers or labor organizations, or a trust or the
26 trustees of a fund established by one or more employers or labor
27 organizations for employees or former employees or members or former
28 members of the labor organization.

29 (b) A professional, trade or occupational association for its
30 members or former or retired members if the association is composed of
31 individuals who were all actively engaged in the same profession, trade or
32 occupation and the association has been maintained in good faith for
33 purposes other than obtaining insurance.

34 (c) An association or a trust or the trustees of a fund
35 established, created or maintained for the benefit of members of one or
36 more associations, subject to compliance with the requirements of section
37 20-1691.04, subsection A.

38 (d) A group other than that described in subdivision (a), (b) or
39 (c) of this paragraph if a policy issued to the group satisfies the
40 criteria under section 20-1691.04, subsection C.

41 ~~6.~~ 5. "Group long-term care insurance" means a long-term care
42 insurance policy that is delivered or issued for delivery in this state to
43 a group.

44 ~~7.~~ 6. "Licensed health care practitioner" means any physician
45 licensed pursuant to title 32, chapter 13 or 17, any registered nurse or

1 registered nurse practitioner licensed pursuant to title 32, chapter 15 or
2 any other individual who meets the requirements prescribed by the United
3 States secretary of the treasury.

4 ~~8.~~ 7. "Long-term care insurance" means an individual or group
5 insurance policy or rider issued by insurers, fraternal benefit societies,
6 nonprofit health, hospital and medical service corporations, prepaid
7 health plans, health care services organizations or any similar
8 organization and advertised, marketed, offered or designed to provide
9 coverage for each covered person on an expense-incurred, indemnity,
10 prepaid or other basis for one or more necessary or medically necessary
11 diagnostic, preventive, therapeutic, rehabilitative, maintenance, personal
12 or custodial care services provided in a setting other than an acute care
13 unit of a hospital. Long-term care insurance includes group and
14 individual annuities, life insurance policies or riders that provide or
15 supplement long-term care insurance and qualified long-term care insurance
16 contracts. Long-term care insurance also includes a policy or rider that
17 provides for payment of benefits based on cognitive impairment or loss of
18 functional capacity. Long-term care insurance does not include any
19 insurance policy that is offered primarily to provide basic medicare
20 supplement coverage, basic hospital expense coverage, basic medical and
21 surgical expense coverage, major medical expense coverage, disability
22 income or related asset protection coverage, hospital confinement
23 indemnity coverage, accident only coverage, specified disease coverage,
24 specified accident coverage or limited benefit health coverage or riders
25 to the insurance policy or a life insurance policy that accelerates the
26 death benefit for terminal illness, medical conditions requiring
27 extraordinary medical intervention or permanent institutional confinement,
28 that provides the option of a lump sum payment for those benefits and in
29 which the benefits or the eligibility for the benefits is not conditioned
30 on the receipt of long-term care.

31 ~~9.~~ 8. "Long-term care partnership program" means a qualified state
32 long-term care insurance partnership as defined in section 1917(b) of the
33 social security act (42 United States Code section 1396p).

34 ~~10.~~ 9. "Maintenance or personal care services" means any care the
35 primary purpose of which is to provide assistance needed with any
36 disability that results in the individual being a chronically ill
37 individual, including the protection from threats to health and safety due
38 to severe cognitive impairment.

39 ~~11.~~ 10. "Policy" means an individual or group policy, contract,
40 subscriber agreement, rider or endorsement delivered or issued for
41 delivery in this state by an insurer, fraternal benefit society, nonprofit
42 health, hospital or medical service corporation, prepaid health plan or
43 health care services organization or any similar organization.

44 ~~12.~~ 11. "Preexisting condition" means a condition for which medical
45 advice or treatment was recommended by or received from a health care

1 services provider within six months before the effective date of coverage
2 of an insured person.

3 ~~13.~~ 12. "Qualified long-term care insurance contract" means:

4 (a) Any insurance policy that meets the requirements of section
5 7702B(b) of the internal revenue code of 1986, as amended.

6 (b) The portion of a life insurance policy that provides long-term
7 care insurance coverage by rider or as a part of the policy and that
8 satisfies the requirements of section 7702B(b) and (e) of the internal
9 revenue code of 1986, as amended.

10 ~~14.~~ 13. "Qualified long-term care services" means necessary
11 diagnostic, preventive, therapeutic, curing, treating, mitigating and
12 rehabilitative services and maintenance or personal care services to which
13 the insured is eligible under a qualified long-term care insurance
14 contract and that are provided pursuant to a plan of care prescribed by a
15 licensed health care practitioner.

16 ~~15.~~ 14. "Severe cognitive impairment" means an impairment
17 determined by a licensed health care practitioner as meeting the
18 definition of an impairment as established by title III of the health
19 insurance portability and accountability act of 1996 (P.L. 104-191; 110
20 STAT. 1936).

21 Sec. 100. Section 20-1691.04, Arizona Revised Statutes, is amended
22 to read:

23 20-1691.04. Requirements for certain group coverage

24 A. Before advertising, marketing or offering a policy within this
25 state issued to a group defined in section 20-1691, paragraph ~~5~~ 4,
26 subdivision (c), the association or the insurer of the association shall
27 file evidence with the director that the association meets all of the
28 following requirements:

29 1. Consists of at least one hundred persons.

30 2. Has been organized and maintained in good faith for purposes
31 other than obtaining insurance.

32 3. Has been in active existence for at least one year.

33 4. Has a constitution and bylaws that prescribe all of the
34 following:

35 (a) That the association holds regular meetings at least annually
36 to further the purposes of the members.

37 (b) Except for credit unions, that the association collects dues or
38 solicits contributions from members.

39 (c) That the members have voting privileges and representation on
40 the governing board and committees.

41 B. Thirty days after filing the evidence required by subsection A
42 of this section, an association is deemed to satisfy the organizational
43 requirements of subsection A of this section unless the director notifies
44 the association or its insurer in writing that the association does not
45 satisfy those organizational requirements.

1 C. An insurer may offer a group long-term care insurance policy to
2 a group defined in section 20-1691, paragraph ~~5~~ 4, subdivision (d) if the
3 director finds all of the following:

4 1. Issuance of the group policy is not contrary to the best
5 interest of the public.

6 2. Issuance of the group policy would result in economies of
7 acquisition or administration.

8 3. The benefits of the policy are reasonable in relation to the
9 premium charged.

10 D. A person shall not offer long-term care insurance coverage for a
11 resident of this state under a group policy issued in another state to a
12 group defined in section 20-1691, paragraph ~~5~~ 4, subdivision (d) unless
13 the state of issuance has statutory and regulatory long-term care
14 insurance requirements substantially similar to the requirements in this
15 state and either this state or the state of issuance has made a
16 determination that the requirements have been met.

17 E. The director may prohibit further offering to a resident of this
18 state a policy that was issued to a group as defined in section 20-1691,
19 paragraph ~~5~~ 4, subdivision (c) or (d) and that was initially authorized
20 for issuance, if the director finds that the insurer does not currently
21 meet the requirements of this article.

22 Sec. 101. Section 20-1691.06, Arizona Revised Statutes, is amended
23 to read:

24 20-1691.06. Outline of coverage; certificate

25 A. An outline of coverage shall be delivered to an applicant for a
26 long-term care insurance policy at the time of initial solicitation
27 through means that prominently direct the recipient's attention to the
28 document and its purpose. In the case of direct response solicitations,
29 the outline of coverage shall be presented in conjunction with an
30 application or enrollment form. In the case of insurance producer
31 solicitations, the insurance producer shall deliver the outline of
32 coverage before the presentation of an application or enrollment form.
33 The outline of coverage shall include all of the following:

34 1. A description of the principal benefits and coverage provided in
35 the policy.

36 2. A statement of the principal exclusions, reductions and
37 limitations contained in the policy.

38 3. A statement of the renewal provisions, including any reservation
39 in the policy of a right to change premiums, and any continuation or
40 conversion provisions of group coverage.

41 4. A statement that the outline of coverage is a summary of the
42 policy issued or applied for and that the policy should be consulted to
43 determine governing contractual provisions.

44 5. A description of the terms under which the policy or certificate
45 may be returned and the premium refunded.

1 6. A description of the relationship of cost of care and benefits.

2 7. A statement and description of whether the policy constitutes a
3 qualified long-term care insurance contract.

4 B. For a long-term care INSURANCE policy that is issued to a group
5 as defined in section 20-1691, paragraph ~~5~~ 4, subdivision (a), an outline
6 of coverage is not required to be delivered if the information listed in
7 subsection A of this section is contained in other materials related to
8 enrollment. On request, an insurer shall make the other materials
9 available to the director.

10 C. On delivery of an individual life insurance policy that provides
11 long-term care benefits within the policy or by rider, a policy summary
12 shall be delivered to the policyholder. In the case of direct response
13 solicitations, the insurer shall deliver the policy summary on the
14 applicant's request. If an applicant does not request the delivery of a
15 policy summary, the insurer shall deliver the policy summary no later than
16 at the time the policy is delivered. A policy summary shall include:

17 1. An explanation of how the long-term care benefits interact with
18 other components of the policy, including deductions from death benefits.

19 2. An explanation of the amount of benefits, the length of benefits
20 and the guaranteed lifetime benefits, if any, for each covered person.

21 3. Any exclusions, reductions or limitations on benefits of
22 long-term care.

23 4. A statement that any long-term care inflation protection option
24 required by state law is not available under the policy.

25 5. If applicable to the type of policy that is issued:

26 (a) A disclosure of the effects of exercising other rights under
27 the policy.

28 (b) A disclosure of guarantees that are related to long-term care
29 costs of insurance charges.

30 (c) Current and projected maximum lifetime benefits.

31 6. An explanation of the monthly reporting requirements for life
32 insurance policies with an accelerated death benefits option.

33 D. The provisions of the policy summary required under subsection C
34 of this section may be incorporated into any required life insurance
35 illustration or policy summary.

36 E. The insurer shall provide a monthly report to the insured any
37 time a long-term care benefit that is funded through a life insurance
38 vehicle by the acceleration of the death benefit is in benefit payment
39 status and the report shall include:

40 1. Any long-term care benefits paid out during the month.

41 2. An explanation of any changes in the policy, including death
42 benefits or cash values, due to long-term care benefits paid out.

43 3. The amount of long-term care benefits existing or remaining.

1 F. A certificate issued pursuant to a group long-term care
2 insurance policy that is delivered or issued for delivery in this state
3 shall include all of the following:

4 1. A description of the principal benefits and coverage provided in
5 the policy.

6 2. A statement of the principal exclusions, reductions and
7 limitations contained in the policy.

8 3. A statement that the group master policy should be consulted to
9 determine governing contractual provisions.

10 G. If an application for a long-term care insurance contract or
11 certificate is approved, the issuer shall deliver the contract or
12 certificate of insurance to the applicant within thirty days ~~of~~ AFTER
13 approval.

14 H. An insurer shall notify a claimant that a claim under a
15 long-term care insurance policy is accepted or denied within fifteen
16 working days ~~of~~ AFTER the insurer's receipt of a claim if the insurer has
17 received the documentation it reasonably requires to determine liability.
18 If the insurer requires longer than fifteen working days, the insurer,
19 within the fifteen days, shall notify the claimant of the need for
20 additional time and shall explain why additional time is required. In no
21 case shall the determination exceed sixty days.

22 I. If an insurer denies a claim under a long-term care insurance
23 policy, the insurer shall:

24 1. Provide the policyholder, certificate holder or designated
25 representative of the policyholder or certificate holder with a written
26 explanation of the reasons for the denial, including a reference to any
27 specific policy provision, condition or exclusion supporting the denial.

28 2. Make available all information directly related to the denial to
29 the policyholder, certificate holder or designated representative of the
30 policyholder or certificate holder.

31 Sec. 102. Section 20-1691.08, Arizona Revised Statutes, is amended
32 to read:

33 20-1691.08. Rate and form review; disapproval

34 A. A person shall not deliver or issue for delivery in this state
35 any long-term care insurance policy or rate unless the person has first
36 filed the form or rate with the director and the director has approved the
37 form or rate. Unless the director issues an order affirmatively approving
38 or disapproving the form or rate within ~~thirty~~ SIXTY days after filing,
39 the form or rate is deemed approved. On written notice given to the
40 insurer within the ~~thirty day~~ SIXTY-DAY period, the director may extend
41 the ~~thirty day~~ SIXTY-DAY review period for up to fifteen additional days.

42 B. The director shall disapprove a rate or form if either:

43 1. The rate ~~is~~ DOES not ~~in compliance~~ COMPLY with this article or
44 any rules adopted pursuant to this article.

1 2. The form contains provisions that are ambiguous, misleading or
2 deceptive, that encourage misrepresentation of the coverage or that are
3 contrary to this title or of any rule adopted pursuant to this title.

4 C. If the director disapproves a rate or form, the director shall
5 send the insurer a written notice specifying the reason for THE
6 disapproval. The insurer may request a hearing pursuant to title 41,
7 chapter 6, article 10 to contest the disapproval. It is unlawful for the
8 insurer to issue or use a rate or form that has been disapproved.

9 D. At any time after notice and for cause shown, the director may
10 issue an order withdrawing approval of any form or rate for any reason
11 listed in subsection B OF THIS SECTION. The insurer may request a hearing
12 pursuant to title 41, chapter 6, article 10 to contest the director's
13 order.

14 E. An insurer shall not issue or use a rate or form after the
15 effective date of an order withdrawing approval.

16 F. The director, by order, may exempt from the requirements of this
17 section for as long as the director deems proper any insurance rate or
18 form specified in the order, to which, in the director's opinion, this
19 section may not practicably be applied or the filing and approval of which
20 are, in the director's opinion, not desirable or necessary for the
21 protection of the public.

22 Sec. 103. Section 20-1691.11, Arizona Revised Statutes, is amended
23 to read:

24 20-1691.11. Nonforfeiture benefits

25 A. Except as provided in subsection B of this section, a person
26 shall not deliver or issue for delivery in this state a long-term care
27 insurance policy unless the policyholder or certificate holder has been
28 offered the option of purchasing a policy or certificate with a
29 nonforfeiture benefit. The offer of the nonforfeiture benefit may be in
30 the form of a rider that is attached to the policy. If the policyholder
31 or certificate holder declines the benefit, the insurer shall provide a
32 contingent benefit on lapse that shall be available for a specified period
33 of time following a substantial increase in premium rates.

34 B. If a group long-term care insurance policy is issued, a person
35 shall make the offer of the nonforfeiture benefit to the group
36 policyholder, except that if the policy is issued to a group as defined in
37 section 20-1691, paragraph ~~5~~ 4, subdivision (d), other than to a
38 continuing care retirement community or other similar entity, a person
39 shall make the offering to each proposed certificate holder.

40 Sec. 104. Section 20-1691.12, Arizona Revised Statutes, is amended
41 to read:

42 20-1691.12. Insurance producer training course requirements

43 A. An individual may not sell, solicit or negotiate long-term care
44 insurance unless the individual:

1 1. Is licensed as an insurance producer for accident and health or
2 sickness.

3 2. Has completed eight hours of initial long-term care training.

4 3. Has completed four hours of long-term care training in each
5 two-year period succeeding July 1, 2009, after the two-year period within
6 which the individual completed the initial long-term care training.

7 B. An individual may satisfy the training requirement prescribed in
8 subsection A of this section only by completing an approved continuing
9 education course that is offered by an approved provider pursuant to
10 chapter 18 of this title. The completion of such a course may also
11 satisfy the insurance continuing education requirement prescribed by
12 chapter 18 of this title.

13 C. The training courses required by subsection A of this section
14 consist of topics that are related to long-term care insurance, long-term
15 care services and, if applicable, qualified state long-term care insurance
16 partnership programs including, as consistent with the minimum standards
17 that apply to approved continuing education courses ~~developed by the~~
18 ~~continuing education review committee pursuant to section 20-2905:~~

19 1. State and federal rules and requirements and the relationship
20 between qualified state long-term care insurance partnership programs and
21 other public and private coverage of long-term care services, including
22 medicaid.

23 2. Available long-term care services and long-term care service
24 providers.

25 3. Changes or improvements in long-term care services or long-term
26 care service providers.

27 4. Alternatives to the purchase of private long-term care
28 insurance.

29 5. The effect of inflation on benefits and the importance of
30 inflation protection.

31 6. Consumer suitability standards and guidelines.

32 D. An insurer that is subject to this article shall obtain
33 verification that an insurance producer received training that is required
34 by subsection A of this section before the insurance producer is ~~permitted~~
35 ALLOWED to sell, solicit or negotiate the insurer's long-term care
36 products.

37 E. An insurer that is subject to this article shall maintain and
38 make available to the director on request sufficient records with respect
39 to the training of insurance producers who sell, solicit or negotiate the
40 insurer's long-term care insurance products to allow the department to
41 provide assurance to the Arizona health care cost containment system
42 administration that the insurance producers have received the training
43 prescribed by this section.

44 F. A nonresident insurance producer's satisfaction of a
45 substantially similar long-term care training requirement of any other

1 state satisfies the nonresident insurance producer's long-term care
2 training requirement as prescribed by this section.

3 Sec. 105. Section 20-1741, Arizona Revised Statutes, is amended to
4 read:

5 20-1741. Annual statement to include certain claims and
6 premium information

7 Each licensed insurer THAT IS authorized to transact casualty
8 insurance in this state and ~~which~~ THAT writes professional liability
9 insurance ~~shall~~, as part of the annual statement required by section
10 20-223, SHALL report ~~such~~ professional liability claims and premium data
11 as ~~shall be~~ prescribed by the director of insurance.

12 Sec. 106. Section 20-1742, Arizona Revised Statutes, is amended to
13 read:

14 20-1742. Insurers to report malpractice claims and actions;
15 definition

16 A. Each health care insurer providing professional liability
17 insurance to a health professional as defined in section 32-3201 shall
18 report to the appropriate health profession regulatory board, except the
19 Arizona medical board, within thirty days of its receipt, any written or
20 oral claim or action for damages for personal injury claimed to have been
21 caused by:

22 1. An error, omission or negligence in the performance of an
23 insured's professional services.

24 2. The performance of professional services without adequate
25 informed consent.

26 3. An alleged breach of contract for professional services.

27 B. The reports required by subsection A of this section shall be
28 confidential, nondiscoverable and nonadmissible as evidence, shall be
29 filed on such forms as the health profession regulatory board, except the
30 Arizona medical board, may require and shall contain:

31 1. The name and address of the health professional involved in the
32 claim.

33 2. The name and address of the person on whose behalf the claim is
34 being filed.

35 3. The date of the occurrence that created the claim.

36 4. The date of the claim if a complaint is not simultaneously
37 filed.

38 5. The date the complaint is filed, if applicable.

39 6. A summary of the occurrence on which the claim is based as
40 stated by the claimant.

41 7. Such other reasonable information related to the claim as the
42 director may require.

43 C. Every health care insurer required to report to the health
44 profession regulatory board pursuant to this section is required to advise
45 the health profession regulatory board of any settlements or judgments

1 entered against a health professional as defined in section 32-3201 within
2 thirty days after the settlement was agreed to or the judgment was entered
3 in superior court.

4 D. There shall be no liability on the part of and no cause of
5 action shall arise against any health care insurer or its agents or
6 employees reporting as required by this section.

7 E. The health profession regulatory board shall notify each health
8 care insurer that is required to report pursuant to subsection A of this
9 section of its duty to report.

10 F. ~~Nothing in~~ This section ~~limits~~ DOES NOT LIMIT the director of
11 THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS from obtaining any
12 of the information required to be reported under this section.

13 G. For the purposes of this section, "health profession regulatory
14 board" means an agency, board or commission that licenses, certifies or
15 registers a health professional as defined by section 32-3201.

16 Sec. 107. Section 20-1801, Arizona Revised Statutes, is amended to
17 read:

18 20-1801. Definitions

19 In this chapter, unless the context otherwise requires:

20 1. "Assets of a life care facility" means those assets held in the
21 name of the life care facility only.

22 2. "Contract holder" means a person who enters into a life care
23 contract with a provider or who is designated, in a life care contract, to
24 be a person provided with services in the person's private residence with
25 the right to future access to services, board and lodging in a facility.

26 ~~3. "Department" means the department of insurance.~~

27 ~~4. "Director" means the director of the department of insurance.~~

28 ~~5.~~ 3. "Entrance fee" means an initial or deferred transfer to a
29 provider of a sum of money or property, made or promised to be made by a
30 person entering into a life care contract, which assures a resident or
31 contract holder of services pursuant to a life care contract.

32 ~~6.~~ 4. "Facility":

33 (a) Means a place or places in which a provider undertakes to
34 provide a resident with nursing services, medical services or
35 health-related services, in addition to board and lodging, for a term in
36 excess of one year or for life pursuant to a life care contract.

37 (b) Does not include a contract holder's private residence.

38 ~~7.~~ 5. "Life care contract" means a contract to provide to a person
39 for the duration of ~~such~~ THE person's life or for a term in excess of one
40 year nursing services, medical services or health-related services, as
41 defined in section 36-401, in addition to board and lodging for ~~such~~ THE
42 person in a facility or services in the person's private residence with
43 the right to future access to services, board and lodging in a facility,
44 conditioned ~~upon~~ ON the transfer of an entrance fee to the provider of

1 such services in addition to or in lieu of the payment of regular periodic
2 charges for the care and services involved.

3 ~~8.~~ 6. "Living unit" means an apartment, room or other area within
4 a facility set aside for the exclusive use of one or more identified
5 residents.

6 ~~9.~~ 7. "Manager" means a corporation, partnership, association,
7 joint stock company, trust, or any other unincorporated organization ~~which~~
8 THAT is contracted with to manage the residential section or ~~health~~
9 ~~related~~ HEALTH-RELATED section, or both, of a life care facility.

10 ~~10.~~ 8. "Permit" means a permit to enter into life care contracts
11 issued by the department ~~of insurance~~.

12 ~~11.~~ 9. "Promoter" means the primary person who is employed to
13 consult or to promote the establishment of a life care facility.

14 ~~12.~~ 10. "Provider" means a person who provides services pursuant to
15 a life care contract.

16 ~~13.~~ 11. "Resident" means a person who enters into a life care
17 contract with a provider or who is designated, in a life care contract, to
18 be a person provided with services, board and lodging in a living unit or
19 at a facility.

20 Sec. 108. Section 20-1808, Arizona Revised Statutes, is amended to
21 read:

22 20-1808. Ratio of assets to liabilities; report;
23 rehabilitation of provider

24 A. The provider shall possess assets in the first year of operation
25 equal to at least seventy-five ~~per cent~~ PERCENT of the unamortized
26 endowment fees plus all other liabilities including long-term debt. The
27 unamortized endowment fees shall be based on life expectancy of
28 purchasers. Thereafter, the provider shall at all times possess assets in
29 an amount sufficient to assure full performance of the obligations of the
30 provider pursuant to life care contracts including any reserve fund escrow
31 required by the director pursuant to section 20-1806.

32 B. If revenues or funds including reserves are inadequate or
33 projected to be inadequate pursuant to the annual report or an actuarial
34 report or if the provider does not meet the requirements of subsection A
35 of this section, the director may employ an independent management
36 consultant experienced in the operation of life care facilities, at the
37 expense of the provider, who shall examine the financial structure and
38 operations of the provider and make recommendations on remedial action to
39 the director. The director shall not be bound by such recommendations.

40 C. IF at any time the director receives notice from the escrow
41 agent that section 20-1806 has not been complied with, ~~OR~~ IF at any other
42 time when the director has reason to believe that the provider is in a
43 financially unsound or unsafe condition, ~~or~~ or that its condition is such
44 that it may otherwise be unable to fully perform its obligations pursuant
45 to life care contracts, ~~or when~~ IF the provider fails to implement the

1 director's recommendations as a result of a management consultant's report
2 or ~~when~~ IF it is obvious to the director that to obtain the services of a
3 financial consultant under subsection B of this section would be futile,
4 the director, through the attorney general, shall apply to the superior
5 court in the county in which the provider's facility is located for an
6 order directing ~~him~~ THE DIRECTOR to assume management and possession of
7 the provider's facility and to rehabilitate the provider to enable it to
8 fully perform its obligation pursuant to life care contracts. The court
9 shall act ~~upon~~ ON the application ~~upon~~ ON notice to the provider, and any
10 objection to the petition shall be filed with the court within the time
11 prescribed by such notice.

12 D. If the court ~~upon~~ ON hearing finds that the provider is in a
13 financially unsound or unsafe condition or that its condition is such that
14 it may otherwise be unable to fully perform its obligations pursuant to
15 life care contracts, the court shall issue an order directing the director
16 to take possession of the property of the provider and to conduct the
17 business thereof, and to take such steps toward removal of the causes and
18 conditions ~~which~~ THAT have made rehabilitation necessary, as the court may
19 direct. The order shall include a provision directing the issuance of a
20 notice of the rehabilitation proceedings to the residents at such
21 facility, to the provider's contract holders and to such other interested
22 persons as the court shall direct.

23 E. Appointment of the director to rehabilitate a provider shall
24 authorize the director to:

25 1. Take possession of and preserve, protect and recover any assets,
26 books and records or property of the provider, including claims or causes
27 of action ~~belonging~~ THAT BELONG to or ~~which~~ THAT may be asserted by the
28 provider, and to deal with such property in ~~his own~~ THE DIRECTOR'S name in
29 the capacity as director, and purchase at any sale any real estate or
30 other asset ~~upon~~ ON which the provider may hold any lien or encumbrance or
31 in which it may have an interest.

32 2. File, prosecute and defend or compromise any suit or suits ~~which~~
33 THAT have been filed or ~~which~~ THAT may thereafter be filed by or against
34 ~~such~~ THE provider ~~which~~ AND THAT are deemed by the director to be
35 necessary to protect the provider or the residents or contract holders or
36 any property affected thereby.

37 3. Take possession of and deposit and invest any of the provider's
38 available funds.

39 4. Pay all expenses of the rehabilitation.

40 5. Exercise such other powers and duties as may be provided by
41 order of the court.

42 6. Appoint managers, supervisors or employees necessary to properly
43 manage and operate the provider and the provider's facility.

- 1 7. Take possession of and, with the prior approval of the court,
2 sell, exchange, lease, mortgage or otherwise dispose of any property of
3 the provider by public sale, bidding or otherwise.
- 4 8. With the prior approval of the court, borrow money with or
5 without security for the purpose of facilitating the rehabilitation of the
6 provider.
- 7 9. Perform all duties of the provider.
- 8 10. Reject any executory contract to which the provider is a party.
- 9 11. Withdraw any sums remaining in the escrow account established
10 pursuant to section 20-1806 for the purpose of rehabilitating the
11 provider's facility.
- 12 F. The court may at any time during a rehabilitation proceeding
13 issue such other instructions or orders as are deemed necessary to aid the
14 director in the rehabilitation proceeding.
- 15 G. The director, or any interested person ~~upon~~ ON due notice to the
16 director, at any time may apply to the court for an order terminating the
17 rehabilitation proceedings and ~~permitting~~ ALLOWING the provider to resume
18 possession of its property and the conduct of its business, but no such
19 order shall be granted except when, after a full hearing, the court has
20 determined that the purposes of the proceeding have been fully
21 accomplished and that the facility can be returned to the provider's
22 management without further jeopardy to the residents of the facility,
23 creditors, owners of the facility, ~~and to~~ the public. An order
24 terminating the rehabilitation proceeding shall be based ~~upon~~ ON a full
25 report and accounting by the director of the conduct of the provider's
26 officers during the rehabilitation and of the provider's current financial
27 condition.
- 28 H. If at any time the director deems that further efforts to
29 rehabilitate the provider would be useless, ~~he~~ THE DIRECTOR may report to
30 the court and apply for an order of liquidation and dissolution pursuant
31 to title 10, chapter 14, article 3, if a corporation, or may apply for
32 other appropriate relief for dissolving the provider and winding up its
33 affairs. An order directing the liquidation or dissolution of the
34 provider shall act as a revocation of the provider's permit issued
35 pursuant to section 20-1803.
- 36 I. In connection with the rehabilitation proceedings, the director
37 may appoint one or more special deputy directors of THE DEPARTMENT OF
38 insurance AND FINANCIAL INSTITUTIONS to act for ~~him~~ THE DIRECTOR and may
39 employ such counsel, clerks or assistants as ~~he~~ THE DIRECTOR deems
40 necessary. The compensation of the special deputies, counsel, clerks or
41 assistants and any expenses of taking possession of the provider's
42 facility and of conducting the proceedings shall be set by the director,
43 subject to approval of the court, and shall be paid out of the funds or
44 assets of the provider.

1 Sec. 109. Section 20-1812, Arizona Revised Statutes, is amended to
2 read:

3 20-1812. Disclosure statement; contents

4 At the time of or ~~prior to~~ BEFORE the execution of a life care
5 contract and the transfer of any money or other property to a provider
6 pursuant thereto, the provider shall deliver to the person with whom the
7 life care contract is entered into a disclosure statement ~~which~~ THAT
8 contains a copy of the provider's certified financial statements and
9 feasibility study prepared according to ~~the provisions of~~ section 20-1802
10 and any other information required by the director. The cover of the
11 disclosure statement shall contain the following statement in bold-faced
12 print: "A permit for this life care facility has been issued by the
13 Arizona department of insurance AND FINANCIAL INSTITUTIONS. This permit
14 does not constitute approval, recommendation or endorsement of the life
15 care facility by the department, nor does it evidence the accuracy or
16 completeness of the information in this statement."

17 Sec. 110. Section 20-2202, Arizona Revised Statutes, is amended to
18 read:

19 20-2202. Joint underwriting association; establishment

20 A. ~~There is established in the department of insurance~~ A joint
21 underwriting association IS ESTABLISHED IN THE DEPARTMENT OF INSURANCE AND
22 FINANCIAL INSTITUTIONS consisting of insurers authorized to write and
23 engaged in writing in this state on a direct basis liability insurance,
24 including the liability portion of multiperil policies, but not including
25 ocean marine insurance. Every such insurer shall be a member of the
26 association and shall remain a member as a condition of its authority to
27 continue to transact insurance in this state.

28 B. If after a hearing conducted pursuant to section 20-2201, the
29 director determines that a voluntary plan would fail to provide coverage,
30 the association shall provide liability insurance coverages for a
31 designated class or classes of risks on a primary basis in this state.
32 The association shall not be required to provide coverage available
33 through an assigned risk plan or coverages for pollution liability,
34 hazardous waste liability or workers' compensation. The association may
35 operate only on a finding by the director after a public hearing pursuant
36 to section 20-161 that liability insurance is substantially unavailable
37 through private insurers for a particular line.

38 C. If the director determines, on application of any interested
39 party and after a public hearing, that liability insurance for a
40 particular line is no longer substantially unavailable through private
41 insurers, the association shall cease its underwriting operations.

42 D. ~~Nothing contained in This chapter prohibits~~ DOES NOT PROHIBIT an
43 insurer from issuing or renewing a policy of liability insurance in this
44 state. However, on a determination by the director, after a public
45 hearing pursuant to section 20-161, that substantial adverse selection

1 has, or will likely, result, the director may issue an order to insurers
2 that no original policies shall thereafter be issued or that renewal
3 policies shall be issued only if the insurer will offer the insurance to a
4 representative sample of rating classifications, or both.

5 Sec. 111. Repeal

6 Section 20-2305, Arizona Revised Statutes, is repealed.

7 Sec. 112. Section 20-2306, Arizona Revised Statutes, is amended to
8 read:

9 20-2306. Use of uniform employee health status questionnaire

10 A. An accountable health plan shall use the uniform employee health
11 status questionnaire prescribed ~~pursuant to section 20-2305~~ BY THE
12 DEPARTMENT for all small groups for which the accountable health plan
13 requires employees and their covered dependents to complete health status
14 questionnaires.

15 B. An accountable health plan may add to the questionnaire
16 additional questions ~~which~~ THAT pertain to eligibility for coverage and
17 for underwriting purposes and may ask the producer or the employees and
18 dependents follow-up questions about their responses to the uniform
19 employee health status questionnaire.

20 Sec. 113. Section 20-2310, Arizona Revised Statutes, is amended to
21 read:

22 20-2310. Discrimination prohibited; preexisting conditions;
23 wellness programs

24 A. Except as provided in subsection B of this section, a health
25 benefits plan may not deny, limit or condition the coverage or benefits
26 based on a person's health status-related factors or a lack of evidence of
27 insurability.

28 B. A health benefits plan shall not exclude coverage for
29 preexisting conditions, except that:

30 1. A health benefits plan may exclude coverage for preexisting
31 conditions for a period of not more than twelve months or, in the case of
32 a late enrollee, eighteen months. The exclusion of coverage does not
33 apply to services that are furnished to newborns who were otherwise
34 covered from the time of their birth or to persons who satisfy the
35 portability requirements under section 20-2308.

36 2. The accountable health plan shall reduce the period of any
37 applicable preexisting condition exclusion by the aggregate of the periods
38 of creditable coverage that apply to the individual.

39 C. A health benefits plan shall not include an affiliation period
40 in a policy unless the affiliation period satisfies the requirements
41 prescribed in 45 Code of Federal Regulations section 146.119(b).

42 D. On request of a health benefits plan, a person who provides
43 coverage during a period of continuous coverage with respect to a covered
44 individual shall promptly disclose the coverage provided to the covered

1 individual, the period of the coverage and the benefits provided under the
2 coverage.

3 E. The accountable health plan shall calculate creditable coverage
4 according to the following rules:

5 1. The accountable health plan shall give an individual credit for
6 each day the individual was covered by creditable coverage.

7 2. The accountable health plan shall not count a period of
8 creditable coverage for an individual enrolled in a health benefits plan
9 if after the period of coverage and before the enrollment date there were
10 sixty-three consecutive days during which the individual was not covered
11 under any creditable coverage.

12 3. The accountable health plan shall give credit in the calculation
13 of creditable coverage for any period that an individual is in a waiting
14 period or an affiliation period for any health coverage.

15 4. The accountable health plan shall not count a period of
16 creditable coverage with respect to enrollment of an individual if, after
17 the most recent period of creditable coverage and before the enrollment
18 date, sixty-three consecutive days lapse during all of which the
19 individual was not covered under any creditable coverage. The accountable
20 health plan shall not include in the determination of the period of
21 continuous coverage described in this section any period that an
22 individual is in a waiting period for health insurance coverage offered by
23 a health care insurer, is in a waiting period for benefits under a health
24 benefits plan offered by an accountable health plan or is in an
25 affiliation period.

26 5. In determining the extent to which an individual has satisfied
27 any portion of any applicable preexisting condition period the accountable
28 health plan shall count a period of creditable coverage without regard to
29 the specific benefits covered during that period.

30 6. An accountable health plan shall not impose any preexisting
31 condition exclusion in the case of an individual who is covered under
32 creditable coverage thirty-one days after the individual's date of birth.

33 7. An accountable health plan shall not impose any preexisting
34 condition exclusion in the case of a child who is adopted or placed for
35 adoption before age eighteen and who is covered under creditable coverage
36 thirty-one days after the adoption or placement for adoption.

37 F. An accountable health plan shall provide the certificate of
38 creditable coverage described in subsection G of this section without
39 charge for creditable coverage occurring after June 30, 1996 if the
40 individual:

41 1. Ceases to be covered under a health benefits plan offered by an
42 accountable health plan or otherwise becomes covered under a COBRA
43 continuation provision. An individual who is covered by a health benefits
44 plan that is offered by an accountable health plan, that is terminated or
45 not renewed at the choice of the employer and where the replacement of the

1 health benefits plan is without a break in coverage is not entitled to
2 receive the certification prescribed in this paragraph but is instead
3 entitled to receive the certifications prescribed in paragraphs 2 and 3 of
4 this subsection.

5 2. Who was covered under a COBRA continuation provision ceases to
6 be covered under the COBRA continuation provision.

7 3. Requests certification from the accountable health plan within
8 twenty-four months after the coverage under a health benefits plan offered
9 by an accountable health plan ceases.

10 G. The certificate of creditable coverage provided by an
11 accountable health plan is a written certification of:

12 1. The period of creditable coverage of the individual under the
13 accountable health plan and any applicable coverage under a COBRA
14 continuation provision.

15 2. Any applicable waiting period or affiliation period imposed on
16 an individual for any coverage under the accountable health plan.

17 H. Any accountable health plan that issues health benefits plans in
18 this state, as applicable, shall issue and accept a written certificate of
19 creditable coverage of the individual that contains at least the following
20 information:

21 1. The date that the certificate is issued.

22 2. The name of the individual or dependent for whom the certificate
23 applies and any other information that is necessary to allow the issuer
24 providing the coverage specified in the certificate to identify the
25 individual, including the individual's identification number under the
26 policy and the name of the policyholder if the certificate is for or
27 includes a dependent.

28 3. The name, address and telephone number of the issuer providing
29 the certificate.

30 4. The telephone number to call for further information regarding
31 the certificate.

32 5. One of the following:

33 (a) A statement that the individual has at least eighteen months of
34 creditable coverage. For the purposes of this subdivision, "eighteen
35 months" means five hundred forty-six days.

36 (b) Both the date that the individual first sought coverage, as
37 evidenced by a substantially complete application, and the date that
38 creditable coverage began.

39 6. The date creditable coverage ended, unless the certificate
40 indicates that creditable coverage is continuing from the date of the
41 certificate.

42 7. The consumer assistance telephone number for the department.

43 8. The following statement in at least ~~fourteen~~ point
44 FOURTEEN-POINT type:

Important notice!

1
2 Keep this certificate with your important personal records to
3 protect your rights under the health insurance portability and
4 accountability act of 1996 ("HIPAA"). This certificate is
5 proof of your prior health insurance coverage. You may need
6 to show this certificate to have a guaranteed right to buy new
7 health insurance ("Guaranteed issue"). This certificate may
8 also help you avoid waiting periods or exclusions for
9 preexisting conditions. Under HIPAA, these rights are
10 guaranteed only for a very short time period. After your
11 group coverage ends, you must apply for new coverage within 63
12 days to be protected by HIPAA. If you have questions, call the
13 Arizona department of insurance AND FINANCIAL INSTITUTIONS.

14 I. An accountable health plan may provide any certification
15 pursuant to subsection F, paragraph 1 of this section at the same time the
16 accountable health plan sends the notice required by the applicable COBRA
17 continuation provision.

18 J. An accountable health plan has satisfied the certification
19 requirement under this section if the accountable health plan offering the
20 health benefits plan provides the prescribed certificate in accordance
21 with this section within thirty days after the event that triggered the
22 issuance of the certification.

23 K. If an accountable health plan imposes a waiting period for
24 coverage of preexisting conditions, within a reasonable period of time
25 after receiving an individual's proof of creditable coverage and not later
26 than the date by which the individual must select an insurance plan, the
27 accountable health plan shall give the individual written disclosure of
28 the accountable health plan's determination regarding any preexisting
29 condition exclusion period that applies to that individual. The
30 disclosure shall include all of the following information:

31 1. The period of creditable coverage allowed toward the waiting
32 period for coverage of preexisting conditions.

33 2. The basis for the accountable health plan's determination and
34 the source and substance of any information on which the accountable
35 health plan has relied.

36 3. A statement of any right the individual may have to present
37 additional evidence of creditable coverage and to appeal the accountable
38 health plan's determination, including an explanation of any procedures
39 for submission and appeal.

40 L. Periods of creditable coverage for an individual are established
41 by presentation of the written certifications described in this section
42 and section 20-1379. In addition to written certification of the period
43 of creditable coverage as described in this section, individuals may
44 establish creditable coverage through the presentation of documents or
45 other means. In order to make a determination that is based on the

1 relevant facts and circumstances of the amount of creditable coverage that
2 an individual has, an accountable health plan shall take into account all
3 information that the plan obtains or that is presented to the plan on
4 behalf of the individual.

5 M. The department may enforce and monitor the issuance and delivery
6 of the notices and certificates by accountable health plans and insurers
7 as required by this section, the health insurance portability and
8 accountability act of 1996 (P.L. 104-191; 110 Stat. 1936) and any federal
9 regulations adopted to implement the health insurance portability and
10 accountability act of 1996.

11 N. This section does not prohibit any health benefits plan from
12 providing or offering to provide rewards or incentives under a wellness
13 program that satisfies the requirements for an exception from the general
14 prohibition against discrimination based on a health factor under the
15 health insurance portability and accountability act of 1996 (P.L. 104-191;
16 110 stat. 1936), including any federal regulations that are adopted
17 pursuant to that act.

18 Sec. 114. Section 20-2318, Arizona Revised Statutes, is amended to
19 read:

20 20-2318. Mandatory coverage prohibited

21 Notwithstanding any law to the contrary, the basic health benefit
22 plan is not subject to the requirements of section 20-461, subsection A,
23 paragraph ~~16~~ 17 and subsection B, section 20-826, subsections C, D, E, F,
24 H, I, J and K, sections 20-841, 20-841.01 and 20-841.02, section 20-1051,
25 paragraph ~~4~~ 3, section 20-1057, subsections B, C, I, J, K, L and M,
26 section 20-1402, subsection A, paragraphs 2, 4, 5, 6, 7 and 8, section
27 20-1404, subsections E, F, G, H, I and J and sections 20-1406, 20-1406.01,
28 20-1406.02 and 20-1408.

29 Sec. 115. Section 20-2402, Arizona Revised Statutes, is amended to
30 read:

31 20-2402. Risk retention groups chartered and licensed in this
32 state; definitions

33 A. A risk retention group, pursuant to this title, shall be
34 chartered and licensed to write only liability insurance pursuant to this
35 chapter and, except as provided in this chapter, must comply with this
36 title with respect to insurers that are chartered and licensed in this
37 state and with section 20-2403. Before it may offer insurance in any
38 state, each risk retention group shall also submit for approval to the
39 director of the department of insurance AND FINANCIAL INSTITUTIONS a plan
40 of operation or a feasibility study and revisions of the plan or study if
41 the group intends to offer any additional lines of liability insurance.
42 The group shall not offer any additional kinds of liability insurance in
43 this state or in any other state until a revision of the plan or study is
44 approved by the director of the department of insurance AND FINANCIAL
45 INSTITUTIONS.

1 B. Immediately on receipt of an application for a charter, this
2 state shall provide summary information concerning the filing to the
3 national association of insurance commissioners, including the name of the
4 risk retention group, the identity of the initial members of the group,
5 the identity of those individuals who organized the group or who will
6 provide administrative services or otherwise influence or control the
7 activities of the group, the amount and nature of initial capitalization,
8 the coverages to be afforded and the states in which the group intends to
9 operate.

10 C. A risk retention group that is licensed in this state shall
11 comply with all of the following:

12 1. The board of directors of the risk retention group shall have a
13 majority of independent board directors. If the risk retention group is a
14 reciprocal risk retention group, the attorney-in-fact shall be required to
15 adhere to the same standards regarding independence of operation and
16 governance as imposed on the risk retention group's board of directors or
17 subscribers' advisory committee, or both, under these standards, and, to
18 the extent permissible under this state's laws, service providers of a
19 reciprocal risk retention group shall contract with the risk retention
20 group and not the attorney-in-fact.

21 2. A board director does not qualify as independent unless the
22 board of directors affirmatively determines that the board director has no
23 material relationship with the risk retention group. Each risk retention
24 group shall disclose these determinations to its domestic regulator, at
25 least annually. Any person that is a direct or indirect owner of or
26 subscriber in the risk retention group or is an officer, board director or
27 employee, or all three, of an owner and insured, as contemplated by 15
28 United States Code section 3901(a)(4)(E)(ii), is considered to be
29 independent, unless some other position of that officer, board director or
30 employee constitutes a material relationship.

31 3. The term of any material service provider contract with the risk
32 retention group may not exceed five years. Any contract or its renewal
33 shall require the approval of the majority of the risk retention group's
34 independent board directors. The risk retention group's board of
35 directors shall have the right to terminate any service provider, audit or
36 actuarial contracts at any time for cause after providing adequate notice
37 as defined in the contract. The service provider contract is deemed
38 material if the amount to be paid for that contract is greater than or
39 equal to five percent of the risk retention group's annual gross written
40 premium or two percent of its surplus, whichever is greater. A service
41 provider contract that is a material relationship may not be entered into
42 unless the risk retention group has notified the director of the
43 department of insurance AND FINANCIAL INSTITUTIONS in writing of its
44 intention to enter into the transaction at least thirty days before and

1 the director of the department of insurance AND FINANCIAL INSTITUTIONS has
2 not disapproved the transaction within that period.

3 4. The board of directors of a risk retention group shall adopt a
4 written policy in the plan of operation as approved by the board that
5 requires the board of directors to do all of the following:

6 (a) Ensure that all owners or insureds, or both, of the risk
7 retention group receive evidence of ownership interest.

8 (b) Develop a set of governance standards applicable to the risk
9 retention group.

10 (c) Oversee the evaluation of the risk retention group's
11 management, including the performance of the captive manager, managing
12 general underwriter or other parties responsible for underwriting,
13 determination of rates, collection of premium, adjusting or settling
14 claims or the preparation of financial statements.

15 (d) Review and approve the amount to be paid for all material
16 service providers.

17 (e) Review and approve, at least annually, all of the following:

18 (i) The risk retention group's goals and objectives relevant to the
19 compensation of officers and service providers.

20 (ii) The officers' and service providers' performance in light of
21 those goals and objectives.

22 (iii) The continued engagement of the officers and material service
23 providers.

24 5. Each risk retention group shall have an audit committee composed
25 of at least three independent board members. A nonindependent board
26 member may participate in the activities of the audit committee, if
27 invited by the members, but cannot be a member of that committee. The
28 audit committee shall have a written charter that defines the committee's
29 purpose, which, at a minimum, shall be to do all of the following:

30 (a) Assist in board oversight of the integrity of the financial
31 statements, the compliance with legal and regulatory requirements and the
32 qualifications, independence and performance of the independent auditor
33 and actuary.

34 (b) Discuss the annual audited financial statements and quarterly
35 financial statements with management.

36 (c) Discuss the annual audited financial statements with its
37 independent auditor and, if advisable, discuss its quarterly financial
38 statements with its independent auditor.

39 (d) Discuss policies with respect to risk assessment and risk
40 management.

41 (e) Meet separately and periodically, either directly or through a
42 designated representative of the committee, with management and
43 independent auditors.

44 (f) Review with the independent auditor any audit problems or
45 difficulties and management's response.

1 (g) Set clear hiring policies of the risk retention group as to the
2 hiring of employees or former employees of the independent auditor.

3 (h) Require the external auditor to rotate the lead or coordinating
4 audit partner having primary responsibility for the risk retention group's
5 audit as well as the audit partner responsible for reviewing that audit,
6 so that neither individual performs audit services for more than five
7 consecutive fiscal years.

8 (i) Report regularly to the board of directors.

9 6. The director of the department of insurance AND FINANCIAL
10 INSTITUTIONS may waive the requirement to establish an audit committee
11 pursuant to paragraph 5 of this subsection if the risk retention group
12 demonstrates to the director that doing so is impracticable and the risk
13 retention group's board of directors is otherwise able to fulfill the
14 requirements of the audit committee as set forth in this section.

15 7. The board of directors shall adopt and disclose governance
16 standards by making the information available through electronic means,
17 such as posting the information on the risk retention group's website, or
18 other means, and providing that information to members and insureds on
19 request. The information shall include all of the following:

20 (a) A process by which the board directors are elected by the
21 owners or insureds, or both.

22 (b) Board director qualification standards.

23 (c) Board director responsibilities.

24 (d) Board director access to management and, as necessary and
25 appropriate, independent advisers.

26 (e) Board director compensation.

27 (f) Board director orientation and continuing education.

28 (g) The policies and procedures that are followed for management
29 succession.

30 (h) The policies and procedures that are followed for the annual
31 performance evaluation of the board.

32 8. The board of directors shall adopt and disclose a code of
33 business conduct and ethics for board directors, officers and employees
34 and promptly disclose to the board of directors any waivers of the code
35 for board directors or executive officers, including all of the following
36 topics:

37 (a) Conflicts of interest.

38 (b) Matters covered under the corporate opportunity doctrine under
39 the state of domicile.

40 (c) Confidentiality.

41 (d) Fair dealing.

42 (e) Protection and proper use of risk retention group assets.

43 (f) Compliance with all applicable laws, rules and regulations.

44 (g) Requiring the reporting of any illegal or unethical behavior
45 that affects the operation of the risk retention group.

1 9. The captive manager, president or chief executive officer of the
2 risk retention group shall promptly notify the domestic regulator, in
3 writing, if either becomes aware of any material noncompliance with any of
4 the risk retention group's governance standards.

5 D. For the purposes of this section:

6 1. "Board director" means a natural person designated in the
7 articles of the risk retention group, or designated, elected or appointed
8 by any other manner, name or title to act as a board director.

9 2. "Board of directors" or "board" means the governing body of the
10 risk retention group elected by the shareholders or members to establish
11 policy, elect or appoint officers and committees and make other governing
12 decisions.

13 3. "Material relationship" means a person's relationship with the
14 risk retention group, including any of the following:

15 (a) The receipt in any one twelve-month period of compensation or
16 payment of any other item of value by that person, a member of that
17 person's immediate family or any business with which that person is
18 affiliated from the risk retention group or a consultant or service
19 provider to the risk retention group that is greater than or equal to five
20 percent of the risk retention group's gross written premium for that
21 twelve-month period or two percent of its surplus, whichever is greater,
22 as measured at the end of any fiscal quarter falling in a twelve-month
23 period. The person or immediate family member of that person is not
24 independent until one year after the person's compensation from the risk
25 retention group falls below the threshold.

26 (b) A relationship with an auditor in which a board director or an
27 immediate family member of a board director who is affiliated with, or
28 employed in, a professional capacity by a present or former internal or
29 external auditor of the risk retention group is not independent until one
30 year after the end of the affiliation, employment or auditing
31 relationship.

32 (c) A relationship with a related entity in which a board director
33 or immediate family member of a board director who is employed as an
34 executive officer of another company where any of the risk retention
35 group's present executives serve on that other company's board of
36 directors is not independent until one year after the end of that service
37 or the employment relationship.

38 4. "Service providers" includes captive managers, auditors,
39 accountants, actuaries, investment advisers, attorneys and managing
40 general underwriters or any other party responsible for underwriting,
41 determination of rates, collection of premium, adjusting and settling
42 claims or the preparation of financial statements. For the purposes of
43 this paragraph, attorney does not include defense counsel retained by the
44 risk retention group to defend claims, unless the amount of fees paid to
45 those attorneys ~~create~~ **CREATES** a material relationship.

1 Sec. 116. Section 20-2501, Arizona Revised Statutes, is amended to
2 read:

3 20-2501. Definitions; scope

4 A. In this chapter, unless the context otherwise requires:

5 1. "Adverse decision" means a utilization review determination by
6 the utilization review agent that a requested service or claim for service
7 is not a covered service or is not medically necessary under the plan if
8 that determination results in a documented denial or nonpayment of the
9 service or claim.

10 2. "Benefits based on the health status of the insured" means a
11 contract of insurance to pay a fixed benefit amount, without regard to the
12 specific services received, to a policyholder who meets certain
13 eligibility criteria based on health status including:

14 (a) A disability income insurance policy that pays a fixed daily,
15 weekly or monthly benefit amount to an insured who is deemed ~~a person with~~
16 TO HAVE a disability as defined by the policy terms.

17 (b) A hospital indemnity policy that pays a fixed daily benefit
18 during hospital confinement.

19 (c) A disability insurance policy that pays a fixed daily, weekly
20 or monthly benefit amount to an insured who is certified by a licensed
21 health care professional as chronically ill as defined by the policy
22 terms.

23 (d) A disability insurance policy that pays a fixed daily, weekly
24 or monthly benefit amount to an insured who suffers from a prolonged
25 physical illness, disability or cognitive disorder as defined by the
26 policy terms.

27 3. "Claim" means a request for payment for a service already
28 provided. Claim does not include:

29 (a) Claim adjustments for usual and customary charges for a service
30 or coordination of benefits between health care insurers.

31 (b) A request for payment under a policy or contract that pays
32 benefits based on the health status of the insured and that does not
33 reimburse the cost of or provide covered services.

34 4. "Covered service" means a service that is included in a policy,
35 evidence of coverage or similar document that specifies which services,
36 insurance or other benefits are included or covered.

37 5. "Denial" means a direct or indirect determination regarding all
38 or part of a request for any service or a direct determination regarding a
39 claim that may trigger a request for review or reconsideration. Denial
40 does not include:

41 (a) Enforcement of a health care insurer's deductibles, copayments
42 or coinsurance requirements or adjustments for usual and customary
43 charges, deductibles, copayments or coinsurance requirements for a service
44 or coordination of benefits between health care insurers.

1 (b) The rejection of a request for payment under a policy or
2 contract that pays benefits based on the health status of the insured and
3 that does not reimburse the cost of or provide covered services.

4 ~~6. "Department" means the department of insurance.~~

5 ~~7. "Director" means the director of the department of insurance.~~

6 ~~8.~~ 6. "Health care insurer" means a disability insurer, group
7 disability insurer, blanket disability insurer, health care services
8 organization, hospital service corporation, prepaid dental plan
9 organization, medical service corporation, dental service corporation or
10 optometric service corporation or a hospital, medical, dental and
11 optometric service corporation.

12 ~~9.~~ 7. "Indirect denial" means a failure to communicate
13 authorization or nonauthorization to the member by the utilization review
14 agent within ten business days after the utilization review agent receives
15 the request for a covered service.

16 ~~10.~~ 8. "Provider" means the physician or other licensed
17 practitioner identified to the utilization review agent as having primary
18 responsibility for providing care, treatment and services rendered to a
19 patient.

20 ~~11.~~ 9. "Service" means a diagnostic or therapeutic medical or
21 health care service, benefit or treatment.

22 ~~12.~~ 10. "Utilization review" means a system for reviewing the
23 appropriate and efficient allocation of inpatient hospital resources,
24 inpatient medical services and outpatient surgery services that are being
25 given or are proposed to be given to a patient, and of any medical,
26 surgical and health care services or claims for services that may be
27 covered by a health care insurer depending on determinable contingencies,
28 including without limitation outpatient services, in-office consultations
29 with medical specialists, specialized diagnostic testing, mental health
30 services, emergency care and inpatient and outpatient hospital services.
31 Utilization review does not include elective requests for the
32 clarification of coverage.

33 ~~13.~~ 11. "Utilization review agent" means a person or entity that
34 performs utilization review. For purposes of article 2 of this chapter,
35 utilization review agent has the same meaning prescribed in section
36 20-2530. For purposes of this chapter, utilization review agent does not
37 include:

38 (a) A governmental agency.

39 (b) An agent that acts on behalf of the governmental agency.

40 (c) An employee of a utilization review agent.

41 ~~14.~~ 12. "Utilization review plan" means a summary description of
42 the utilization review guidelines, protocols, procedures and written
43 standards and criteria of a utilization review agent.

1 obtain the member's medical records pursuant to title 12, chapter 13,
2 article 7.1.

3 3. The specific title and department of the person and the address,
4 telephone number and ~~telefacsimile~~ FAX number of that person whom the
5 member must notify at each level of review prescribed in subsection A of
6 this section in order to pursue that level of review.

7 4. The specific title and department of the person and the address,
8 telephone number and ~~telefacsimile~~ FAX number of the person who will be
9 responsible for processing that review.

10 5. A notice that if the member decides to pursue an appeal the
11 member must provide the person who will be responsible for processing the
12 appeal with any material justification or documentation for the appeal at
13 the time that the member files the written appeal.

14 6. A description of the utilization review agent's and health care
15 insurer's roles at each level of review prescribed by subsection A of this
16 section and an outline of the director's role during the external
17 independent review process, if not already described in response to
18 paragraph 1 of this subsection.

19 7. A notice that if the member participates in the process of
20 review pursuant to this article the member waives any privilege of
21 confidentiality of the member's medical records regarding any person who
22 examined or will examine the member's medical records in connection with
23 that review process for the medical condition under review.

24 8. A statement that the member is not responsible for the costs of
25 any external independent review.

26 9. Standardized forms that are prescribed by the department and
27 that a member may use to file and pursue an appeal.

28 10. The name and telephone number for the department of insurance
29 AND FINANCIAL INSTITUTIONS consumer assistance office with a statement
30 that the department of insurance AND FINANCIAL INSTITUTIONS consumer
31 assistance office can assist consumers with questions about the health
32 care appeals process.

33 D. At the time of issuing a denial, the health care insurer shall
34 notify the member of the right to appeal under this article. A health
35 care insurer that issues an explanation of benefits document shall satisfy
36 this obligation by prominently displaying in the document a statement
37 about the right to appeal. A health care insurer that does not issue an
38 explanation of benefits document shall satisfy this obligation through
39 some other reasonable means to assure that the member is apprised of the
40 right to appeal at the time of a denial. A reasonable means that includes
41 giving the member's treating provider a form statement about the right to
42 appeal shall require the treating provider to notify the member of the
43 member's right to appeal.

44 E. Any written notice, acknowledgment, request, decision or other
45 written document required to be mailed pursuant to this article is deemed

1 received by the person to whom the document is properly addressed on the
2 fifth business day after the request is mailed. For the purposes of this
3 subsection, "properly addressed" means the last known address.

4 F. The director shall require any member who files a complaint with
5 the department relating to an adverse decision to pursue the review
6 process prescribed in this article. This subsection does not limit the
7 director's authority pursuant to chapter 1, article 2 of this title.

8 G. If the member's complaint is an issue of medical necessity under
9 the coverage document and not whether the claim or service is covered, the
10 informal reconsideration shall be performed as prescribed by section
11 20-2535 by a licensed health care professional. If the member's complaint
12 is an issue of medical necessity under the coverage document and not
13 whether the claim or service is covered, the expedited review or formal
14 appeal shall be decided by a physician, provider or other health care
15 professional as prescribed by section 20-2534 or 20-2536. Any external
16 independent review shall be decided by a physician, provider or other
17 health care professional as prescribed by section 20-2537.

18 H. Any person given access to a member's medical records or other
19 medical information in connection with proceedings pursuant to this
20 article shall maintain the confidentiality of the records or information
21 in accordance with title 12, chapter 13, article 7.1.

22 Sec. 118. Section 20-2541, Arizona Revised Statutes, is amended to
23 read:

24 20-2541. Health care insurer fee

25 The director ~~of the department of insurance~~ may assess each health
26 care insurer that is authorized to transact insurance:

27 1. A single fee of not more than ~~two hundred dollars~~ \$200 per
28 insurer.

29 2. Up to ~~two hundred dollars~~ \$200 each year for the costs of
30 performing the responsibilities relating to the procurement of independent
31 review organizations as prescribed in sections 20-2537 and 20-2538 and for
32 implementing and maintaining the external independent review process,
33 including processing and paying claims through the health care appeals
34 fund established by section 20-2540. The department ~~of insurance~~ is
35 authorized one full-time equivalent position to perform these
36 responsibilities.

37 Sec. 119. Section 20-2802, Arizona Revised Statutes, is amended to
38 read:

39 20-2802. Scope of chapter

40 A. This chapter does not apply to:

41 1. A provider employed by or under contract with the enrollee's
42 health care services plan.

43 2. A health care services ~~plans~~ PLAN administered under title 36.

1 3. A health care services plan ~~which~~ THAT only covers health care
2 expenses incurred by an enrollee who is subsequently admitted to a
3 licensed hospital as part of the treatment.

4 B. ~~Nothing in~~ This chapter ~~is intended to~~ DOES NOT create any
5 private right or cause of action for or on behalf of any enrollee,
6 provider or other person, whether a resident or nonresident of this state.
7 This chapter provides solely an administrative remedy to the director ~~of~~
8 ~~the department of insurance~~ for any violation of this chapter or any
9 related rule.

10 Sec. 120. Section 20-2901, Arizona Revised Statutes, is amended to
11 read:

12 20-2901. Definitions

13 In this article, unless the context otherwise requires:

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

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

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

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

28 ~~5.~~ 4. "Continuously licensed" means that a licensee's license has
29 not terminated for any reason. For the purposes of this paragraph, a
30 license that expires under section 20-289, subsection E is not considered
31 to have terminated if the late fee is timely paid and the license is
32 renewed or the license is placed on inactive status pursuant to section
33 20-289.01.

34 ~~6.~~ 5. "Contractor" means the person who has a contract with the
35 department ~~of insurance~~ to approve continuing education providers and
36 courses and to administer the continuing education program and who is paid
37 through fees collected from approved providers when the approved providers
38 apply for continuing education course approval.

39 ~~7.~~ 6. "Credit hour" means the value assigned to an hour of
40 instruction in an approved continuing education course.

41 ~~8.~~ 7. "Ethics training" means continuing education course content
42 regarding the ethical responsibilities insurance producers owe to
43 insurers, applicants, policyholders, regulators, insurance professionals
44 and the public.

Article II

Definitions

In this compact, unless the context otherwise requires:

1. "Advertisement" means any material designed to create public interest in a product or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

2. "Bylaws" means those bylaws established by the commission for its governance or for directing or controlling the commission's actions or conduct.

3. "Commission" means the interstate insurance product regulation commission established by this compact.

4. "Commissioner" means the INSURANCE director ~~of insurance~~ or the chief insurance regulatory official of a state including commissioner, superintendent, director or administrator.

5. "Compact" means the interstate insurance product regulation compact.

6. "Compacting state" means any state that has enacted the compact and that has not withdrawn or been terminated under article XIV of this compact.

~~7. "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.~~

~~8.~~ 7. "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by the compact.

~~9.~~ 8. "Member" means the person chosen by a compacting state as its representative to the commission or the person's designee.

~~10.~~ 9. "Noncompacting state" means any state that is not at the time a compacting state.

~~11.~~ 10. "Operating procedures" means procedures adopted by the commission implementing a rule, uniform standard or compact provision.

~~12.~~ 11. "Product" means the form of a policy or contract, including any application, endorsement or related form that is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an insurer is authorized to issue.

~~13.~~ 12. "Rule" means a statement of general or particular applicability and future effect that is adopted by the commission, including a uniform standard developed pursuant to article VII of this compact, and that is designed to implement, interpret or prescribe law or policy or describes the organization, procedure or practice requirements

1 of the commission, which shall have the force and effect of law in the
2 compacting states.

3 ~~14.~~ 13. "State" means any state, district or territory of the
4 United States.

5 ~~15.~~ 14. "Third-party filer" means an entity that submits a product
6 filing to the commission on behalf of an insurer.

7 ~~16.~~ 15. "Uniform standard" means a standard adopted by the
8 commission for a product line pursuant to article VII of this compact and
9 includes all of the product requirements in aggregate. Each uniform
10 standard shall be construed, whether express or implied, to prohibit the
11 use of any inconsistent, misleading or ambiguous provisions in a product
12 and the form of the product made available to the public shall not be
13 unfair, inequitable or against public policy as determined by the
14 commission.

15 Article III

16 Commission Establishment and Venue

17 A. The compacting states hereby create and establish a joint public
18 agency known as the interstate insurance product regulation commission.
19 Under article IV of this compact, the commission has the power to develop
20 uniform standards for product lines, receive and provide prompt review of
21 products filed with the commission and give approval to those product
22 filings satisfying applicable uniform standards. It is not intended for
23 the commission to be the exclusive entity for receipt and review of
24 insurance product filings. This section does not prohibit any insurer
25 from filing its product in any state wherein the insurer is licensed to
26 conduct the business of insurance. Any filing is subject to the laws of
27 the state where filed.

28 B. The commission is a body corporate and politic, and an
29 instrumentality of the compacting states.

30 C. The commission is solely responsible for its liabilities except
31 as otherwise specifically provided in this compact.

32 D. Venue is proper and judicial proceedings by or against the
33 commission shall be brought solely and exclusively in a court of competent
34 jurisdiction where the principal office of the commission is located.

35 Article IV

36 Commission Powers

37 The commission has the following powers:

38 1. To adopt rules pursuant to article VII of this compact that
39 shall have the force and effect of law and shall be binding in the
40 compacting states to the extent and in the manner provided in the compact.

41 2. To exercise its rulemaking authority and establish reasonable
42 uniform standards for products covered under the compact, and
43 advertisement related thereto, which shall have the force and effect of
44 law and shall be binding in the compacting states, but only for those
45 products filed with the commission. A compacting state shall have the

1 right to opt out of the uniform standard pursuant to article VII of this
2 compact, to the extent and in the manner provided in this compact. Any
3 uniform standard established by the commission for long-term care
4 insurance products may provide the same or greater protections for
5 consumers as, but shall not provide less than, those protections set forth
6 in the national association of insurance commissioners' long-term care
7 insurance model act and long-term care insurance model regulation,
8 respectively, adopted as of 2001. The commission shall consider whether
9 any subsequent amendments to the long-term care insurance model act or
10 long-term care insurance model regulation adopted by the national
11 association of insurance commissioners require amending of the uniform
12 standards established by the commission for long-term care insurance
13 products.

14 3. To receive and review in an expeditious manner products filed
15 with the commission, and rate filings for disability income and long-term
16 care insurance products, and give approval of those products and rate
17 filings that satisfy the applicable uniform standard, where such approval
18 shall have the force and effect of law and be binding on the compacting
19 states to the extent and in the manner provided in the compact.

20 4. To receive and review in an expeditious manner advertisement
21 relating to long-term care insurance products for which uniform standards
22 have been adopted by the commission, and give approval to all
23 advertisement that satisfies the applicable uniform standard. For any
24 product covered under this compact, other than long-term care insurance
25 products, the commission shall have the authority to require an insurer to
26 submit all or any part of its advertisement with respect to that product
27 for review or approval before use if the commission determines that the
28 nature of the product is such that an advertisement of the product could
29 have the capacity or tendency to mislead the public. The actions of the
30 commission as provided in this section shall have the force and effect of
31 law and shall be binding in the compacting states to the extent and in the
32 manner provided in the compact.

33 5. To exercise its rulemaking authority and designate products and
34 advertisement that may be subject to a self-certification process without
35 the need for prior approval by the commission.

36 6. To adopt operating procedures pursuant to article VII of this
37 compact that shall be binding in the compacting states to the extent and
38 in the manner provided in the compact.

39 7. To bring and prosecute legal proceedings or actions in its name
40 as the commission. The standing of any state insurance department to sue
41 or be sued under applicable law shall not be affected.

42 8. To issue subpoenas requiring the attendance and testimony of
43 witnesses and the production of evidence.

44 9. To establish and maintain offices.

45 10. To purchase and maintain insurance and bonds.

1 11. To borrow, accept or contract for services of personnel,
2 including employees of a compacting state.

3 12. To hire employees, professionals or specialists, and elect or
4 appoint officers, and to fix their compensation, define their duties and
5 give them appropriate authority to carry out the purposes of the compact,
6 and determine their qualifications and to establish the commission's
7 personnel policies and programs relating to, among other things, conflicts
8 of interest, rates of compensation and qualifications of personnel.

9 13. To accept any and all appropriate donations and grants of
10 money, equipment, supplies, materials and services, and to receive, use
11 and dispose of the same. The commission shall strive to avoid any
12 appearance of impropriety.

13 14. To lease, purchase, accept appropriate gifts or donations of,
14 or otherwise to own, hold, improve or use, any property, real, personal or
15 mixed. The commission shall strive to avoid any appearance of
16 impropriety.

17 15. To sell, convey, mortgage, pledge, lease, exchange, abandon or
18 otherwise dispose of any property, real, personal or mixed.

19 16. To remit filing fees to compacting states as may be set forth
20 in the bylaws, rules or operating procedures.

21 17. To enforce compliance by compacting states with rules, uniform
22 standards, operating procedures and bylaws.

23 18. To provide for dispute resolution among compacting states.

24 19. To advise compacting states on issues relating to insurers
25 domiciled or doing business in noncompacting jurisdictions, consistent
26 with the purposes of the compact.

27 20. To provide advice and training to those personnel in state
28 insurance departments responsible for product review, and to be a resource
29 for state insurance departments.

30 21. To establish a budget and make expenditures.

31 22. To borrow money.

32 23. To appoint committees, including advisory committees comprising
33 members, state insurance regulators, state legislators or their
34 representatives, insurance industry and consumer representatives and other
35 interested persons as may be designated in the bylaws.

36 24. To provide and receive information from, and to cooperate with,
37 law enforcement agencies.

38 25. To adopt and use a corporate seal.

39 26. To perform other functions as may be necessary or appropriate
40 to achieve the purposes of the compact consistent with the state
41 regulation of the business of insurance.

42 Article V

43 Commission Organization

44 A. Each compacting state shall have and be limited to one member.
45 Each member shall be qualified to serve in that capacity pursuant to

1 applicable law of the compacting state. Any member may be removed or
2 suspended from office as provided by the law of the state from which the
3 member shall be appointed. Any vacancy occurring in the commission shall
4 be filled in accordance with the laws of the compacting state wherein the
5 vacancy exists. This section does not affect the manner in which a
6 compacting state determines the election or appointment and qualification
7 of its own commissioner.

8 B. Each member shall be entitled to one vote and shall have an
9 opportunity to participate in the governance of the commission in
10 accordance with the bylaws. Notwithstanding any provision in this compact
11 to the contrary, no action of the commission with respect to the adoption
12 of a uniform standard shall be effective unless two-thirds of the members
13 vote in favor of the uniform standard.

14 C. The commission, by a majority of the members, shall prescribe
15 bylaws to govern its conduct as may be necessary or appropriate to carry
16 out the purposes, and exercise the powers, of the compact, including:

17 1. Establishing the fiscal year of the commission.

18 2. Providing reasonable procedures for appointing and electing
19 members, as well as holding meetings, of the management committee.

20 3. Providing reasonable standards and procedures for:

21 (a) The establishment and meetings of other committees.

22 (b) Governing any general or specific delegation of any authority
23 or function of the commission.

24 4. Providing reasonable procedures for calling and conducting
25 meetings of the commission that consist of a majority of commission
26 members, ensuring reasonable advance notice of each such meeting and
27 providing for the right of citizens to attend each such meeting with
28 enumerated exceptions designed to protect the public's interest, the
29 privacy of individuals and insurers' proprietary information, including
30 trade secrets. The commission may meet in camera only after a majority of
31 the entire membership votes to close a meeting. As soon as practicable,
32 the commission must make public a copy of the vote to close the meeting
33 revealing the vote of each member with no proxy votes allowed and the
34 votes taken during the meeting.

35 5. Establishing the titles, duties, authority and reasonable
36 procedures for the election of the officers of the commission.

37 6. Providing reasonable standards and procedures for the
38 establishment of the personnel policies and programs of the commission.
39 Notwithstanding any civil service or other similar laws of any compacting
40 state, the bylaws shall exclusively govern the personnel policies and
41 programs of the commission.

42 7. Adopting a code of ethics to address permissible and prohibited
43 activities of commission members and employees.

44 8. Providing a mechanism for winding up the operations of the
45 commission and the equitable disposition of any surplus funds that may

1 exist after the termination of the compact and after the payment or
2 reserving of all of its debts and obligations.

3 D. The commission shall publish its bylaws in a convenient form and
4 file a copy of the bylaws and any amendment to the bylaws with the
5 appropriate agency or officer in each of the compacting states.

6 E. A management committee comprising no more than fourteen members
7 shall be established as follows:

8 1. One member from each of the six compacting states with the
9 largest premium volume for individual and group annuities, life,
10 disability income, and long-term care insurance products, determined from
11 the records of the national association of insurance commissioners for the
12 prior year.

13 2. Four members from those compacting states with at least two ~~per~~
14 ~~cent~~ PERCENT of the market based on the premium volume described in
15 paragraph 1 of this subsection, other than the six compacting states with
16 the largest premium volume, selected on a rotating basis as provided in
17 the bylaws.

18 3. Four members from those compacting states with less than two ~~per~~
19 ~~cent~~ PERCENT of the market, based on the premium volume described in
20 paragraph 1 of this subsection, with one selected from each of the four
21 zone regions of the national association of insurance commissioners as
22 provided in the bylaws.

23 F. The management committee shall have such authority and duties as
24 may be set forth in the bylaws, including:

25 1. Managing the affairs of the commission in a manner consistent
26 with the bylaws and purposes of the commission.

27 2. Establishing and overseeing an organizational structure within,
28 and appropriate procedures for, the commission to provide for the creation
29 of uniform standards and other rules, THE receipt and review of product
30 filings, administrative and technical support functions, THE review of
31 decisions regarding the disapproval of a product filing and the review of
32 elections made by a compacting state to opt out of a uniform standard.
33 However, a uniform standard shall not be submitted to the compacting
34 states for adoption unless approved by two-thirds of the members of the
35 management committee.

36 3. Overseeing the offices of the commission.

37 4. Planning, implementing and coordinating communications and
38 activities with other state, federal and local government organizations in
39 order to advance the goals of the commission.

40 G. The commission shall elect annually officers from the management
41 committee, with each having such authority and duties, as may be specified
42 in the bylaws.

43 H. The management committee, subject to the approval of the
44 commission, may appoint or retain an executive director for such period,
45 on such terms and conditions and for such compensation as the commission

1 may deem appropriate. The executive director shall serve as secretary to
2 the commission, but shall not be a member of the commission. The
3 executive director shall hire and supervise other staff as may be
4 authorized by the commission.

5 I. A legislative committee comprising state legislators or their
6 designees shall be established to monitor the operations of, and make
7 recommendations to, the commission, including the management committee.
8 However, the manner of selection and term of any legislative committee
9 member shall be as set forth in the bylaws. Before the adoption by the
10 commission of any uniform standard, revision to the bylaws, annual budget
11 or other significant matter as may be provided in the bylaws, the
12 management committee shall consult with and report to the legislative
13 committee.

14 J. The commission shall establish two advisory committees, one of
15 which shall comprise consumer representatives independent of the insurance
16 industry, and the other comprising insurance industry representatives.

17 K. The commission may establish additional advisory committees as
18 its bylaws may provide for the carrying out of its functions.

19 L. The commission shall maintain its corporate books and records in
20 accordance with the bylaws.

21 M. The members, officers, executive director, employees and
22 representatives of the commission shall be immune from suit and liability,
23 either personally or in their official capacity, for any claim for damage
24 to or loss of property or personal injury or other civil liability caused
25 by or arising out of any actual or alleged act, error or omission that
26 occurred, or that the person against whom the claim is made had a
27 reasonable basis for believing occurred within the scope of commission
28 employment, duties or responsibilities. This subsection does not protect
29 any such person from suit or liability for any damage, loss, injury or
30 liability caused by the intentional or wilful and wanton misconduct of
31 that person.

32 N. The commission shall defend any member, officer, executive
33 director, employee or representative of the commission in any civil action
34 seeking to impose liability arising out of any actual or alleged act,
35 error or omission that occurred within the scope of commission employment,
36 duties or responsibilities, or that the person against whom the claim is
37 made had a reasonable basis for believing occurred within the scope of
38 commission employment, duties or responsibilities. This subsection does
39 not prohibit that person from retaining the person's own counsel. Also,
40 the actual or alleged act, error or omission may not have resulted from
41 that person's intentional or wilful and wanton misconduct.

42 O. The commission shall indemnify and hold harmless any member,
43 officer, executive director, employee or representative of the commission
44 for the amount of any settlement or judgment obtained against that person
45 arising out of any actual or alleged act, error or omission that occurred

1 within the scope of commission employment, duties or responsibilities, or
2 that such person had a reasonable basis for believing occurred within the
3 scope of commission employment, duties or responsibilities. However, the
4 actual or alleged act, error or omission may not have resulted from the
5 intentional or wilful and wanton misconduct of that person.

6 Article VI

7 Commission Meeting and Acts

8 A. The commission shall meet and take such actions as are
9 consistent with the provisions of this compact and the bylaws.

10 B. Each member of the commission shall have the right and power to
11 cast a vote to which that compacting state is entitled and to participate
12 in the business and affairs of the commission. A member shall vote in
13 person or by such other means as provided in the bylaws. The bylaws may
14 provide for members' participation in meetings by telephone or other means
15 of communication.

16 C. The commission shall meet at least once during each calendar
17 year. Additional meetings shall be held as set forth in the bylaws.

18 Article VII

19 Rules and Operating Procedures, Rulemaking Functions
20 and Opting Out of Uniform Standards

21 A. The commission shall adopt reasonable rules, including uniform
22 standards, and operating procedures in order to effectively and
23 efficiently achieve the purposes of this compact. If the commission
24 exercises its rulemaking authority in a manner that is beyond the scope of
25 the purposes of this compact, the action by the commission shall be
26 invalid and have no force and effect.

27 B. Rules and operating procedures shall be made pursuant to a
28 rulemaking process that conforms to the model state administrative
29 procedure act of 1981 as amended, as may be appropriate to the operations
30 of the commission. Before the commission adopts a uniform standard, the
31 commission shall give written notice to the relevant state legislative
32 committees in each compacting state responsible for insurance issues of
33 its intention to adopt the uniform standard. The commission in adopting a
34 uniform standard shall consider fully all submitted materials and issue a
35 concise explanation of its decision.

36 C. A uniform standard shall become effective ninety days after its
37 adoption by the commission or such later date as the commission may
38 determine. A compacting state may opt out of a uniform standard as
39 provided in this article. "Opt out" means any action by a compacting
40 state to decline to adopt or participate in an adopted uniform standard.
41 All other rules and operating procedures, and amendments thereto, shall
42 become effective as of the date specified in each rule, operating
43 procedure or amendment.

44 D. A compacting state may opt out of a uniform standard, either by
45 legislation or rule adopted by the insurance department under the

1 compacting state's administrative procedure act. If a compacting state
2 elects to opt out of a uniform standard by rule, it must:

3 1. Give written notice to the commission no later than ten business
4 days after the uniform standard is adopted, or at the time the state
5 becomes a compacting state.

6 2. Find that the uniform standard does not provide reasonable
7 protections to the citizens of the state, given the conditions in the
8 state.

9 E. The commissioner shall make specific findings of fact and
10 conclusions of law, based on a preponderance of the evidence, detailing
11 the conditions in the state that warrant a departure from the uniform
12 standard and determining that the uniform standard would not reasonably
13 protect the citizens of the state. The commissioner must consider and
14 balance the following factors and find that the conditions in the state
15 and needs of the citizens of the state outweigh both:

16 1. The intent of the legislature to participate in, and the
17 benefits of, an interstate agreement to establish national uniform
18 consumer protections for the products subject to this compact.

19 2. The presumption that a uniform standard adopted by the
20 commission provides reasonable protections to consumers of the relevant
21 product.

22 F. A compacting state, at the time of its enactment of the compact,
23 may prospectively opt out of all uniform standards involving long-term
24 care insurance products by expressly providing for such opt out in the
25 enacted compact, and such an opt out shall not be treated as a material
26 variance in the offer or acceptance of any state to participate in the
27 compact. Such an opt out shall be effective at the time of enactment of
28 the compact by the compacting state and shall apply to all existing
29 uniform standards involving long-term care insurance products and those
30 subsequently adopted. Pursuant to this subsection, this state opts out of
31 all uniform standards involving long-term care insurance products.

32 G. If a compacting state elects to opt out of a uniform standard,
33 the uniform standard shall remain applicable in the compacting state
34 electing to opt out until the opt out legislation is enacted into law or
35 the regulation opting out becomes effective. Once the opt out of a
36 uniform standard by a compacting state becomes effective as provided under
37 the laws of that state, the uniform standard shall have no further force
38 and effect in that state unless and until the legislation or regulation
39 implementing the opt out is repealed or otherwise becomes ineffective
40 under the laws of that state. If a compacting state opts out of a uniform
41 standard after the uniform standard has been made effective in that state,
42 the opt out shall have the same prospective effect as provided under
43 article XIV of this compact for withdrawals.

44 H. If a compacting state has formally initiated the process of
45 opting out of a uniform standard by regulation, and while the regulatory

1 opt out is pending, the compacting state may petition the commission, at
2 least fifteen days before the effective date of the uniform standard, to
3 stay the effectiveness of the uniform standard in that state. The
4 commission may grant a stay if it determines the regulatory opt out is
5 being pursued in a reasonable manner and there is a likelihood of success.
6 If a stay is granted or extended by the commission, the stay or extension
7 thereof may postpone the effective date by up to ninety days, unless
8 affirmatively extended by the commission. However, a stay may not be
9 permitted to remain in effect for more than one year unless the compacting
10 state can show extraordinary circumstances that warrant a continuance of
11 the stay, including, the existence of a legal challenge that prevents the
12 compacting state from opting out. A stay may be terminated by the
13 commission on notice that the rulemaking process has been terminated.

14 I. Not later than thirty days after a rule or operating procedure
15 is adopted, any person may file a petition for judicial review of the rule
16 or operating procedure. However, the filing of such a petition shall not
17 stay or otherwise prevent the rule or operating procedure from becoming
18 effective unless the court finds that the petitioner has a substantial
19 likelihood of success. The court shall give deference to the actions of
20 the commission consistent with applicable law and shall not find the rule
21 or operating procedure to be unlawful if the rule or operating procedure
22 represents a reasonable exercise of the commission's authority.

23 Article VIII

24 Commission Records and Enforcement

25 A. The commission shall adopt rules establishing conditions and
26 procedures for public inspection and copying of its information and
27 official records, except information and records involving the privacy of
28 individuals and insurers' trade secrets. The commission may adopt
29 additional rules under which it may make available to federal and state
30 agencies, including law enforcement agencies, records and information
31 otherwise exempt from disclosure, and may enter into agreements with such
32 agencies to receive or exchange information or records subject to
33 nondisclosure and confidentiality provisions.

34 B. Except as to privileged records, data and information, the laws
35 of any compacting state pertaining to confidentiality or nondisclosure
36 shall not relieve any compacting state commissioner of the duty to
37 disclose any relevant records, data or information to the commission.
38 Disclosure to the commission does not waive or otherwise affect any
39 confidentiality requirement. Except as otherwise expressly provided in
40 this compact, the commission shall not be subject to the compacting
41 state's laws pertaining to confidentiality and nondisclosure with respect
42 to records, data and information in its possession. Confidential
43 information of the commission shall remain confidential after the
44 information is provided to any commissioner.

1 C. The commission shall monitor compacting states for compliance
2 with duly adopted bylaws, rules, including uniform standards, and
3 operating procedures. The commission shall notify any noncomplying
4 compacting state in writing of its noncompliance with commission bylaws,
5 rules or operating procedures. If a noncomplying compacting state fails
6 to remedy its noncompliance within the time specified in the notice of
7 noncompliance, the compacting state shall be deemed to be in default as
8 set forth in article XIV of this compact.

9 D. The commissioner of any state in which an insurer is authorized
10 to do business, or is conducting the business of insurance, shall continue
11 to exercise the commissioner's authority to oversee the market regulation
12 of the activities of the insurer in accordance with the provisions of the
13 state's law. The commissioner's enforcement of compliance with the
14 compact is governed by the following provisions:

15 1. With respect to the commissioner's market regulation of a
16 product or advertisement that is approved or certified to the commission,
17 the content of the product or advertisement shall not constitute a
18 violation of the provisions, standards or requirements of the compact
19 except on a final order of the commission, issued at the request of a
20 commissioner after prior notice to the insurer and an opportunity for
21 hearing before the commission.

22 2. Before a commissioner may bring an action for violation of any
23 provision, standard or requirement of the compact relating to the content
24 of an advertisement not approved or certified to the commission, the
25 commission, or an authorized commission officer or employee, must
26 authorize the action. Authorization under this paragraph does not require
27 notice to the insurer, opportunity for hearing or disclosure of requests
28 for authorization or records of the commission's action on such requests.

29 Article IX

30 Dispute Resolution

31 On the request of a member, the commission shall attempt to resolve
32 any disputes or other issues that are subject to this compact and that may
33 arise between two or more compacting states, or between compacting states
34 and noncompacting states, and the commission shall adopt an operating
35 procedure providing for resolution of such disputes.

36 Article X

37 Product Filing and Approval

38 A. Insurers and third-party filers seeking to have a product
39 approved by the commission shall file the product with, and pay applicable
40 filing fees to, the commission. This compact does not restrict or
41 otherwise prevent an insurer from filing its product with the insurance
42 department in any state wherein the insurer is licensed to conduct the
43 business of insurance, and such filing shall be subject to the laws of the
44 states where filed.

1 B. The commission shall establish appropriate filing and review
2 processes and procedures pursuant to commission rules and operating
3 procedures. The commission shall adopt rules to establish conditions and
4 procedures under which the commission will provide public access to
5 product filing information. In establishing such rules, the commission
6 shall consider the interests of the public in having access to such
7 information, as well as protection of personal medical and financial
8 information and trade secrets, that may be contained in a product filing
9 or supporting information.

10 C. Any product approved by the commission may be sold or otherwise
11 issued in those compacting states for which the insurer is legally
12 authorized to do business.

13 Article XI

14 Review of Commission Decisions Regarding Filings

15 A. Not later than thirty days after the commission has given notice
16 of a disapproved product or advertisement filed with the commission, the
17 insurer or third-party filer whose filing was disapproved may appeal the
18 determination to a review panel appointed by the commission. The
19 commission shall adopt rules to establish procedures for appointing the
20 review panels and provide for notice and hearing. An allegation that the
21 commission, in disapproving a product or advertisement filed with the
22 commission, acted arbitrarily, capriciously or in a manner that is an
23 abuse of discretion or otherwise not in accordance with the law, is
24 subject to judicial review in accordance with article III, subsection D of
25 this compact.

26 B. The commission shall have authority to monitor, review and
27 reconsider products and advertisement subsequent to their filing or
28 approval on a finding that the product does not meet the relevant uniform
29 standard. Where appropriate, the commission may withdraw or modify its
30 approval after proper notice and hearing, subject to the appeal process in
31 subsection A of this article.

32 Article XII

33 Finance

34 A. The commission shall pay or provide for the payment of the
35 reasonable expenses of its establishment and organization. To fund the
36 cost of its initial operations, the commission may accept contributions
37 and other forms of funding from the national association of insurance
38 commissioners, compacting states and other sources. Contributions and
39 other forms of funding from other sources shall be of such a nature that
40 the independence of the commission concerning the performance of its
41 duties shall not be compromised.

42 B. The commission shall collect a filing fee from each insurer and
43 third-party filer filing a product with the commission to cover the cost
44 of the operations and activities of the commission and its staff in a
45 total amount sufficient to cover the commission's annual budget.

1 C. The commission's budget for a fiscal year shall not be approved
2 until it has been subject to notice and comment as set forth in article
3 VII of this compact.

4 D. The commission shall be exempt from all taxation in and by the
5 compacting states.

6 E. The commission shall not pledge the credit of any compacting
7 state, except by and with the appropriate legal authority of that
8 compacting state.

9 F. The commission shall keep complete and accurate accounts of all
10 its internal receipts, including grants and donations, and disbursements
11 of all funds under its control. The internal financial accounts of the
12 commission shall be subject to the accounting procedures established under
13 its bylaws. The financial accounts and reports including the system of
14 internal controls and procedures of the commission shall be audited
15 annually by an independent certified public accountant. On the
16 determination of the commission, but no less frequently than every three
17 years, the review of the independent auditor shall include a management
18 and performance audit of the commission. The commission shall make an
19 annual report to the governor and legislature of the compacting states,
20 which shall include a report of the independent audit. The commission's
21 internal accounts shall not be confidential and such materials may be
22 shared with the commissioner of any compacting state on request. Any work
23 papers related to any internal or independent audit and any information
24 regarding the privacy of individuals and insurers' proprietary
25 information, including trade secrets, shall remain confidential.

26 G. A compacting state does not have any claim to or ownership of
27 any property held by or vested in the commission or to any commission
28 funds held under this compact.

29 Article XIII

30 Compacting States, Effective Date and Amendment

31 A. Any state is eligible to become a compacting state.

32 B. The compact shall become effective and binding on legislative
33 enactment of the compact into law by two compacting states. The
34 commission shall become effective for purposes of adopting uniform
35 standards for, reviewing and giving approval or disapproval of products
36 filed with the commission that satisfy applicable uniform standards only
37 after twenty-six states are compacting states or, alternatively, by states
38 representing greater than forty ~~per cent~~ PERCENT of the premium volume for
39 life insurance, annuity, disability income and long-term care insurance
40 products, based on records of the national association of insurance
41 commissioners for the prior year. Thereafter, it shall become effective
42 and binding as to any other compacting state on enactment of the compact
43 into law by that state.

44 C. Amendments to the compact may be proposed by the commission for
45 enactment by the compacting states. An amendment does not become

1 effective and binding on the commission and the compacting states unless
2 and until all compacting states enact the amendment into law.

3 Article XIV

4 Withdrawal, Default and Termination

5 A. Once effective, the compact shall continue in force and remain
6 binding on each and every compacting state. A compacting state may
7 withdraw from the compact by enacting a statute specifically repealing the
8 statute that enacted the compact into law.

9 B. The effective date of withdrawal is the effective date of the
10 repealing statute. The withdrawal shall not apply to any product filings
11 approved or self-certified, or any advertisement of such products, on the
12 date the repealing statute becomes effective, except by mutual agreement
13 of the commission and the withdrawing state unless the approval is
14 rescinded by the withdrawing state as provided in subsection E of this
15 article.

16 C. The commissioner of the withdrawing state shall immediately
17 notify the management committee in writing on the introduction of
18 legislation repealing the compact in the withdrawing state.

19 D. The commission shall notify the other compacting states of the
20 introduction of such legislation within ten days after its receipt of
21 notice thereof.

22 E. The withdrawing state is responsible for all obligations, duties
23 and liabilities incurred through the effective date of withdrawal,
24 including any obligations, the performance of which extend beyond the
25 effective date of withdrawal, except to the extent those obligations may
26 have been released or relinquished by mutual agreement of the commission
27 and the withdrawing state. The commission's approval of products and
28 advertisement before the effective date of withdrawal shall continue to be
29 effective and be given full force and effect in the withdrawing state,
30 unless formally rescinded by the withdrawing state in the same manner as
31 provided by the laws of the withdrawing state for the prospective
32 disapproval of products or advertisement previously approved under state
33 law.

34 F. Reinstatement following withdrawal of any compacting state shall
35 occur on the effective date of the withdrawing state reenacting the
36 compact.

37 G. If the commission determines that any compacting state has at
38 any time defaulted in the performance of any of its obligations or
39 responsibilities under the compact, the bylaws or adopted rules or
40 operating procedures, after notice and hearing as set forth in the bylaws,
41 all rights, privileges and benefits conferred by the compact on the
42 defaulting state shall be suspended from the effective date of default as
43 fixed by the commission. The grounds for default include failure of a
44 compacting state to perform its obligations or responsibilities and any
45 other grounds designated in commission rules. The commission shall

1 immediately notify the defaulting state in writing of the defaulting
2 state's suspension pending a cure of the default. The commission shall
3 stipulate the conditions and the time period within which the defaulting
4 state must cure its default. If the defaulting state fails to cure the
5 default within the time period specified by the commission, the defaulting
6 state shall be terminated from the compact and all rights, privileges and
7 benefits conferred by the compact shall be terminated from the effective
8 date of termination.

9 H. Product approvals by the commission or product
10 self-certifications, or any advertisement in connection with such product,
11 that are in force on the effective date of termination shall remain in
12 force in the defaulting state in the same manner as if the defaulting
13 state had withdrawn voluntarily under this article.

14 I. Reinstatement following termination of any compacting state
15 requires a reenactment of the compact.

16 J. The compact dissolves effective on the date of the withdrawal or
17 default of the compacting state that reduces membership in the compact to
18 one compacting state. On the dissolution of the compact, the compact
19 becomes null and void and shall be of no further force or effect, and the
20 business and affairs of the commission shall be wound up and any surplus
21 funds shall be distributed in accordance with the bylaws.

22 Article XV

23 Binding Effect of Compact and Other Laws

24 A. The compact does not prevent the enforcement of any other law of
25 a compacting state, except as provided in subsection B of this article.

26 B. For any product approved or certified to the commission, the
27 rules, uniform standards and any other requirements of the commission
28 shall constitute the exclusive provisions applicable to the content,
29 approval and certification of such products. For advertisement that is
30 subject to the commission's authority, any rule, uniform standard or other
31 requirement of the commission that governs the content of the
32 advertisement shall constitute the exclusive provision that a commissioner
33 may apply to the content of the advertisement. No action taken by the
34 commission shall abrogate or restrict any of the following:

35 1. The access of any person to state courts.

36 2. Remedies available under state law related to breach of
37 contract, tort or other laws not specifically directed to the content of
38 the product.

39 3. State law relating to the construction of insurance contracts.

40 4. The authority of the attorney general of the state, including
41 maintaining any actions or proceedings, as authorized by law.

42 C. All insurance products filed with individual states shall be
43 subject to the laws of those states.

1 D. All lawful actions of the commission, including all rules and
2 operating procedures adopted by the commission, are binding on the
3 compacting states.

4 E. All agreements between the commission and the compacting states
5 are binding in accordance with their terms.

6 F. On the request of a party to a conflict over the meaning or
7 interpretation of commission actions, and on a majority vote of the
8 compacting states, the commission may issue advisory opinions regarding
9 the meaning or interpretation in dispute.

10 G. If any provision of the compact exceeds the constitutional
11 limits imposed on the legislature of any compacting state, the
12 obligations, duties, powers or jurisdiction sought to be conferred by that
13 provision on the commission shall be ineffective as to that compacting
14 state, and those obligations, duties, powers or jurisdiction shall remain
15 in the compacting state and shall be exercised by the agency thereof to
16 which those obligations, duties, powers or jurisdiction are delegated by
17 law in effect at the time the compact becomes effective.

18 Article XVI

19 Severability and Construction

20 A. If any provision of this compact or its application to any
21 person or circumstance is held invalid, the remainder of the compact or
22 the application of the provision to other persons or circumstances is not
23 affected.

24 B. This compact shall be liberally construed to effectuate its
25 purposes.

26 Sec. 123. Section 20-3302, Arizona Revised Statutes, is amended to
27 read:

28 20-3302. Insurance compliance audit privilege; requirements

29 A. Except as provided in subsections E and F of this section, an
30 insurance compliance audit document is privileged information and is not
31 discoverable or admissible as evidence in any legal action in any civil or
32 administrative proceeding other than a regulatory or legal action brought
33 as part of the director's duties. This privilege is a matter of
34 substantive law of this state and is not merely a procedural matter
35 governing civil proceedings in the courts of this state. The following
36 provisions apply to the privilege:

37 1. If any company, person or entity performs or directs the
38 performance of an insurance compliance audit, an officer, employee or
39 agent involved with the insurance compliance audit or any consultant who
40 is hired for the purpose of performing the insurance compliance audit may
41 not be examined in any civil or administrative proceeding as to the
42 insurance compliance audit or any insurance compliance audit document.

43 2. In connection with examinations conducted under this title, an
44 insurer may submit an insurance compliance audit document to the director
45 or the director's designee as a confidential document without waiving the

1 privilege set forth under this subsection to which the insurer would
2 otherwise be entitled. Any insurance compliance audit document furnished
3 to the director may not be provided by the director to any other person or
4 entity and shall be accorded the same privilege provided under this
5 subsection.

6 3. If an insurer submits an insurance compliance audit document to
7 the director, the document remains confidential and privileged and:

8 (a) Is subject to all applicable statutory or common law
9 privileges, including the insurance compliance audit privilege, the work
10 product doctrine, the attorney-client privilege or the subsequent remedial
11 measures exclusion.

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

13 (c) Is not subject to title 39, chapter 1, article 2, not subject
14 to subpoena and not subject to discovery or admissible in a private
15 administrative proceeding or in a private civil action, other than in an
16 administrative proceeding conducted by the director.

17 4. Disclosure of an insurance compliance audit document to a
18 governmental agency, whether voluntary or pursuant to compulsion of law,
19 does not constitute a waiver of the privilege set forth under this
20 subsection with respect to any other person or governmental agency.

21 5. The director may obtain insurance compliance audit documents at
22 any time. The director may use the insurance compliance audit documents
23 in the furtherance of any regulatory or legal action brought as part of
24 the director's duties. The insurer shall comply with any compliance dates
25 set by the director with respect to the insurance compliance audit.
26 NOTWITHSTANDING ANY OTHER LAW, THE DIRECTOR SHALL PROVIDE AN INSURER WITH
27 COPIES OF ALL DOCUMENTS THAT THE DIRECTOR BELIEVES SUPPORT A VIOLATION OF
28 THIS TITLE OR THAT JUSTIFY ANY REGULATORY OR OTHER ACTION AGAINST THE
29 INSURER. A DISCLOSURE PURSUANT TO THIS PARAGRAPH IS NOT A WAIVER OF ANY
30 APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DISCLOSED
31 DOCUMENTS.

32 6. In order to facilitate identification, audit documents produced
33 as a result of an insurance compliance audit shall be labeled "compliance
34 report: privileged document".

35 7. A person who conducts or participates in the preparation of an
36 insurance compliance audit and who has observed physical events may
37 testify regarding those events, but may not be compelled to testify or
38 produce documents related to any privileged part of the insurance
39 compliance audit or any insurance compliance audit document.

40 8. The insurance compliance audit does not prevent the discovery of
41 a document or other evidence, otherwise discoverable, that is maintained
42 by an insurer and that was not developed for the insurance compliance
43 audit pursuant to this article.

44 B. The privilege described in this article does not apply to:

1 1. A document, communication, data or report or other information
2 required by the department or other regulatory agency to be collected,
3 developed, maintained or reported under applicable law.

4 2. Information obtained by observation, sampling or monitoring by
5 the department or other regulatory agency.

6 3. Information obtained from a source not involved in the
7 preparation of the insurance compliance audit report.

8 4. Documents, communications, data, spreadsheets, reports,
9 memoranda, drawings, photographs, exhibits, computer records, maps,
10 charts, graphs, recordings and surveys kept or prepared in the ordinary
11 course of business.

12 C. If an insurance compliance audit document is obtained, reviewed
13 or used in a criminal proceeding, the privilege described in this article
14 is not waived or eliminated for any other purpose.

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

17 E. The privilege set forth under subsection A of this section does
18 not apply under the following circumstances:

19 1. To the extent that it is expressly waived by the insurer that
20 prepared or caused to be prepared the insurance compliance audit document.

21 2. If, after an in camera review, a court of record in a civil or
22 administrative proceeding other than in a regulatory or legal action
23 brought as part of the director's duties determines one of the following:

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

25 (b) The document is not subject to the privilege.

26 (c) The privileged document shows evidence of noncompliance with
27 applicable state or federal laws, rules, regulations or orders of the
28 department and the insurer, person or entity fails to undertake corrective
29 action or eliminate the noncompliance within the compliance date set by
30 the director.

31 F. Within sixty days after an insurer is served a written request
32 by certified mail for disclosure of an insurance compliance audit
33 document, the insurer may file with the appropriate court a petition
34 requesting a hearing on whether the insurance compliance audit document or
35 portions of the document are privileged under this section or subject to
36 disclosure. The court shall conduct an in camera review of the insurance
37 compliance audit document and shall determine whether all or a portion of
38 the insurance compliance audit document is privileged or subject to
39 disclosure. The insurer's failure to file a petition for a hearing does
40 not waive the privilege in connection with any other request for
41 disclosure of the insurance compliance audit document. If an insurer
42 files a petition for an in camera hearing pursuant to this subsection, the
43 following apply:

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

1 2. After conducting an in camera review, the court may require
2 disclosure of all or a portion of the insurance compliance audit document
3 if the court determines, based on its in camera review, that any one of
4 the conditions set forth in subsection E, paragraph 2 of this section
5 applies. On making this determination, the court may only compel the
6 disclosure of those portions of an insurance compliance audit document
7 that are relevant to issues in dispute in the underlying proceeding. Any
8 compelled disclosure will not be considered to be a public document or be
9 deemed to be a waiver of the privilege for any other civil or
10 administrative proceeding. An insurer unsuccessfully opposing disclosure
11 may apply to the court for an appropriate order protecting the document
12 from further disclosure.

13 3. At the time of filing a request for a hearing, the insurer shall
14 provide all of the following information:

15 (a) The date of the insurance compliance audit document.

16 (b) The identity of the entity conducting the insurance compliance
17 audit.

18 (c) The general nature of the activities covered by the insurance
19 compliance audit.

20 (d) An identification of the portions of the insurance compliance
21 audit document for which the privilege is being asserted.

22 G. An insurer asserting the insurance compliance privilege set
23 forth under subsection A of this section has the burden of demonstrating
24 the applicability of the privilege. Once an insurer has established the
25 applicability of the privilege, the party seeking disclosure has the
26 burden of proving the inapplicability of the privilege.

27 H. At any time, the parties to a civil or administrative proceeding
28 other than a regulatory or legal action brought as a part of the
29 director's duties may stipulate to entry of an order directing that
30 specific information contained in an insurance compliance audit document
31 is or is not subject to the privilege provided under subsection A of this
32 section. The stipulation may be limited to the instant proceeding and,
33 absent specific language to the contrary, is not applicable to any other
34 proceeding.

35 I. This section or the release of any insurance compliance audit
36 document under this section does not limit, waive or abrogate the scope or
37 nature of any statutory or common law privilege including the work product
38 doctrine, the attorney-client privilege or the subsequent remedial
39 measures exclusion.

40 J. This article does not limit the director's authority under
41 sections 20-156, 20-157, 20-157.01, 20-160 and 20-466.

1 Sec. 124. Section 20-3459, Arizona Revised Statutes, is amended to
2 read:

3 20-3459. Civil immunity; enforcement; civil penalty

4 A. A health insurer that complies in good faith with the
5 requirements of this chapter is immune from civil liability for the
6 purposes of reviewing and approving a credentialing application.

7 B. The director ~~of insurance~~ shall enforce this chapter. A health
8 insurer that fails to comply with this chapter or with any rules adopted
9 pursuant to this chapter is subject to the civil penalties prescribed in
10 section 20-456.

11 C. On receipt of multiple complaints of violations of this chapter
12 by a health insurer from applicants or participating providers, the
13 director ~~of insurance~~ shall conduct an examination of the health insurer
14 pursuant to section 20-156, 20-831 or 20-1058, as applicable to the
15 specific insurer.

16 Sec. 125. Section 23-722.04, Arizona Revised Statutes, is amended
17 to read:

18 23-722.04. Unemployment insurance information; disclosure;
19 violation; classification

20 A. The department or the office of economic opportunity may
21 disclose unemployment insurance information to the following entities:

22 1. Any federal, state or local governmental agency in the
23 investigation of fraud relating to public programs or the misuse of public
24 monies.

25 2. Divisions of the department, including the employment and
26 rehabilitation services administrations, for program and research
27 purposes.

28 3. The workforce Arizona council for program performance, regional
29 planning and other program and research purposes.

30 4. The department of education to evaluate adult education program
31 performance and for other primary and adult education program and research
32 purposes.

33 5. The Arizona board of regents, universities under the
34 jurisdiction of the Arizona board of regents and community college
35 districts to evaluate program performance and for other program and
36 research purposes.

37 6. The United States department of labor, or its agents, or the
38 United States census bureau, or its agents, as required by law or in
39 connection with the requirements imposed as a result of receiving federal
40 funding.

41 7. Department contractors or subcontractors, or their agents, for
42 the sole purpose of providing for the processing, storage and transmission
43 of information. This disclosure must be consistent with this section.

44 8. The industrial commission of Arizona, department of insurance
45 AND FINANCIAL INSTITUTIONS or attorney general for use by those agencies,

1 or their agents or contractors, in the prevention, investigation and
2 prosecution of workers' compensation fraud.

3 B. On the request of one of the entities specified in subsection A
4 of this section to the department or the office of economic opportunity,
5 the department or the office of economic opportunity shall disclose
6 unemployment insurance information to the entity pursuant to guidelines
7 established by the workforce data task force established by section
8 41-5404 and pursuant to a written data sharing agreement with the
9 requesting entity in a form determined by the workforce data task force
10 pursuant to the laws of this state and applicable federal regulations.
11 The department or the office of economic opportunity may disclose the
12 unemployment insurance information only after the requesting entity has
13 demonstrated that the information will be kept confidential, except for
14 those purposes for which the information was provided to the requesting
15 entity, and that the requesting entity has security safeguards in place to
16 prevent the unauthorized disclosure of the information.

17 C. Except as otherwise allowed by law or as otherwise authorized by
18 agreement between the department of economic security and the United
19 States department of labor, the department of economic security or the
20 office of economic opportunity may not use federal unemployment insurance
21 grant monies to pay for any costs incurred in processing and handling
22 requests for disclosure of unemployment insurance information. The
23 department of economic security and the office of economic opportunity, in
24 consultation with the workforce data task force, shall establish a rate
25 structure that complies with 20 Code of Federal Regulations section 603.8
26 for costs incurred in processing requests for disclosure of unemployment
27 insurance information.

28 D. The requesting entity may not make public any unemployment
29 insurance information that identifies an individual or the individual's
30 employer. Any unauthorized disclosure, including security breaches, shall
31 be reported to the department and the office of economic opportunity
32 immediately. Any person who knowingly discloses confidential unemployment
33 insurance information in violation of this section without prior written
34 authorization from the department or the office of economic opportunity or
35 authorization as otherwise provided by law is guilty of a class 3
36 misdemeanor.

37 E. The office of economic opportunity may use unemployment
38 insurance information to perform economic analyses, for the development of
39 labor market information and a state workforce evaluation data system and
40 for other program and research purposes.

41 F. This section does not prohibit disclosure that is required or
42 allowed by federal law.

1 Sec. 126. Section 23-901, Arizona Revised Statutes, is amended to
2 read:

3 23-901. Definitions

4 In this chapter, unless the context otherwise requires:

5 1. "Award" means the finding or decision of an administrative law
6 judge or the commission as to the amount of compensation or benefit due an
7 injured employee or the dependents of a deceased employee.

8 2. "Client" means an individual, association, company, firm,
9 partnership, corporation or any other legally recognized entity that is
10 subject to this chapter and that enters into a professional employer
11 agreement with a professional employer organization.

12 3. "Co-employee" means every person employed by an injured
13 employee's employer.

14 4. "Commission" means the industrial commission of Arizona.

15 5. "Compensation" means the compensation and benefits provided by
16 this chapter.

17 6. "Employee", "workman", "worker" and "operative" means:

18 (a) Every person in the service of this state or a county, city,
19 town, municipal corporation or school district, including regular members
20 of lawfully constituted police and fire departments of cities and towns,
21 whether by election, appointment or contract of hire.

22 (b) Every person in the service of any employer subject to this
23 chapter, including aliens and minors legally or illegally ~~permitted~~
24 ALLOWED to work for hire, but not including a person whose employment is
25 both:

26 (i) Casual.

27 (ii) Not in the usual course of the trade, business or occupation
28 of the employer.

29 (c) Lessees of mining property and the lessees' employees and
30 contractors engaged in the performance of work that is a part of the
31 business conducted by the lessor and over which the lessor retains
32 supervision or control are within the meaning of this paragraph employees
33 of the lessor, and are deemed to be drawing wages as are usually paid
34 employees for similar work. The lessor may deduct from the proceeds of
35 ores mined by the lessees the premium required by this chapter to be paid
36 for such employees.

37 (d) Regular members of volunteer fire departments organized
38 pursuant to title 48, chapter 5, article 1, regular firefighters of any
39 volunteer fire department, including private fire protection service
40 organizations, organized pursuant to title 10, chapters 24 through 40,
41 volunteer firefighters serving as members of a fire department of any
42 incorporated city or town or an unincorporated area without pay or without
43 full pay and on a part-time basis, and voluntary policemen and volunteer
44 firefighters serving in any incorporated city, town or unincorporated area
45 without pay or without full pay and on a part-time basis, are deemed to be

1 employees, but for the purposes of this chapter, the basis for computing
2 wages for premium payments and compensation benefits for regular members
3 of volunteer fire departments organized pursuant to title 48, chapter 5,
4 article 1, or organized pursuant to title 10, chapters 24 through 40,
5 regular members of any private fire protection service organization,
6 volunteer firefighters and volunteer policemen of these departments or
7 organizations shall be the salary equal to the beginning salary of the
8 same rank or grade in the full-time service with the city, town, volunteer
9 fire department or private fire protection service organization, provided
10 if there is no full-time equivalent then the salary equivalent shall be as
11 determined by resolution of the governing body of the city, town or
12 volunteer fire department or corporation.

13 (e) Members of the department of public safety reserve, organized
14 pursuant to section 41-1715, are deemed to be employees. For the purposes
15 of this chapter, the basis for computing wages for premium payments and
16 compensation benefits for a member of the department of public safety
17 reserve who is a peace officer shall be the salary received by officers of
18 the department of public safety for the officers' first month of regular
19 duty as an officer. For members of the department of public safety
20 reserve who are not peace officers, the basis for computing premiums and
21 compensation benefits is ~~four hundred dollars~~ \$400 a month.

22 (f) Any person placed in on-the-job evaluation or in on-the-job
23 training under the department of economic security's temporary assistance
24 for needy families program or vocational rehabilitation program shall be
25 deemed to be an employee of the department for the purpose of coverage
26 under the state workers' compensation laws only. The basis for computing
27 premium payments and compensation benefits shall be ~~two hundred dollars~~
28 \$200 per month. Any person receiving vocational rehabilitation services
29 under the department of economic security's vocational rehabilitation
30 program whose major evaluation or training activity is academic, whether
31 as an enrolled attending student or by correspondence, or who is confined
32 to a hospital or penal institution, shall not be deemed to be an employee
33 of the department for any purpose.

34 (g) Regular members of a volunteer sheriff's reserve, which may be
35 established by resolution of the county board of supervisors, to assist
36 the sheriff in the performance of the sheriff's official duties. A roster
37 of the current members shall monthly be certified to the clerk of the
38 board of supervisors by the sheriff and shall not exceed the maximum
39 number authorized by the board of supervisors. Certified members of an
40 authorized volunteer sheriff's reserve shall be deemed to be employees of
41 the county for the purpose of coverage under the Arizona workers'
42 compensation laws and occupational disease disability laws and shall be
43 entitled to receive the benefits of these laws for any compensable
44 injuries or disabling conditions that arise out of and occur in the course
45 of the performance of duties authorized and directed by the sheriff.

1 Compensation benefits and premium payments shall be based on the salary
2 received by a regular full-time deputy sheriff of the county involved for
3 the first month of regular patrol duty as an officer for each certified
4 member of a volunteer sheriff's reserve. This subdivision does not
5 provide compensation coverage for any member of a sheriff's posse who is
6 not a certified member of an authorized volunteer sheriff's reserve except
7 as a participant in a search and rescue mission or a search and rescue
8 training mission.

9 (h) A working member of a partnership may be deemed to be an
10 employee entitled to the benefits provided by this chapter on written
11 acceptance, by endorsement, at the discretion of the insurance carrier for
12 the partnership of an application for coverage by the working partner.
13 The basis for computing premium payments and compensation benefits for the
14 working partner shall be an assumed average monthly wage of not less than
15 ~~six hundred dollars~~ \$600 nor more than the maximum wage provided in
16 section 23-1041 and is subject to the discretionary approval of the
17 insurance carrier. Any compensation for permanent partial or permanent
18 total disability payable to the partner is computed on the lesser of the
19 assumed monthly wage agreed to by the insurance carrier on the acceptance
20 of the application for coverage or the actual average monthly wage
21 received by the partner at the time of injury.

22 (i) The sole proprietor of a business subject to this chapter may
23 be deemed to be an employee entitled to the benefits provided by this
24 chapter on written acceptance, by endorsement, at the discretion of the
25 insurance carrier of an application for coverage by the sole proprietor.
26 The basis for computing premium payments and compensation benefits for the
27 sole proprietor is an assumed average monthly wage of not less than ~~six~~
28 ~~hundred dollars~~ \$600 nor more than the maximum wage provided by section
29 23-1041 and is subject to the discretionary approval of the insurance
30 carrier. Any compensation for permanent partial or permanent total
31 disability payable to the sole proprietor shall be computed on the lesser
32 of the assumed monthly wage agreed to by the insurance carrier on the
33 acceptance of the application for coverage or the actual average monthly
34 wage received by the sole proprietor at the time of injury.

35 (j) A member of the Arizona national guard, Arizona state guard or
36 unorganized militia shall be deemed a state employee and entitled to
37 coverage under the Arizona workers' compensation law at all times while
38 the member is receiving the payment of the member's military salary from
39 this state under competent military orders or on order of the governor.
40 Compensation benefits shall be based on the monthly military pay rate to
41 which the member is entitled at the time of injury, but not less than a
42 salary of ~~four hundred dollars~~ \$400 per month, nor more than the maximum
43 provided by the workers' compensation law. Arizona compensation benefits
44 shall not inure to a member compensable under federal law.

1 (k) Certified ambulance drivers and attendants who serve without
2 pay or without full pay on a part-time basis are deemed to be employees
3 and entitled to the benefits provided by this chapter and the basis for
4 computing wages for premium payments and compensation benefits for
5 certified ambulance personnel shall be ~~four hundred dollars~~ \$400 per
6 month.

7 (l) Volunteer workers of a licensed health care institution may be
8 deemed to be employees and entitled to the benefits provided by this
9 chapter on written acceptance by the insurance carrier of an application
10 by the health care institution for coverage of such volunteers. The basis
11 for computing wages for premium payments and compensation benefits for
12 volunteers shall be ~~four hundred dollars~~ \$400 per month.

13 (m) Personnel who participate in a search or rescue operation or a
14 search or rescue training operation that carries a mission identifier
15 assigned by the division of emergency management as provided in section
16 35-192.01 and who serve without compensation as volunteer state employees.
17 The basis for computation of wages for premium purposes and compensation
18 benefits is the total volunteer man-hours recorded by the division of
19 emergency management in a given quarter multiplied by the amount
20 determined by the appropriate risk management formula.

21 (n) Personnel who participate in emergency management training,
22 exercises or drills that are duly enrolled or registered with the division
23 of emergency management or any political subdivision as provided in
24 section 26-314, subsection C and who serve without compensation as
25 volunteer state employees. The basis for computation of wages for premium
26 purposes and compensation benefits is the total volunteer man-hours
27 recorded by the division of emergency management or political subdivision
28 during a given training session, exercise or drill multiplied by the
29 amount determined by the appropriate risk management formula.

30 (o) Regular members of the Arizona game and fish department
31 reserve, organized pursuant to section 17-214. The basis for computing
32 wages for premium payments and compensation benefits for a member of the
33 reserve is the salary received by game rangers and wildlife managers of
34 the Arizona game and fish department for the game rangers' and wildlife
35 managers' first month of regular duty.

36 (p) Every person employed pursuant to a professional employer
37 agreement.

38 (q) A working member of a limited liability company who owns less
39 than fifty percent of the membership interest in the limited liability
40 company.

41 (r) A working member of a limited liability company who owns fifty
42 percent or more of the membership interest in the limited liability
43 company may be deemed to be an employee entitled to the benefits provided
44 by this chapter on the written acceptance, by endorsement, of an
45 application for coverage by the working member at the discretion of the

1 insurance carrier for the limited liability company. The basis for
2 computing wages for premium payments and compensation benefits for the
3 working member is an assumed average monthly wage of ~~six hundred dollars~~
4 \$600 or more but not more than the maximum wage provided in section
5 23-1041 and is subject to the discretionary approval of the insurance
6 carrier. Any compensation for permanent partial or permanent total
7 disability payable to the working member is computed on the lesser of the
8 assumed monthly wage agreed to by the insurance carrier on the acceptance
9 of the application for coverage or the actual average monthly wage
10 received by the working member at the time of injury.

11 (s) A working shareholder of a corporation who owns less than fifty
12 percent of the beneficial interest in the corporation.

13 (t) A working shareholder of a corporation who owns fifty percent
14 or more of the beneficial interest in the corporation may be deemed to be
15 an employee entitled to the benefits provided by this chapter on the
16 written acceptance, by endorsement, of an application for coverage by the
17 working shareholder at the discretion of the insurance carrier for the
18 corporation. The basis for computing wages for premium payments and
19 compensation benefits for the working shareholder is an assumed average
20 monthly wage of ~~six hundred dollars~~ \$600 or more but not more than the
21 maximum wage provided in section 23-1041 and is subject to the
22 discretionary approval of the insurance carrier. Any compensation for
23 permanent partial or permanent total disability payable to the working
24 shareholder is computed on the lesser of the assumed monthly wage agreed
25 to by the insurance carrier on the acceptance of the application for
26 coverage or the actual average monthly wage received by the working
27 shareholder at the time of injury.

28 7. "General order" means an order applied generally throughout this
29 state to all persons under jurisdiction of the commission.

30 8. "Heart-related or perivascular injury, illness or death" means
31 myocardial infarction, coronary thrombosis or any other similar sudden,
32 violent or acute process involving the heart or perivascular system, or
33 any death resulting therefrom, and any weakness, disease or other
34 condition of the heart or perivascular system, or any death resulting
35 therefrom.

36 9. "Insurance carrier" means every insurance carrier duly
37 authorized by the director of THE DEPARTMENT OF insurance AND FINANCIAL
38 INSTITUTIONS to write workers' compensation or occupational disease
39 compensation insurance in this state.

40 10. "Interested party" means the employer, the employee, or if the
41 employee is deceased, the employee's estate, the surviving spouse or
42 dependents, the commission, the insurance carrier or their representative.

43 11. "Mental injury, illness or condition" means any mental,
44 emotional, psychotic or neurotic injury, illness or condition.

1 12. "Order" means and includes any rule, direction, requirement,
2 standard, determination or decision other than an award or a directive by
3 the commission or an administrative law judge relative to any entitlement
4 to compensation benefits, or to the amount of compensation benefits, and
5 any procedural ruling relative to the processing or adjudicating of a
6 compensation matter.

7 13. "Personal injury by accident arising out of and in the course
8 of employment" means any of the following:

9 (a) Personal injury by accident arising out of and in the course of
10 employment.

11 (b) An injury caused by the wilful act of a third person directed
12 against an employee because of the employee's employment, but does not
13 include a disease unless resulting from the injury.

14 (c) An occupational disease that is due to causes and conditions
15 characteristic of and peculiar to a particular trade, occupation, process
16 or employment, and not the ordinary diseases to which the general public
17 is exposed, and subject to section 23-901.01 or, for heart-related,
18 perivascular or pulmonary cases, section 23-1105.

19 14. "Professional employer agreement" means a written contract
20 between a client and a professional employer organization:

21 (a) In which the professional employer organization expressly
22 agrees to co-employ all or a majority of the employees providing services
23 for the client. In determining whether the professional employer
24 organization employs all or a majority of the employees of a client, any
25 person employed pursuant to the terms of the professional employer
26 agreement after the initial placement of client employees on the payroll
27 of the professional employer organization shall be included.

28 (b) That is intended to be ongoing rather than temporary in nature.

29 (c) In which employer responsibilities for worksite employees,
30 including hiring, firing and disciplining, are expressly allocated between
31 the professional employer organization and the client in the agreement.

32 15. "Professional employer organization" means any person engaged
33 in the business of providing professional employer services. Professional
34 employer organization does not include a temporary help firm or an
35 employment agency.

36 16. "Professional employer services" means the service of entering
37 into co-employment relationships under this chapter to which all or a
38 majority of the employees providing services to a client or to a division
39 or work unit of a client are covered employees.

40 17. "Special order" means an order other than a general order.

41 18. "Weakness, disease or other condition of the heart or
42 perivascular system" means arteriosclerotic heart disease, cerebral
43 vascular disease, peripheral vascular disease, cardiovascular disease,
44 angina pectoris, congestive heart trouble, coronary insufficiency,
45 ischemia and all other similar weaknesses, diseases and conditions, and

1 also previous episodes or instances of myocardial infarction, coronary
2 thrombosis or any similar sudden, violent or acute process involving the
3 heart or perivascular system.

4 19. "Workers' compensation" means workmen's compensation as used in
5 article XVIII, section 8, Constitution of Arizona.

6 Sec. 127. Section 23-904, Arizona Revised Statutes, is amended to
7 read:

8 23-904. Arizona worker injuries in other state; injury to
9 foreign worker in this state; evidence of
10 insurance; judicial notice of other state's laws

11 A. If a worker who has been hired or is regularly employed in this
12 state receives a personal injury by accident arising out of and in the
13 course of the worker's employment, the worker is entitled to compensation
14 according to the laws of this state even if the injury was received
15 outside this state.

16 B. If a worker who is employed in this state and is subject to this
17 chapter temporarily leaves this state incidental to that employment and
18 receives an injury arising out of and in the course of employment, the
19 worker, or beneficiaries of the worker if the injury results in death, is
20 entitled to the benefits of this chapter as though the worker were injured
21 in this state.

22 C. A worker from another state and the employer of the worker in
23 that other state are exempt from this chapter while that worker is
24 temporarily in this state doing work for an employer if all of the
25 following are true:

26 1. The employer has furnished workers' compensation insurance
27 coverage under the workers' compensation insurance or similar laws of a
28 state other than Arizona so as to cover that worker's employment while in
29 this state.

30 2. The extraterritorial provisions of this chapter are recognized
31 in that other state.

32 3. Employers and workers who are covered in this state are likewise
33 ~~exempted~~ EXEMPT from the application of the workers' compensation
34 insurance act or similar laws of the other state.

35 4. The benefits under the workers' compensation insurance act or
36 similar laws of the other state, or other remedies under a similar act or
37 laws, are the exclusive remedy against the employer for any injury,
38 whether resulting in death or not, received by the worker while
39 temporarily working for that employer in this state.

40 D. A certificate from a duly authorized officer of the commission,
41 the department of insurance AND FINANCIAL INSTITUTIONS or a similar
42 department of another state certifying that the employer in the other
43 state is insured in that state is prima facie evidence that the employer
44 carries that workers' compensation insurance.

1 E. If in any appeal or other litigation the construction of the
2 laws of another state is required, the courts shall take judicial notice
3 of the laws of the other state.

4 F. For THE purposes of this section, a worker is deemed to be
5 temporarily in a state doing work for an employer if, during the three
6 hundred sixty-five days immediately preceding either the worker's date of
7 injury or, in the case of an occupational disease or cumulative trauma
8 claim, the worker's last date of injurious exposure, the worker performs
9 fewer than ninety continuous days of required services in the state under
10 the direction and control of the employer.

11 G. If a worker has a claim under the workers' compensation laws of
12 another state, territory, province or foreign nation for the same injury
13 or occupational disease as the claim filed in this state, the total amount
14 of compensation paid or awarded under the other state's workers'
15 compensation laws shall be credited against the compensation due under the
16 workers' compensation laws of this state. The worker is entitled to the
17 full amount of compensation due under the laws of this state. If
18 compensation under the laws of this state is more than the compensation
19 under the laws of the other state, or compensation paid the worker under
20 the laws of the other state is recovered from the worker, the insurer
21 shall pay any unpaid compensation to the worker up to the amount required
22 by the claim under the laws of this state.

23 H. Claims made after ~~the effective date of this section~~ SEPTEMBER
24 13, 2013 are subject to this section regardless of the date of injury.

25 Sec. 128. Section 23-930, Arizona Revised Statutes, is amended to
26 read:

27 23-930. Unfair claim processing practices; bad faith; civil
28 penalties

29 A. The commission has exclusive jurisdiction as prescribed in this
30 section over complaints involving alleged unfair claim processing
31 practices or bad faith by an employer, self-insured employer, insurance
32 carrier or claims processing representative relating to any aspect of this
33 chapter. The commission shall investigate allegations of unfair claim
34 processing or bad faith either on receiving a complaint or on its own
35 motion.

36 B. If the commission finds that unfair claim processing or bad
37 faith has occurred in the handling of a particular claim, it shall award
38 the claimant, in addition to any benefits it finds are due and owing, a
39 benefit penalty of twenty-five ~~per cent~~ PERCENT of the benefit amount
40 ordered to be paid or ~~five hundred dollars~~ \$500, whichever is more.

41 C. If the commission finds that an employer, self-insured employer,
42 insurance carrier or claim processing representative has a history or
43 pattern of repeated unfair claim processing practices or bad faith, it may
44 impose a civil penalty of up to ~~one thousand dollars~~ \$1,000 for each

1 violation found. The civil penalty shall be deposited, pursuant to
2 sections 35-146 and 35-147, in the state general fund.

3 D. Any party aggrieved by an order of the commission under this
4 section may request a hearing pursuant to section 23-947. The hearing and
5 decision shall be conducted pursuant to ~~the provisions of~~ section 23-941.

6 E. The commission shall adopt by rule a definition of unfair claim
7 processing practices and bad faith. In adopting a rule under this
8 subsection, the commission shall consider, among other factors, recognized
9 and approved claim processing practices within the insurance industry, the
10 commission's own experience in processing workers' compensation claims and
11 the workers' compensation and insurance laws of this state.

12 F. This section ~~shall not be construed as limiting~~ DOES NOT LIMIT
13 or ~~interfering~~ INTERFERE with the authority of the department of insurance
14 AND FINANCIAL INSTITUTIONS as provided by law to regulate any insurance
15 carriers, including the jurisdiction of the department of insurance AND
16 FINANCIAL INSTITUTIONS over unfair claim settlement practices as provided
17 in section 20-461.

18 Sec. 129. Section 23-950, Arizona Revised Statutes, is amended to
19 read:

20 23-950. Priority of actions

21 Actions and proceedings under this chapter and actions or
22 proceedings to which the commission, the ~~insurance~~ department, OF
23 INSURANCE AND FINANCIAL INSTITUTIONS or the state is a party in which any
24 question arises under this chapter or concerning an award of the
25 commission, or an order of the commission or ~~insurance~~ THE department OF
26 INSURANCE AND FINANCIAL INSTITUTIONS shall be advanced for trial or
27 hearing over civil actions, except election contests and actions affecting
28 the corporation commission.

29 Sec. 130. Section 23-961, Arizona Revised Statutes, is amended to
30 read:

31 23-961. Methods of securing compensation by employers;
32 deficit premium; civil penalty

33 A. Employers shall secure workers' compensation to their employees
34 in one of the following ways:

35 1. By insuring and keeping insured the payment of such compensation
36 with an insurance carrier authorized by the director of THE DEPARTMENT OF
37 insurance AND FINANCIAL INSTITUTIONS to write workers' compensation
38 insurance in this state.

39 2. By furnishing to the commission satisfactory proof of financial
40 ability to pay the compensation directly or through a workers'
41 compensation pool approved by the commission in the amount and manner and
42 when due as provided in this chapter. The requirements of this paragraph
43 may be satisfied by furnishing to the commission satisfactory proof that
44 the employer is a member of a workers' compensation pool approved by the
45 commission pursuant to section 23-961.01. The commission may require a

1 deposit or any other security from the employer for the payment of
2 compensation liabilities in an amount fixed by the commission, but not
3 less than ~~one hundred thousand~~ \$100,000 dollars for workers' compensation
4 liabilities. If the employer does not fully comply with the provisions of
5 this chapter relating to the payment of compensation, the commission may
6 revoke the authority of the employer to pay compensation directly.

7 B. An employer may not secure compensation to comply with this
8 chapter by any mechanism other than as provided in this section. No
9 insurance, combination or other program may be marketed, offered or sold
10 as workers' compensation that does not comply with this section. An
11 employer violates this chapter if the employer purchases or secures its
12 obligations under this chapter through a substitute for workers'
13 compensation that does not comply with this section.

14 C. Insurance carriers that transact the business of workers'
15 compensation insurance in this state are subject to the rules of the
16 director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS.

17 D. On application of an insurance carrier, the director of THE
18 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS may order the release
19 to the insurance carrier of all or part of the cash or securities that the
20 insurance carrier deposited before ~~the effective date of this amendment to~~
21 ~~this section~~ JULY 1, 2015 with the state treasurer pursuant to this
22 section. In determining whether to order the release of all or part of
23 the deposit, the director of THE DEPARTMENT OF insurance AND FINANCIAL
24 INSTITUTIONS shall consider all of the following:

25 1. The financial condition of the insurance carrier.

26 2. The insurance carrier's liabilities for workers' compensation
27 loss and loss expenses in this state.

28 3. Whether the insurance carrier is subject to a finding of
29 hazardous condition, an order of supervision, a delinquency proceeding or
30 any other regulatory action in this state, the insurance carrier's state
31 of domicile or any other state in which the insurance carrier transacted
32 the business of insurance.

33 4. Any other factors the director of THE DEPARTMENT OF insurance
34 AND FINANCIAL INSTITUTIONS determines are relevant to the application for
35 release of the deposit.

36 E. Except in the event of nonpayment of premiums, each insurance
37 carrier shall carry a risk to the conclusion of the policy period unless
38 the policy is cancelled by the employer or unless one or both of the
39 parties to a professional employer agreement terminate the agreement. The
40 policy period shall be agreed upon ON by the insurance carrier and the
41 employer.

42 F. At least thirty days' notice shall be given by the insurance
43 carrier to the employer and to the commission of any cancellation or
44 nonrenewal of a policy if the cancellation or nonrenewal is at the
45 election of the insurance carrier. The insurance carrier shall promptly

1 notify the commission of any cancellation by the employer or failure of
2 the employer to renew the policy. The failure to give notice of
3 nonrenewal if the nonrenewal is at the election of the insurance carrier
4 shall not extend coverage beyond the policy period. An insurance carrier
5 shall notify the commission on a form prescribed by the commission that it
6 has insured an employer for workers' compensation promptly after
7 undertaking to insure the employer.

8 G. Every insurance carrier on or before March 1 of each year shall
9 pay to the state treasurer for the credit of the administrative fund, in
10 lieu of all other taxes on workers' compensation insurance, a tax of not
11 more than three ~~per cent~~ PERCENT on all premiums collected or contracted
12 for during the year ending December 31 next preceding, less the deductions
13 from such total direct premiums for applicable cancellations, returned
14 premiums and all policy dividends or refunds paid or credited to
15 policyholders within this state and not reapplied as premiums for new,
16 additional or extended insurance. Every self-insured employer, including
17 workers' compensation pools, on or before March 31 of each year shall pay
18 a tax of not more than three ~~per cent~~ PERCENT of the premiums that would
19 have been paid by the employer if the employer had been fully insured by
20 an insurance carrier authorized to transact workers' compensation
21 insurance in this state during the preceding calendar year. The
22 commission shall adopt rules that shall specify the premium plans and
23 methods to be used for the calculation of rates and premiums and that
24 shall be the basis for the taxes assessed to self-insured employers. The
25 tax shall be not less than ~~two hundred fifty dollars~~ \$250 per annum and
26 shall be computed and collected by the commission and paid to the state
27 treasurer for the credit of the administrative fund at a rate not
28 exceeding three ~~per cent~~ PERCENT to be fixed annually by the industrial
29 commission OF ARIZONA. The rate shall be no more than is necessary to
30 cover the actual expenses of the industrial commission OF ARIZONA in
31 carrying out its powers and duties under this title. Any quarterly
32 payments of tax pursuant to subsection I of this section shall be deducted
33 from the tax payable pursuant to this subsection.

34 H. An insurance carrier may reduce the amount of premiums paid by
35 an employer by up to five ~~per cent~~ PERCENT if all of the following apply:

36 1. The insured employer complies with the drug testing policy
37 requirements prescribed in section 23-493.04.

38 2. The insured employer conducts drug testing of prospective
39 employees.

40 3. The insured employer conducts drug testing of an employee after
41 the employee has been injured.

42 4. The insured employer allows the employer's insurance carrier to
43 have access to the drug testing results under paragraphs 2 and 3 of this
44 subsection.

1 I. Any insurer that, pursuant to this section, paid or is required
2 to pay a tax of ~~two thousand dollars~~ \$2,000 or more for the preceding
3 calendar year shall file a quarterly report, in a form prescribed by the
4 commission, accompanied by a payment in an amount equal to the tax due at
5 the rates prescribed in subsection G of this section for premiums
6 determined pursuant to subsection G of this section or an amount equal to
7 twenty-five ~~per cent~~ PERCENT of the tax paid or required to be paid
8 pursuant to subsection G of this section for the preceding calendar year.
9 The quarterly payments shall be due and payable on or before the last day
10 of the month following the close of the quarter and shall be made to the
11 state treasurer.

12 J. If an overpayment of taxes results from the method prescribed in
13 subsection I of this section the industrial commission OF ARIZONA may
14 refund the overpayment without interest.

15 K. An insurer who fails to pay the tax prescribed by subsection G
16 or I of this section or the amount prescribed by section 23-1065,
17 subsection A is subject to a civil penalty equal to the greater of
18 ~~twenty-five dollars~~ \$25 or five ~~per cent~~ PERCENT of the tax or amount due
19 plus interest at the rate of one ~~per cent~~ PERCENT per month from the date
20 the tax or amount was due.

21 L. An insurance carrier authorized to write workers' compensation
22 insurance may not assess an employer premiums for services provided by a
23 contractor alleged to be an employee under section 23-902, subsection B or
24 C, unless the carrier has done both of the following:

25 1. Prepared written audit or field investigation findings
26 establishing that all applicable factors for determining employment status
27 under section 23-902 have been met.

28 2. Provided a copy of such findings to the employer in advance of
29 assessing a premium.

30 M. Notwithstanding section 23-901, paragraph 6, subdivision (i), a
31 sole proprietor may waive the sole proprietor's rights to workers'
32 compensation coverage and benefits if both the sole proprietor and the
33 insurance carrier of the employer subject to this chapter for which the
34 sole proprietor performs services sign and date a waiver that is
35 substantially in the following form:

36 I am a sole proprietor, and I am doing business
37 as (name of sole proprietor). I am performing work as
38 an independent contractor for (name of employer). I am
39 not the employee of (name of employer) for workers'
40 compensation purposes, and, therefore, I am not entitled to
41 workers' compensation benefits from (name of employer). I
42 understand that if I have any employees working for me, I must
43 maintain workers' compensation insurance on them.

44 _____
45 Sole proprietor Date

1 FINANCIAL INSTITUTIONS by the designated rating organization pursuant to
2 section 20-357, subsection B, unless the director requires the use of
3 rates from another rating organization, plus a uniform percentage increase
4 that applies to all classifications, that is determined by the designated
5 rating organization or, if the director directs, another rating
6 organization and that is subject to approval by the director. The
7 expected loss rates, ballast factors and other factors for use with the
8 uniform experience rating plan as described in title 20, chapter 2,
9 article 4 and filed with the director also apply to experience rated risks
10 in the assigned risk plan.

11 F. Rating classifications used in the assigned risk plan shall
12 conform to the uniform classification plan. Subclassifications and rating
13 rule deviations shall not be used in the assigned risk plan.

14 G. All insurers participating in workers' compensation or
15 occupational disease compensation insurance shall participate in the
16 assigned risk plan.

17 H. Distribution of assignments among insurers shall be made in
18 proportion to each insurer's share of the preceding calendar year's total
19 net direct workers' compensation and occupational disease compensation
20 insurance premium written in this state, as far as practicable.

21 I. An insurer that refuses to participate in the assigned risk plan
22 shall not be authorized to write workers' compensation coverage in this
23 state. If an insurer refuses to participate in the assigned risk plan
24 after being authorized to write workers' compensation coverage in this
25 state, the insurer's authorization shall be revoked. If an insurer
26 withdraws from or is terminated from writing workers' compensation
27 coverage in this state, the insurer remains responsible for all injuries
28 sustained during the period of coverage stated in the policies of that
29 insurer.

30 Sec. 132. Section 25-529, Arizona Revised Statutes, is amended to
31 read:

32 25-529. Title IV-D cases; alternative medical insurance
33 coverage

34 The director of the department of economic security may disseminate
35 information provided by the department of insurance AND FINANCIAL
36 INSTITUTIONS regarding individual medical insurance plans and may enter
37 into agreements with a consortium of other states to offer medical
38 insurance coverage to children in title IV-D cases.

39 Sec. 133. Section 28-667, Arizona Revised Statutes, is amended to
40 read:

41 28-667. Written accident report; definition

42 A. A law enforcement officer or public employee who, in the regular
43 course of duty, investigates a motor vehicle accident resulting in bodily
44 injury, death or damage to the property of any person in excess of \$2,000

1 or the issuance of a citation shall complete a written report of the
2 accident as follows:

3 1. Either at the time of and at the scene of the accident or after
4 the accident by interviewing participants or witnesses.

5 2. Within twenty-four hours after completing the investigation.

6 B. Every law enforcement officer or public employee who, in the
7 regular course of duty, investigates a motor vehicle accident that results
8 in damage to the property of any person in an amount of \$2,000 or less,
9 but that does not result in the issuance of a citation or bodily injury or
10 death, shall complete a portion of the written report of the accident.
11 The portion of the written report shall:

12 1. Be completed either at the time of and at the scene of the
13 accident or after the accident by interviewing participants or witnesses.

14 2. Be completed within twenty-four hours after completing the
15 investigation.

16 3. Include the following minimum information:

17 (a) The time, day, month and year of the accident.

18 (b) Information adequate to identify the location of the accident.

19 (c) Identifying information for all involved parties and witnesses,
20 including name, age, sex, address, telephone number, vehicle ownership and
21 registration and proof of insurance.

22 (d) A narrative description of the facts of the accident, a simple
23 diagram of the scene of the accident and the investigating officer's name,
24 agency and identification number.

25 C. The agency employing the officer or public employee:

26 1. Shall not allow a person to examine the accident report or any
27 related investigation report or a reproduction of the accident report or a
28 related investigation report if the request is for a commercial
29 solicitation purpose.

30 2. May require a person requesting the accident or related
31 investigative report to state under penalty of perjury that the report is
32 not examined or copied for a commercial solicitation purpose.

33 3. May retain the original report.

34 4. Shall maintain an electronic copy of the original report if the
35 agency elects not to retain the original report pursuant to paragraph 3 of
36 this subsection.

37 5. Shall immediately forward a copy of the report to the department
38 of transportation for its use.

39 6. Except as otherwise provided by law, on request shall provide a
40 copy of the unredacted report to the following:

41 (a) A person who is involved in the accident or the owner of a
42 vehicle involved in the accident or a representative of the person or
43 owner.

44 (b) Any insurer licensed pursuant to title 20 if the report is
45 related to an investigation into fraudulent claims, or any insurer that

1 writes automobile liability or motor vehicle liability policies and that
2 is both of the following:

3 (i) Under the jurisdiction of the department of insurance AND
4 FINANCIAL INSTITUTIONS or a self-insured entity or its agents, employees
5 or contractors in connection with claims investigation activities,
6 antifraud activities, rating or underwriting.

7 (ii) An insurer of a person or vehicle involved in the accident.

8 (c) An attorney licensed to practice law or to a licensed private
9 investigator representing a person involved in the accident in connection
10 with any civil, administrative or arbitration proceeding in any court or
11 government agency or before any self-regulatory body, including the
12 service of process, investigation in anticipation of litigation and the
13 execution or enforcement of judgments and orders, or pursuant to a court
14 order.

15 (d) An insurance support organization as defined in section 20-2102
16 that provides services in connection with claims investigation activities,
17 antifraud activities, rating or underwriting.

18 D. If a request is made pursuant to subsection C, paragraph 6,
19 subdivision (a) or (c) of this section and the accident report indicates
20 that a criminal complaint has been issued, before the report is released
21 the personal identifying information regarding any victim shall be
22 redacted from the accident report pursuant to section 13-4434.

23 E. A law enforcement agency may deny a request for a copy of an
24 unredacted accident report if the agency determines that release of the
25 report would be harmful to a criminal investigation.

26 F. The department may place notes, date stamps, identifying
27 numbers, marks or other information on the copies as needed, if they do
28 not alter the original information reported by the investigating officer
29 or public employee.

30 G. Any law restricting the distribution of personal identifying
31 information by a business entity described in subsection C, paragraph 6,
32 subdivisions (b) and (d) of this section applies to personal identifying
33 information contained in an accident report. If a person who receives
34 information under this section is not otherwise subject to distribution
35 restrictions for information contained in accident reports, the person
36 shall not release the report or any information contained in the report
37 except to those persons designated in subsection C, paragraph 6 of this
38 section.

39 H. For the purposes of this section, "commercial solicitation
40 purpose" means a request for an accident report if there is neither:

41 1. A relationship between the person or the principal of the person
42 requesting the accident report and any party involved in the accident.

43 2. A reason for the person to request the report other than for the
44 purposes of soliciting a business or commercial relationship.

1 Sec. 134. Section 28-2166, Arizona Revised Statutes, is amended to
2 read:

3 28-2166. Registration of vehicle rented without a driver;
4 liability insurance; joint liability; violation;
5 classification; definition

6 A. The department of transportation shall not allow an owner who is
7 engaged in the business of renting or who intends to rent a motor vehicle
8 in this state without a driver to register or to rent the motor vehicle
9 until either:

10 1. The owner has procured public liability insurance with an
11 insurance company approved by the department of insurance AND FINANCIAL
12 INSTITUTIONS.

13 2. The owner has furnished to the department of transportation
14 satisfactory proof of the owner's ability to respond in damages in the
15 amount of ~~fifteen thousand dollars~~ \$15,000 if one motor vehicle is
16 registered and ~~ten thousand dollars~~ \$10,000 for each additional motor
17 vehicle. Proof of the ability to respond in damages in the amount of ~~one~~
18 ~~hundred thousand dollars~~ \$100,000 is sufficient for any number of motor
19 vehicles.

20 B. The policy of insurance required by subsection A OF THIS SECTION
21 shall:

22 1. Insure the renter against:

23 (a) Liability arising from the renter's negligence in the operation
24 of the rented motor vehicle in an amount of at least ~~fifteen thousand~~
25 ~~dollars~~ \$15,000 for any one person injured or killed and ~~thirty~~
26 ~~thousand dollars~~ \$30,000 for any number more than one PERSON injured or
27 killed in any one accident.

28 (b) Liability of the renter for property damage in the amount of at
29 least ~~ten thousand dollars~~ \$10,000 for any one accident.

30 2. Cover the liability of the renter to a passenger in the rented
31 motor vehicle unless the owner gives the renter a written notice that the
32 policy does not cover the liability.

33 C. Subject to ~~the provisions of~~ subsection D of this section, the
34 public liability insurance or the obligation of a self-insured owner
35 pursuant to this section is primary coverage to any other available
36 liability insurance coverage that is available and applicable for any
37 damages and injury caused by a renter unless one of the following ~~apply~~
38 APPLIES:

39 1. It is disclosed in the rental agreement to the renter the
40 following:

41 "The owner does not extend any of its motor vehicle financial
42 responsibility or provide public liability insurance coverage to the
43 renter, authorized drivers or any other driver."

44 This disclosure shall be by one of the following methods:

1 (a) In at least ~~ten point~~ TEN-POINT bold type in the rental or
2 lease agreement and affirmatively acknowledged by the renter.

3 (b) In the terms of the master agreement maintained with the
4 renter.

5 (c) At the time a reservation is made by a renter online, the
6 disclosure is made in a conspicuous manner.

7 2. The renter purchased public liability insurance from the owner
8 that provides coverage that complies with subsection B of this section to
9 renters and authorized drivers of rental motor vehicles for liability that
10 arises from the operation of the rental motor vehicle. Any liability
11 insurance purchased from the owner pursuant to this subsection shall apply
12 and be exhausted prior to any other applicable and available liability
13 insurance coverage.

14 D. The owner regulated by this section:

15 1. Shall respond to the ~~third party~~ THIRD-PARTY claim, provide
16 financial responsibility as prescribed in subsection B of this section and
17 provide a defense for all claims for damages or liability arising out of
18 the ownership, maintenance or use of a motor vehicle if there is an
19 accident, there are damages or injuries that are caused by the renter and
20 one of the following APPLIES:

21 (a) The renter does not have any other liability coverage ~~which~~
22 THAT is available and applicable to the loss.

23 (b) The owner has not fully and accurately provided to the claimant
24 the contact information regarding the renter, including the name, THE
25 address, THE applicable insurance company and the policy number or the
26 insurance company's claim number, within twenty days after the owner is
27 notified of the claim.

28 2. After the owner has assumed defense of the claim under this
29 subsection, cannot tender the claim to the excess insurer without the
30 written agreement from the excess insurer and the excess insurer is not
31 responsible for any costs incurred by the owner before the tender is
32 accepted.

33 3. Has no obligation to provide a defense after the owner has paid
34 its coverage limits, if the renter does not have any other liability
35 coverage that is available and applicable to the loss.

36 4. In any situation in which damages or injuries are caused by a
37 person who is operating a motor vehicle and who is not authorized by the
38 written rental agreement to do so, has a right of subrogation against the
39 person who rented the motor vehicle for damages that are caused to the
40 owner and that arose out of the unauthorized operation of the owner's
41 motor vehicle.

42 5. Except as provided in paragraph 4 of this subsection, has no
43 other right of subrogation against the person who rented the motor
44 vehicle.

1 E. In a situation where the owner does not provide primary
2 coverage, the public liability insurance or the obligation of the
3 self-insured owner pursuant to this section shall provide excess coverage
4 up to the limits prescribed in subsection B of this section.

5 F. The department of transportation shall cancel the registration
6 of a motor vehicle rented without a driver if the owner has failed to
7 comply with this section.

8 G. The owner of a motor vehicle who rents it to another without a
9 driver, other than as a bona fide transaction involving the sale of the
10 motor vehicle, without having procured the required public liability
11 insurance or without qualifying as a self-insurer pursuant to section
12 28-4007 with at least the minimum limits prescribed in subsection A of
13 this section is jointly and severally liable with the renter for damage
14 caused by the negligence of the renter operating the motor vehicle.

15 H. The owner of a motor vehicle who rents a motor vehicle without a
16 driver, other than as a bona fide transaction involving the sale of the
17 motor vehicle, without first complying with this section is guilty of a
18 class 2 misdemeanor.

19 I. As used in this section, an owner who is engaged in the business
20 of renting or who intends to rent a motor vehicle without a driver does
21 not include a person who operates a golf course that rents golf carts that
22 are intended to be used primarily for playing a round of golf and that are
23 only incidentally operated or moved on a highway.

24 J. ~~As used in~~ FOR THE PURPOSES OF this section, "renter" includes
25 any person operating a motor vehicle with permission of the person who has
26 rented it.

27 Sec. 135. Section 28-4007, Arizona Revised Statutes, is amended to
28 read:

29 28-4007. Self-insurers

30 A. Except as provided in subsection E of this section, a person in
31 whose name more than ten motor vehicles are registered or who is required
32 to comply with the financial responsibility requirements prescribed in
33 article 2 of this chapter may qualify as a self-insurer or partial
34 self-insurer by obtaining a certificate of self-insurance or partial
35 self-insurance issued by the director as provided in this section.

36 B. After determining that the person is financially able and will
37 continue to be able to pay judgments obtained against the person, the
38 director may issue a certificate of self-insurance or partial
39 self-insurance.

40 C. On not less than five days' notice and after a hearing, the
41 director may cancel a certificate of self-insurance or a certificate of
42 partial self-insurance on reasonable grounds. For the purposes of this
43 subsection, "reasonable grounds" includes any of the following
44 circumstances:

1 1. Failure to pay a judgment within thirty days after the judgment
2 becomes final.

3 2. Determination by the director that the person has not complied
4 with the financial responsibility requirements of this chapter.

5 3. Determination by the director that the person knowingly
6 submitted false information that is required by this chapter to this
7 state, a political subdivision of this state, a court or a law enforcement
8 agency.

9 4. Determination by the director that the person knowingly failed
10 to respond within thirty days to a claim for damages for liability arising
11 out of the ownership, maintenance or use of a motor vehicle.

12 5. Determination by the director that the person does not meet the
13 bond requirements prescribed in section 28-4011.

14 D. A person who is required to comply with the financial
15 responsibility requirements prescribed in article 2 of this chapter may
16 file an application with the department for partial self-insurance to
17 cover any portion of the financial responsibility requirements.

18 E. A person may also qualify as a self-insurer if the person is
19 insured by a captive insurer that is domiciled and authorized by the
20 department of insurance AND FINANCIAL INSTITUTIONS to transact business in
21 this state and that provides coverage in an amount of at least that
22 required by section 28-4033.

23 F. A person applying for self-insurance or partial self-insurance
24 pursuant to this section shall comply with both of the following at the
25 time of application:

26 1. The person shall submit evidence in a form prescribed by the
27 director that the person is financially able and will continue to be able
28 to pay the entire amount of self-insurance or partial self-insurance
29 allowed by the director for judgments obtained against the person for
30 liability arising out of the ownership, maintenance or use of a motor
31 vehicle.

32 2. If applicable, the person shall submit evidence in a form
33 prescribed by the director that the person has a valid insurance policy
34 that meets the requirements prescribed in section 28-4033 and that is
35 issued by an insurer that holds a valid certificate of authority or that
36 is ~~permitted~~ ALLOWED to transact surplus lines insurance in this state.

37 G. The director may adopt rules to implement this section,
38 including rules requiring additional evidence that the person meets the
39 financial responsibility requirements of this chapter and rules providing
40 for the periodic submission of evidence demonstrating that the person
41 meets the standards required by the department to qualify as a
42 self-insurer, a captive insurer or partial self-insurer.

43 H. The director of the department of transportation, in
44 consultation with the director of the department of insurance AND
45 FINANCIAL INSTITUTIONS, may establish procedures that allow a person to

1 apply for and file a certificate of either partial self-insurance or
2 self-insurance.

3 I. The director of the department of transportation, in
4 consultation with the director of the department of insurance AND
5 FINANCIAL INSTITUTIONS, shall establish procedures to exchange information
6 regarding changes in the self-insurance status of persons who are subject
7 to this section.

8 Sec. 136. Section 28-4008, Arizona Revised Statutes, is amended to
9 read:

10 28-4008. Assigned risk plans

11 A. After consultation with insurance companies authorized to issue
12 motor vehicle liability policies in this state, the director of the
13 department of insurance AND FINANCIAL INSTITUTIONS shall approve a
14 reasonable plan for the equitable apportionment among the companies of
15 applicants for policies and for motor vehicle liability policies who are
16 in good faith entitled to but are unable to procure the policies through
17 ordinary methods.

18 B. After a plan has been approved, all insurance companies
19 authorized to issue motor vehicle liability policies in this state shall
20 subscribe to and participate in the plan.

21 C. An applicant for a policy under this section, a person insured
22 under an assigned risk plan and an insurance company affected may appeal
23 to the director of the department of insurance AND FINANCIAL INSTITUTIONS
24 from any ruling or decision of the manager or committee designated to
25 operate the plan. Within ten days after notice of an order or act of the
26 director of the department of insurance AND FINANCIAL INSTITUTIONS, a
27 person aggrieved under this section by the order or act may file a
28 petition in the superior court in the county in which the director of the
29 department of insurance AND FINANCIAL INSTITUTIONS is domiciled against
30 the director of the department of insurance AND FINANCIAL INSTITUTIONS for
31 a review of the order or act. The court shall summarily hear the petition
32 and may make any appropriate order or decree.

33 Sec. 137. Section 28-4038, Arizona Revised Statutes, is amended to
34 read:

35 28-4038. Transportation network services; financial
36 responsibility requirements; survey

37 A. For a transportation network company that requires a
38 transportation network company driver to accept rides that are booked and
39 paid for exclusively through the transportation network company's digital
40 network or software application and during the time in which the
41 transportation network company driver is logged in to the transportation
42 network company's digital network or software application to be a driver,
43 but is not in the act of providing transportation network services, the
44 following insurance coverage shall be maintained:

1 ~~1. Before March 1, 2016, the transportation network company driver~~
2 ~~shall maintain a motor vehicle liability insurance policy that meets at~~
3 ~~least the requirements of section 28-4009. A transportation network~~
4 ~~company shall provide motor vehicle liability insurance coverage in the~~
5 ~~amount of twenty-five thousand dollars because of bodily injury to or~~
6 ~~death of one person in any one accident, subject to the limit for one~~
7 ~~person, fifty thousand dollars because of bodily injury to or death of two~~
8 ~~or more persons in any one accident and twenty thousand dollars because of~~
9 ~~injury to or destruction of property of others in any one accident in the~~
10 ~~event a transportation network company driver's policy excludes coverage~~
11 ~~according to the policy's terms.~~

12 ~~2. From and after February 29, 2016, the transportation network~~
13 ~~company driver or the transportation network company, or both, shall~~
14 ~~provide primary motor vehicle liability insurance coverage in the amount~~
15 ~~of twenty-five thousand dollars \$25,000 because of bodily injury to or~~
16 ~~death of one person in any one accident, subject to the limit for one~~
17 ~~person, fifty thousand dollars \$50,000 because of bodily injury to or~~
18 ~~death of two or more persons in any one accident and twenty thousand~~
19 ~~dollars \$20,000 because of injury to or destruction of property of others~~
20 ~~in any one accident. Coverage shall be maintained through any of the~~
21 ~~following:~~

22 ~~(a) 1. A private passenger motor vehicle policy maintained by the~~
23 ~~transportation network company driver that expressly provides liability~~
24 ~~coverage while the driver is logged in to the transportation network~~
25 ~~company's digital network or software application to be a driver.~~

26 ~~(b) 2. A motor vehicle liability policy maintained by the~~
27 ~~transportation network company.~~

28 ~~(c) 3. A commercial motor vehicle liability policy.~~

29 B. For a transportation network company that requires a
30 transportation network company driver to accept rides that are booked and
31 paid for exclusively through the transportation network company's digital
32 network or software application and during the time in which the
33 transportation network company driver is providing transportation network
34 services, the transportation network company driver or the transportation
35 network company, or both, shall maintain the following insurance
36 coverages:

37 1. Primary commercial motor vehicle liability insurance that covers
38 the transportation network company driver's provision of transportation
39 network services in a minimum amount of ~~two hundred fifty thousand dollars~~
40 ~~\$250,000 per incident.~~

41 2. Commercial uninsured motorist coverage in a minimum amount of
42 ~~two hundred fifty thousand dollars \$250,000 per incident.~~

43 C. ~~From and after February 29, 2016,~~ Unless an insurance policy
44 expressly provides coverage or contains an amendment or endorsement that
45 expressly provides coverage, the transportation network company driver's

1 insurance policy and the motor vehicle owner's personal motor vehicle
2 insurance policy shall not be required to provide coverage for the
3 transportation network company vehicle, the transportation network company
4 driver, the motor vehicle owner or any third party while a transportation
5 network company driver is logged in to a transportation network company's
6 digital network or software application to be a driver or is providing
7 transportation network services.

8 D. Notwithstanding subsection C of this section, an insurer may
9 offer, for the period during which a transportation network company driver
10 is logged in to a transportation network company's digital network or
11 software application to be a driver or is providing transportation network
12 services, one of the following:

13 1. A motor vehicle liability insurance policy expressly providing
14 such coverage.

15 2. An amendment or endorsement to an existing motor vehicle
16 liability insurance policy specifically providing such coverage.

17 E. An insurance policy required by this section is deemed to
18 satisfy the financial responsibility requirements for a motor vehicle
19 insurance policy under this title.

20 F. A transportation network company driver shall carry proof of
21 insurance in the transportation network company vehicle at all times while
22 logged in to a transportation network company's digital network or
23 software application to be a driver or is providing transportation network
24 services. If an accident occurs involving a transportation network
25 company vehicle, the transportation network company driver shall provide
26 proof of insurance to the parties involved in the accident at the time of
27 the accident. The transportation network company driver shall also notify
28 the transportation network company of the accident.

29 G. In a claims coverage investigation, transportation network
30 companies and any insurer providing coverage as prescribed in this section
31 shall fully cooperate in the exchange of information, including the
32 precise times that a transportation network company driver logged on and
33 off of the transportation network company's digital network or software
34 application in the twenty-four-hour period immediately preceding the
35 accident, and shall disclose to each other a clear description of the
36 coverage, exclusions and limits provided under any insurance policy each
37 party issued or maintained.

38 ~~H. From and after February 29, 2016,~~ This section and section
39 28-4009 do not create an obligation for an insurer that issues coverage to
40 which section 20-1631 applies to offer, provide or issue a motor vehicle
41 liability insurance policy or an endorsement or amendment that includes
42 coverage for any liability arising while a transportation network company
43 driver is logged in to the transportation network company's digital
44 network or software application to be a driver or is providing
45 transportation network services.

1 I. An insurance policy required by this section may be placed with
2 an insurer authorized to transact insurance in this state pursuant to
3 title 20, chapter 2, article 1 or a surplus lines insurer pursuant to
4 title 20, chapter 2, article 5.

5 J. The department of insurance AND FINANCIAL INSTITUTIONS, as part
6 of its annual survey of insurance companies, may request information from
7 any property and casualty insurer authorized to write private passenger
8 motor vehicle coverage in this state, including information regarding:

9 1. Whether the insurer offers for purchase a policy or an
10 endorsement or amendment that covers transportation network company
11 drivers while the driver is logged in to a transportation network
12 company's digital network or software application to be a driver or is
13 providing transportation network services.

14 2. The number of those policies, endorsements or amendments that
15 have been purchased during the reporting period.

16 3. The number of those policies, endorsements or amendments that
17 have been canceled during the reporting period.

18 Sec. 138. Section 28-4133, Arizona Revised Statutes, is amended to
19 read:

20 28-4133. Insurance identification cards; documentary
21 evidence; exception

22 A. An authorized insurer shall issue at least two motor vehicle
23 insurance identification cards for a motor vehicle or automobile liability
24 policy that meets the requirements of section 28-4009 or section 28-4033,
25 subsection A, paragraph 2, subdivision (c).

26 B. The card shall include the number that the department assigns to
27 the insurer and shall state that:

28 1. A person is required to possess evidence of financial
29 responsibility within the motor vehicle.

30 2. The card or an image of the card that is displayed on a wireless
31 communication device meets the requirement prescribed in paragraph 1 of
32 this subsection.

33 3. The card or an image of the card that is displayed on a wireless
34 communication device is satisfactory evidence if the person is asked by
35 the department of transportation to verify financial responsibility on the
36 motor vehicle.

37 C. All documentary evidence issued by an insurer or an authorized
38 agent of the insurer shall indicate:

39 1. The name of the insurer as listed with the department of
40 insurance AND FINANCIAL INSTITUTIONS.

41 2. For the purpose of verifying insurance coverage, the mailing
42 address and telephone number of the insurer or an authorized agent of the
43 insurer.

44 3. In order to accurately verify insurance coverage, other
45 information as required by the department of transportation.

1 4. If a binder is issued by an authorized agent of an insurer, the
2 name, address and telephone number of the agent.

3 D. This section does not apply to a commercial vehicle policy that
4 provides automatic coverage for additional or newly acquired vehicles
5 until the policy's expiration date.

6 Sec. 139. Section 28-6923, Arizona Revised Statutes, is amended to
7 read:

8 28-6923. Bid requirements; procedure; bond

9 A. All items of construction or reconstruction of department
10 facilities involving an expenditure of ~~one hundred eighty-nine thousand~~
11 ~~dollars~~ \$189,000 or more shall be called for by advertising in a newspaper
12 of general circulation published in this state for either:

13 1. Two consecutive publications if it is a weekly newspaper.

14 2. Two publications at least six but not more than ten days apart
15 if it is a daily newspaper.

16 B. In fiscal year 2008-2009 and each fiscal year thereafter, the
17 amount provided in subsection A of this section shall be adjusted by the
18 annual percentage change in the GDP price deflator as defined in section
19 41-563.

20 C. The advertisement shall state specifically the character of the
21 work to be done and where a person may obtain copies of the plans,
22 specifications and complete information as to the proposed work.

23 D. The bidding information provided shall state specifically the
24 character of the work to be performed and the kind, quantity and quality
25 of materials or supplies to be furnished. The plans and specifications:

26 1. Shall be sufficiently complete, definite and explicit to ~~permit~~
27 ALLOW informed, free, open and competitive bidding on a common basis.

28 2. May require performance on the basis of either means and methods
29 specifications or end result specifications.

30 3. If end result specifications are used, shall provide an
31 objective or standard to be achieved with the successful bidder expected
32 to exercise the bidder's skill and ingenuity in achieving that objective
33 or standard of performance by selecting the means and manner of
34 performance and by assuming a corresponding responsibility for that
35 selection.

36 E. If contractor insurance is required for construction or
37 reconstruction pursuant to this section, the insurance shall be placed
38 with an insurer authorized to transact insurance in this state pursuant to
39 title 20, chapter 2, article 1 or a surplus lines insurer approved and
40 identified by the director of the department of insurance AND FINANCIAL
41 INSTITUTIONS pursuant to title 20, chapter 2, article 5.

42 F. A bid shall be accompanied by a certified check, cashier's check
43 or surety bond for ten ~~per cent~~ PERCENT of the amount of the bid included
44 in the proposal as a guarantee that the contractor will enter into a
45 contract to perform the proposal pursuant to the plans and specifications.

1 G. The certified check, cashier's check or surety bond shall be
2 returned to the contractors whose proposals are not accepted and to the
3 successful contractor on the execution of a satisfactory bond and contract
4 as provided in this article.

5 H. The surety bond provided pursuant to subsection F of this
6 section shall be executed and furnished as required by title 34, chapter
7 2, and the conditions and provisions of the surety bid bond regarding the
8 surety's obligations shall follow the form required under section 34-201,
9 subsection A, paragraph 3.

10 I. If a bid that is satisfactory to the board is received, it shall
11 let a contract to the lowest responsible bidder, on the contractor giving
12 performance and payment bonds that follow the form and include the
13 provisions required by title 34, chapter 2, article 2.

14 J. If the bids received for construction or reconstruction are not
15 satisfactory to the board, a second call shall be made. If they are again
16 rejected by the board, it may authorize the state engineer to construct or
17 reconstruct the item as it deems most advantageous.

18 K. In determining the lowest responsible bidder under this section,
19 the department and the board may consider the time of completion proposed
20 by the bidder if the department and the board determine that this
21 procedure will serve the public interest by providing a substantial fiscal
22 benefit or that the use of the traditional awarding of contracts is not
23 practicable for meeting desired construction standards or delivery
24 schedules and if the formula for considering the time of completion is
25 specifically stated in the bidding information.

26 L. This section does not prohibit a change to a construction
27 contract that either:

28 1. Does not alter the scope of the work under a contract and the
29 cost of the change does not exceed ten ~~per cent~~ PERCENT of the contract
30 amount or ~~fifty thousand dollars~~ \$50,000, whichever is greater.

31 2. Does alter the scope of the work if the cost of the change does
32 not exceed ten ~~per cent~~ PERCENT of the contract amount or ~~fifty thousand~~
33 ~~dollars~~ \$50,000, whichever is greater, and the changed work is within
34 twenty ~~per cent~~ PERCENT of the total project length.

35 M. If a project is funded completely with private monies, the
36 private entity is not required to comply with subsections A through L of
37 this section if the private entity complies with all of the following:

38 1. Before advertising for bids, submits to the department a bond
39 that is issued by a surety insurer authorized to do business in this state
40 and that is in an amount equal to one hundred twenty-five ~~per cent~~ PERCENT
41 of the anticipated construction cost of the project, including
42 construction management and contractor costs.

43 2. Solicits sealed bids from at least four contractors who are
44 prequalified by the department to perform a contract of the anticipated
45 dollar amount of the construction.

1 3. Awards the contract to the best bidder taking into account price
2 and other criteria as provided in the bid documents.

3 4. Obtains bonds from the selected contractor that provide the same
4 coverage as performance and payment bonds issued under title 34, chapter
5 2, article 2.

6 5. Uses department construction standards.

7 6. Pays all costs of department reviews of the contract and
8 inspections of the project.

9 N. For the purposes of this section, a project is funded completely
10 with private monies if all of the following apply:

11 1. The contractor is paid entirely with monies from private
12 entities.

13 2. The private entities hire a competent construction manager and
14 contractor who do not have an affiliation with each other.

15 3. The private entities either pay all costs of design or reimburse
16 the department for all costs of design.

17 Sec. 140. Section 28-7369, Arizona Revised Statutes, is amended to
18 read:

19 28-7369. Insurance requirements in procurements

20 If contractor insurance is required for services procured pursuant
21 to this article, the insurance shall be placed with an insurer authorized
22 to transact insurance in this state pursuant to title 20, chapter 2,
23 article 1 or a surplus lines insurer approved and identified by the
24 director of the department of insurance AND FINANCIAL INSTITUTIONS
25 pursuant to title 20, chapter 2, article 5.

26 Sec. 141. Section 28-7704, Arizona Revised Statutes, is amended to
27 read:

28 28-7704. Procurements

29 A. The department:

30 1. May procure services under this chapter using any of the
31 following:

32 (a) Requests for project proposals in which the department
33 describes a class of transportation facilities or a geographic area in
34 which private entities are invited to submit proposals to develop
35 transportation facilities.

36 (b) Solicitations using requests for qualifications, short-listing
37 of qualified proposers, requests for proposals, negotiations, best and
38 final offers or other procurement procedures.

39 (c) Procurements seeking from the private sector development and
40 finance plans most suitable for the project.

41 (d) Best value selection procurements based on price or financial
42 proposals, or both, or other factors.

43 (e) Other procedures that the department determines may further the
44 implementation of this chapter.

1 2. Shall procure services under this chapter using unsolicited
2 proposals if the department determines that there is sufficient merit to
3 pursue any unsolicited proposal and a reasonable opportunity for other
4 entities to submit competing proposals for consideration and a possible
5 contract award as appropriate.

6 B. For any procurement in which the department issues a request for
7 qualifications, request for proposals or similar solicitation document,
8 the request shall generally set forth the factors that will be evaluated
9 and the manner in which responses will be evaluated. If contractor
10 insurance is required for services procured pursuant to this section the
11 insurance shall be placed with an insurer authorized to transact insurance
12 in this state pursuant to title 20, chapter 2, article 1 or a surplus
13 lines insurer approved and identified by the director of the department of
14 insurance AND FINANCIAL INSTITUTIONS pursuant to title 20, chapter 2,
15 article 5.

16 C. In evaluating proposals, the department may accord such relative
17 weight to factors such as cost, financial commitment, innovative
18 financing, technical, scientific, technological or socioeconomic merit and
19 other factors as the department deems appropriate to obtain the best value
20 for this state.

21 D. The department may pay a stipend to a proposer based on the
22 department's estimate, in its sole discretion, of the value of the work
23 product received, but only if the department has determined that the
24 proposal submitted was responsive to the department's request for
25 proposals and met all requirements established by the department for the
26 project. In exchange for the stipend, the department may require the
27 recipient to grant to the department the right to use any work product
28 contained in the recipient's proposal, including technologies, techniques,
29 methods, processes and information contained in the recipient's project
30 design.

31 E. The department may charge and retain an administrative fee for
32 the evaluation of an unsolicited project proposal.

33 F. The department may procure services, award agreements and
34 administer revenues as authorized in this section notwithstanding any
35 requirements of any other state or local statute, regulation or law
36 relating to public bidding or other procurement procedures or other
37 provisions otherwise applicable to public works, services or utilities.

38 G. The department may retain financial, legal and other consultants
39 and experts inside or outside the public sector to assist in the
40 evaluation, negotiation and development of eligible facilities under this
41 chapter with a minimum of five years' experience working in that capacity
42 with public-private partnerships.

43 H. The department may spend monies that are reasonably necessary
44 for the development of procurements, evaluation of concepts or proposals,

1 negotiation of agreements and implementation of agreements for development
2 or operation of eligible facilities under this chapter.

3 I. Before the department begins the process for procuring services
4 as prescribed in subsection A of this section, the department shall hold
5 at least one public hearing to receive comments on user charges, tolls,
6 fares or similar charges.

7 Sec. 142. Section 29-609, Arizona Revised Statutes, is amended to
8 read:

9 29-609. Purpose; insurance business

10 A. Except as provided in subsection B of this section, a limited
11 liability company may be organized under this chapter and may conduct or
12 promote business and other activities for any lawful purpose, except
13 banking.

14 B. A limited liability company shall not be an insurer as defined
15 in section 20-104 unless as a title insurance agent as defined in section
16 20-1562 or as a pure captive insurer as defined in section 20-1098 who is
17 expressly authorized by the director of the department of insurance AND
18 FINANCIAL INSTITUTIONS pursuant to title 20. For the purposes of title
19 insurance transactions or pure captive insurance business, the members of
20 the limited liability company are individually responsible, equally and
21 ratably, and not one for another, for all contracts, debts and engagements
22 of the limited liability company, to the extent of the amount of each
23 member's initial investment in the limited liability company.

24 Sec. 143. Section 29-3108, Arizona Revised Statutes, is amended to
25 read:

26 29-3108. Nature, purpose and duration of limited liability
27 company

28 A. A limited liability company is an entity distinct from its
29 member or members.

30 B. Except as provided in subsections C and D of this section, a
31 limited liability company may have any lawful purpose, regardless of
32 whether the purpose is for profit.

33 C. A limited liability company may not engage in the business of
34 banking.

35 D. A limited liability company may not be an insurer as defined in
36 section 20-104 unless as a title insurance agent as defined in section
37 20-1562 or as a pure captive insurer as defined in section 20-1098 that is
38 expressly authorized by the director of the department of insurance AND
39 FINANCIAL INSTITUTIONS pursuant to title 20. For the purposes of title
40 insurance transactions or pure captive insurance business, the members of
41 the company are individually responsible, equally and ratably, and not one
42 for another, for all contracts, debts and engagements of the company, to
43 the extent of the amount of each member's initial investment in the
44 company.

45 E. A limited liability company has perpetual duration.

1 Sec. 144. Section 32-1004, Arizona Revised Statutes, is amended to
2 read:

3 32-1004. Exemptions

4 A. The following persons are exempt from the provisions of this
5 chapter when engaged in the regular course of their respective businesses
6 but shall comply with the requirements of section 32-1051, paragraphs 2
7 through 7 and section 32-1055, subsection C and subsection D, paragraphs
8 1, 2, 3 and 5:

9 1. Attorneys-at-law.

10 2. A person regularly employed on a regular wage or salary in the
11 capacity of credit person or a similar capacity, except as an independent
12 contractor.

13 3. Banks, including trust departments of a bank, fiduciaries and
14 financing and lending institutions.

15 4. Common carriers.

16 5. Title insurers, title insurance agents and abstract companies
17 while doing an escrow business.

18 6. Licensed real estate brokers.

19 7. Employees of licensees under this chapter.

20 8. Substation payment offices employed by or serving as independent
21 contractors or public utilities.

22 9. A person licensed pursuant to title 6, chapter 7.

23 10. A person licensed pursuant to title 6, chapter 9.

24 11. A person licensed pursuant to title 6, chapter 14, article 1.

25 12. A participant in a finance transaction in which a lender
26 receives the right to collect commercial claims due the borrower by
27 assignment, by purchase or by the taking of a security interest in those
28 commercial claims.

29 13. An accounting, bookkeeping or billing service provider that
30 complies with all of the following:

31 (a) Does not accept accounts that are contractually past due at the
32 time of receipt.

33 (b) Does not initiate any contact with individual debtors except
34 for the initial written notice of the amount owing and one written
35 follow-up notice.

36 (c) Does not give or send to any debtor a written communication
37 that requests or demands payment.

38 (d) Does not receive or have access to monies paid by debtors or
39 their insurers.

40 (e) All communications with the debtors are done in the name of the
41 creditor.

42 14. A person collecting claims owed, due or asserted to be owed or
43 due to a financial institution the deposits of which are insured by an
44 agency of the federal government, or any affiliate of the financial
45 institution, if the person is related by common ownership or affiliated by

1 corporate control with the financial institution and collects the claims
2 only for the financial institution or any affiliate of the financial
3 institution.

4 15. A person who is licensed pursuant to title 20, chapter 2,
5 article 3, 3.1, 3.2, 3.3 or 3.5 and who is authorized to collect premiums
6 under an insurance policy financed by a premium finance agreement as
7 defined in section 6-1401.

8 16. A PERSON THAT IS LICENSED PURSUANT TO TITLE 20, CHAPTER 2,
9 ARTICLE 9, THAT IS AUTHORIZED TO ACT AS AN ADMINISTRATOR FOR AN INSURER AS
10 DEFINED IN SECTION 20-485 AND THAT COLLECTS CHARGES PURSUANT TO SECTION
11 20-485.09, SUBSECTION B.

12 B. For the purposes of subsection A, paragraph 12 of this section:

13 1. A transaction shall not be deemed a finance transaction if the
14 primary purpose is to facilitate the collection of claims.

15 2. Commercial claim does not include an account arising from the
16 purchase of a service or product intended for personal, family or
17 household use.

18 C. For the purposes of subsection A, paragraph 13, subdivision (b)
19 of this section, the initial written notice and follow-up notice may
20 contain only the following information:

21 1. The name, address and telephone and telefacsimile numbers of the
22 creditor.

23 2. The amount due and an itemization of that amount.

24 3. The date payment is due.

25 4. The address or place where payment is to be made.

26 5. If the payment is past due, that payment is past due.

27 D. For a person who is exempt under subsection A, paragraph 14 of
28 this section, the superintendent shall investigate complaints of residents
29 of this state relating to any violations of section 32-1051, paragraphs 2
30 through 7 or section 32-1055, subsection C or subsection D, paragraph 1,
31 2, 3 or 5 and may examine the books, accounts, claims and files of a
32 person that relate to the complaint. A person who is exempt and who
33 violates the provisions of section 32-1051, paragraphs 2 through 7 or
34 section 32-1055, subsection C or subsection D, paragraph 1, 2, 3 or 5 is
35 subject to the provisions of sections 6-132, 6-136 and 6-137.

36 Sec. 145. Section 32-1134, Arizona Revised Statutes, is amended to
37 read:

38 32-1134. Powers and duties of registrar

39 A. The registrar shall:

40 1. Establish assessments and maintain the fund balance at a level
41 sufficient to pay operating costs and anticipated claims using the cash
42 basis of accounting.

43 2. Cause an examination of the fund to be made every three years by
44 an independent certified public accountant.

1 D. The county recorder of the county in which the bond and contract
2 are recorded shall index the bond and contract under the index
3 classification in which mechanics' and materialmen's liens are recorded.

4 Sec. 147. Section 33-1004, Arizona Revised Statutes, is amended to
5 read:

6 33-1004. Discharge of mechanic's liens; bond; limitations of
7 actions; discharge of surety; judgment

8 A. After perfection of a lien pursuant to this article, an owner,
9 including any person who has a legal or equitable interest in the land
10 ~~which~~ THAT is subject to the lien, a contractor, subcontractor, mortgagee
11 or other lien creditor, ~~may~~, either before or after the commencement of an
12 action to foreclose such lien, MAY cause to be recorded in the office of
13 the county recorder, in the county in which the land is located, a surety
14 bond in the form described in subsection B of this section, together with
15 a power of attorney disclosing the authority of the person executing the
16 same on behalf of the surety. ~~Upon~~ ON the recordation of ~~such~~ THE bond,
17 the property shall be discharged of such lien whether or not a copy of the
18 bond is served ~~upon~~ ON the claimant or ~~he~~ THE CLAIMANT perfects ~~his~~ THE
19 CLAIMANT'S rights against the bond.

20 B. A surety bond to discharge a lien perfected under this section
21 shall be executed by the person seeking to discharge such lien, as
22 principal, and by a surety company or companies holding a certificate of
23 authority to transact surety business in this state, issued by the
24 director of the department of insurance AND FINANCIAL INSTITUTIONS
25 pursuant to title 20, chapter 2, article 1. The bond shall be for the
26 sole protection of the claimant who perfected such lien. Notwithstanding
27 any other statute, the surety bond shall not be executed by AN individual
28 surety or sureties, even if the requirements of section 7-101 are
29 satisfied. The bond shall be in an amount equal to one hundred fifty ~~per~~
30 ~~cent~~ PERCENT of the demand set forth in and secured by the notice and
31 claim of lien and shall be conditioned for the payment of the judgment
32 ~~which~~ THAT would have been rendered against the property for the
33 enforcement of the lien. The legal description of the property and the
34 docket and page of the lien sought to be discharged shall be set forth in
35 the bond.

36 C. The principal on such bond, ~~upon recordation thereof~~ ON
37 RECORDING THE BOND with the county recorder, shall cause a copy of the
38 bond to be served within a reasonable time ~~upon~~ ON the lien claimant, and
39 if a suit is then pending to foreclose the lien, the claimant, within
40 ninety days after receipt thereof, shall cause proceedings to be
41 instituted to add the surety and the principal as parties to the lien
42 foreclosure suit. In addition, on recording and service of the surety
43 bond, any monies withheld in response to a stop notice or bonded stop
44 notice that is served by the lien claimant pursuant to article 9 of this

1 chapter with respect to the same labor and material described in the
2 notice and claim of lien shall be released promptly.

3 D. The bond shall be discharged and the principal and sureties
4 released ~~upon~~ ON any of the following:

5 1. The failure of the lien claimant to commence a suit within the
6 time allowed pursuant to section 33-998.

7 2. THE failure of the lien claimant to name the principal and
8 sureties as parties to the action seeking foreclosure of the lien if a
9 copy of the bond has been served ~~upon~~ ON THE claimant. If the bond is
10 served ~~upon~~ ON the claimant within less than ninety days ~~from~~ AFTER the
11 date THE claimant would be required to commence ~~his~~ THE CLAIMANT'S action
12 pursuant to section 33-998, the claimant shall have ninety days ~~from~~ AFTER
13 the date ~~he~~ THE CLAIMANT receives a copy of such bond to add the principal
14 and the sureties as parties to the lien foreclosure suit.

15 3. The dismissal of the foreclosure suit with prejudice as to the
16 claimant or the entry of judgment in such suit against claimant.

17 E. In an action to foreclose a lien under this article, where a
18 bond has been filed and served as provided herein, a judgment for the
19 claimant on the bond shall be against the principal and ~~his~~ THE
20 PRINCIPAL'S sureties for the reasonable value of the labor and material
21 furnished and shall not be against the property. A judgment for the
22 claimant on the bond, including any recovery for interest, expenses, costs
23 and attorney fees awarded by the court, shall not exceed the penal sum of
24 the bond. If the amount the claimant recovers exceeds the penal sum of
25 the bond, the claimant shall also be entitled to judgment against the
26 principal for the excess amount.

27 F. ~~In the event~~ IF a copy of the bond is not served ~~upon~~ ON the
28 claimant as provided in subsection C of this section, the claimant shall
29 have six months after the discovery of ~~such~~ THE bond to commence an action
30 thereon, except that no action may be commenced on ~~such~~ THE bond after two
31 years from the date it was recorded as provided in this section.

32 G. The county recorder of the county in which the bond and contract
33 are recorded shall index the bond and contract under the index
34 classification in which mechanics' and materialmen's liens are recorded.

35 Sec. 148. Section 33-1062, Arizona Revised Statutes, is amended to
36 read:

37 33-1062. Release of stop notice or bonded stop notice; surety
38 bond

39 A. An owner, a construction lender or any original contractor or
40 subcontractor who disputes any stop notice or bonded stop notice may file
41 with the person on whom notice was served a release bond. The release
42 bond shall be executed in an amount equal to one hundred fifty ~~per cent~~
43 PERCENT of the amount claimed in the notice, conditioned for the payment
44 of any amount that does not exceed the penal obligation of the bond and
45 that the claimant may recover on the claim. A copy of the release bond

1 shall be served on the stop notice claimant in the same manner required
2 for the delivery of a stop notice. On the filing and service of the
3 release bond, the monies withheld in response to the stop notice or bonded
4 stop notice shall be released promptly. A bond to release a stop notice
5 or bonded stop notice under this section shall be executed by a surety
6 company or companies holding a certificate of authority to transact surety
7 business in this state, issued by the director of the department of
8 insurance AND FINANCIAL INSTITUTIONS pursuant to title 20, chapter 2,
9 article 1. The bond shall be for the sole protection of the claimant who
10 perfected such notice.

11 B. If an owner, a construction lender or any original contractor or
12 subcontractor causes to be recorded a surety bond to discharge a lien
13 perfected by the stop notice claimant pursuant to section 33-1004 with
14 respect to the same labor and material described in the stop notice or
15 bonded stop notice, the surety bond shall also serve as a release bond
16 pursuant to this section, and the monies withheld in response to the stop
17 notice or bonded stop notice shall be released promptly on the recording
18 and service of the surety bond on the stop notice claimant as prescribed
19 in section 33-1004.

20 C. In an action to enforce payment of a claim stated in a stop
21 notice or bonded stop notice, ~~where~~ IF a bond has been filed and served as
22 provided in this section, a judgment for the claimant on the bond shall be
23 against the person seeking to release ~~such~~ THE stop notice or bonded stop
24 notice as principal and the surety for the amount the claimant recovers on
25 the stop notice or bonded stop notice claim, including any recovery for
26 interest, expenses, costs and attorney fees awarded by the court, that
27 does not exceed the penal sum of the bond. If the amount the claimant
28 recovers on the stop notice or bonded stop notice claim exceeds the penal
29 sum of the bond, the claimant shall also be entitled to judgment against
30 the principal for the excess amount.

31 Sec. 149. Section 33-1076, Arizona Revised Statutes, is amended to
32 read:

33 33-1076. Discharge of commercial real estate broker's liens;
34 bond; limitations of actions; discharge of surety;
35 judgment

36 A. After perfection of a lien pursuant to this article, an owner,
37 including any person who has a legal or equitable interest in the land
38 that is subject to the lien, a mortgagee or any other lien creditor ~~may~~,
39 either before or after the commencement of an action to foreclose the
40 lien, MAY cause to be recorded in the office of the county recorder in the
41 county in which the land is located a surety bond in the form described in
42 subsection B of this section, together with a power of attorney disclosing
43 the authority of the person executing the bond on behalf of the surety.
44 On the recordation of the bond, the property shall be discharged of the

1 lien whether or not a copy of the bond is served on the claimant or the
2 claimant perfects the claimant's rights against the bond.

3 B. A surety bond to discharge a lien perfected under this article
4 shall be executed by the person seeking to discharge the lien, as
5 principal, and by a surety company or companies holding a certificate of
6 authority to transact surety business in this state that is issued by the
7 director of the department of insurance AND FINANCIAL INSTITUTIONS
8 pursuant to title 20, chapter 2, article 1. The bond is for the sole
9 protection of the claimant who perfected the lien. Notwithstanding any
10 other statute, the surety bond shall not be executed by individual surety
11 or sureties, even if the requirements of section 7-101 are satisfied. The
12 bond shall be in an amount equal to one and one-half times the claim
13 secured by the lien and shall be conditioned for the payment of the
14 judgment that would have been rendered against the property for the
15 enforcement of the lien. The legal description of the property and the
16 docket and page of the lien sought to be discharged shall be set forth in
17 the bond.

18 C. On recordation of the bond with the county recorder, the
19 principal on the bond shall cause a copy of the bond to be served within a
20 reasonable time on the lien claimant, and if a suit is then pending to
21 foreclose the lien, the claimant, within ninety days after receipt of the
22 bond, shall cause proceedings to be instituted to add the surety and the
23 principal as parties to the lien foreclosure suit.

24 D. The bond shall be discharged and the principal and sureties
25 shall be released on any of the following:

26 1. The failure of the lien claimant to commence a suit within the
27 time allowed pursuant to section 33-1074.

28 2. THE failure of the lien claimant to name the principal and
29 sureties as parties to the action seeking foreclosure of the lien if a
30 copy of the bond has been served on the claimant. If the bond is served
31 on the claimant fewer than ninety days after the date the claimant would
32 be required to commence an action pursuant to section 33-1074, the
33 claimant has ninety days ~~from~~ AFTER the date of receiving a copy of the
34 bond to add the principal and the sureties as parties to the lien
35 foreclosure suit.

36 3. The dismissal of the foreclosure suit with prejudice as to the
37 claimant or the entry of judgment in a suit against the claimant.

38 E. In an action to foreclose a lien under this article, if a bond
39 has been filed and served as prescribed by this section a judgment for the
40 claimant on the bond shall be against the principal and the principal's
41 sureties and shall not be against the property.

42 F. If a copy of the bond is not served on the claimant as provided
43 in subsection C of this section, the claimant has six months after the
44 discovery of the bond to commence an action on the bond, except that no

1 action may be commenced on the bond after two years from the date it was
2 recorded as provided in this section.

3 G. The county recorder of the county in which the bond and contract
4 are recorded shall index the bond and contract under the index
5 classification in which commercial real estate broker liens are recorded.

6 Sec. 150. Section 34-201, Arizona Revised Statutes, is amended to
7 read:

8 34-201. Notice of intention to receive bids and enter
9 contract; procedure; doing work without advertising
10 for bids; county compliance

11 A. Except as provided in subsections B through G and L of this
12 section, every agent, on acceptance and approval of the working drawings
13 and specifications, shall publish a notice to contractors of intention to
14 receive bids and contract for the proposed work. This notice shall be
15 published by advertising in a newspaper of general circulation in the
16 county in which the agent is located for two consecutive publications if
17 it is a weekly newspaper or for two publications that are at least six but
18 ~~no~~ NOT more than ten days apart if it is a daily newspaper. The notice
19 shall state:

20 1. The nature of the work required, the type, purpose and location
21 of the proposed building and where the plans, specifications and full
22 information as to the proposed work may be obtained.

23 2. That contractors desiring to submit proposals may obtain copies
24 of full or partial sets of plans and specifications for estimate on
25 request or by appointment. The return of ~~such~~ THE plans and
26 specifications shall be guaranteed by a deposit of a designated amount
27 ~~which~~ THAT shall be refunded on return of the plans and specifications in
28 good order.

29 3. That every proposal shall be accompanied by a certified check,
30 cashier's check or surety bond for ten ~~per cent~~ PERCENT of the amount of
31 the bid included in the proposal as a guarantee that the contractor will
32 enter into a contract to perform the proposal in accordance with the plans
33 and specifications. Notwithstanding any other statute, the surety bond
34 shall be executed solely by a surety company or companies holding a
35 certificate of authority to transact surety business in this state issued
36 by the director of the department of insurance AND FINANCIAL INSTITUTIONS
37 pursuant to title 20, chapter 2, article 1. The surety bond shall not be
38 executed by an individual surety or sureties, even if the requirements of
39 section 7-101 are satisfied. The certified check, cashier's check or
40 surety bond shall be returned to the contractors whose proposals are not
41 accepted, and to the successful contractor on the execution of a
42 satisfactory bond and contract as provided in this article. The
43 conditions and provisions of the surety bid bond regarding the surety's
44 obligations shall follow the following form:

1 Now, therefore, if the obligee accepts the proposal of the
2 principal and the principal enters into a contract with the
3 obligee in accordance with the terms of the proposal and gives
4 the bonds and certificates of insurance as specified in the
5 standard specifications with good and sufficient surety for
6 the faithful performance of the contract and for the prompt
7 payment of labor and materials furnished in the prosecution of
8 the contract, or in the event of the failure of the principal
9 to enter into the contract and give the bonds and certificates
10 of insurance, if the principal pays to the obligee the
11 difference not to exceed the penalty of the bond between the
12 amount specified in the proposal and such larger amount for
13 which the obligee may in good faith contract with another
14 party to perform the work covered by the proposal then this
15 obligation is void. Otherwise it remains in full force and
16 effect provided, however, that this bond is executed pursuant
17 to the provisions of section 34-201, Arizona Revised Statutes,
18 and all liabilities on this bond shall be determined in
19 accordance with the provisions of the section to the extent as
20 if it were copied at length herein.

21 4. That the right is reserved to reject any or all proposals or to
22 withhold the award for any reason the agent determines.

23 B. If the agent believes that any construction, building addition
24 or alteration contemplated at a public institution can be advantageously
25 done by the inmates of the public institution and regularly employed help,
26 the agent may cause the work to be done without advertising for bids.

27 C. Any building, structure, addition or alteration may be
28 constructed either with or without the use of the agent's regularly
29 employed personnel without advertising for bids, provided that the total
30 cost of the work, excluding materials and equipment previously acquired by
31 bid, does not exceed:

32 1. In fiscal year 1994-1995, ~~fourteen thousand dollars~~ \$14,000.

33 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
34 amount provided in paragraph 1 of this subsection adjusted by the annual
35 percentage change in the GDP price deflator as defined in section 41-563.

36 D. Notwithstanding subsection C of this section, any street, road,
37 bridge, water or sewer work, other than a water or sewer treatment plant
38 or building, may be constructed either with or without the use of the
39 agent's regularly employed personnel without advertising for bids,
40 provided that the total cost of the work does not exceed:

41 1. In fiscal year 1994-1995, ~~one hundred fifty thousand dollars~~
42 \$150,000.

43 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
44 amount provided in paragraph 1 of this subsection adjusted by the annual
45 percentage change in the GDP price deflator as defined in section 41-563.

1 E. For the purposes of subsection D of this section, the total cost
2 of water or sewer work does not include services provided by volunteers or
3 donations made for the water or sewer project.

4 F. Notwithstanding this section, an agent may:

5 1. Construct, reconstruct, install or repair a natural gas or
6 electric utility and distribution system, owned or operated by such agent,
7 with regularly employed personnel of the agent without advertising for
8 bids, unless otherwise prohibited by charter or ordinance.

9 2. Construct recreational projects, including trails, playgrounds,
10 ballparks and other similar facilities and excluding buildings,
11 structures, building additions and alterations to buildings, structures
12 and building additions, with volunteer workers or workers provided by a
13 nonprofit organization without advertising for bids for labor and
14 materials, provided that the total cost of the work does not exceed:

15 (a) In fiscal year 2001-2002, ~~one hundred fifty thousand dollars~~
16 \$150,000.

17 (b) In fiscal year 2002-2003 and each fiscal year thereafter, the
18 amount provided in subdivision (a) adjusted by the annual percentage
19 change in the GDP price deflator as defined in section 41-563.

20 G. A contribution by an agent for the financing of public
21 infrastructure made pursuant to a development agreement is exempt from
22 this section if ~~such~~ THE contribution for any single development does not
23 exceed:

24 1. In fiscal year 1994-1995, ~~one hundred thousand dollars~~ \$100,000.

25 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
26 amount provided in paragraph 1 of this subsection adjusted by the annual
27 percentage change in the GDP price deflator as defined in section 41-563.

28 H. In addition to other state or local requirements relating to the
29 publication of bids, each agent shall provide at least one set of all
30 plans and specifications to any construction news reporting service that
31 files an annual request with the agent. For the purposes of this
32 subsection, "construction news reporting service" means a service that
33 researches, gathers and disseminates news and reports either in print or
34 electronically, on at least a weekly basis for building projects,
35 construction bids, the purchasing of materials, supplies or services and
36 other construction bidding or planned activity to the allied construction
37 industry. The allied construction industry includes both general and
38 specialty contractors, builders, material and service suppliers,
39 architects and engineers, owners, developers and government agencies.

40 I. Any construction by a county under this section shall comply
41 with the uniform accounting system prescribed for counties by the auditor
42 general under section 41-1279.21. Any construction by a city or town
43 under this section shall comply with generally accepted accounting
44 principles.

1 J. Any construction, building addition or alteration project that
2 is financed by monies of this state or its political subdivisions shall
3 not use endangered wood species unless an exemption is granted by the
4 director of the department of administration. The director shall only
5 grant an exemption if the use of endangered wood species is deemed
6 necessary for historical restoration or to repair existing facilities and
7 the use of any substitute material is not practical. Any lease-purchase
8 agreement entered into by this state or its political subdivisions for
9 construction shall specify that no endangered wood species may be used in
10 the construction unless an exemption is granted by the director. For the
11 purposes of this subsection, "endangered wood species" includes those
12 listed in appendix I of the convention on international trade in
13 endangered species of wild flora and fauna.

14 K. All bonds given by a contractor and surety pursuant to this
15 article, regardless of their actual form, will be deemed by law to be the
16 form required and set forth in this article and no other.

17 L. Any building, structure, addition or alteration may be
18 constructed without complying with this article if the construction,
19 including construction of buildings or structures on public or private
20 property, is required as a condition of development of private property
21 and is authorized by section 9-463.01 or 11-822. For the purposes of this
22 subsection, building does not include police, fire, school, library or
23 other public buildings.

24 M. Notwithstanding section 34-221, any agent may enter into a
25 guaranteed energy cost savings contract with a qualified provider for the
26 purchase of energy cost savings measures without complying with this
27 article and may procure a guaranteed energy cost savings contract through
28 the competitive sealed proposal process prescribed in title 41, chapter 23
29 or any similar competitive proposal process adopted by the agent.

30 Sec. 151. Section 34-222, Arizona Revised Statutes, is amended to
31 read:

32 34-222. Surety bond required; suit on bond; limitations

33 A. Except where specifically exempted by statute, before any
34 contract is executed with any person for the construction, alteration, or
35 repair of any public building, a public work or improvement of any county,
36 city or town, or officer, board or commission thereof, and irrigation,
37 power, electrical, drainage, flood protection and flood control districts,
38 tax levying public improvement districts, and county or city improvement
39 districts, the person shall furnish to the agent entering into such
40 contract the following bonds ~~which~~ THAT shall become binding ~~upon~~ ON the
41 award of the contract to such person, who, for purposes of this article,
42 means "contractor":

43 1. A performance bond in an amount equal to the full contract
44 amount conditioned ~~upon~~ ON the faithful performance of the contract in
45 accordance with plans, specifications and conditions thereof. Such bond

1 shall be solely for the protection of the public body awarding the
2 contract.

3 2. A payment bond in an amount equal to the full contract amount
4 solely for the protection of claimants supplying labor or materials to the
5 contractor or his subcontractors in the prosecution of the work provided
6 for in such contract.

7 B. Each such bond shall include a provision allowing the prevailing
8 party in a suit on such bond to recover as a part of the judgment such
9 reasonable attorneys' fees as may be fixed by a judge of the court.

10 C. Notwithstanding any other statute, each such bond shall be
11 executed solely by a surety company or companies holding a certificate of
12 authority to transact surety business in this state issued by the director
13 of the department of insurance AND FINANCIAL INSTITUTIONS pursuant to
14 title 20, chapter 2, article 1. The bonds shall not be executed by an
15 individual surety or sureties, even if the requirements of section 7-101
16 are satisfied. The bonds shall be payable to the public body concerned.

17 D. Such bonds shall be filed in the office of the department,
18 board, commission, institution, agency or other contracting body awarding
19 the contract.

20 E. It shall be illegal for the invitation for bids, or any person
21 acting or purporting to act on behalf of the contracting body, to require
22 that such bonds be furnished by a particular surety company, or through a
23 particular agent or broker.

24 F. The conditions and provisions in the payment bond regarding the
25 surety's obligations shall follow the following form:

26 Now, therefore, the condition of this obligation is such, that
27 if the principal promptly pays all monies due to all persons
28 supplying labor or materials to the principal or the
29 principal's subcontractors in the prosecution of the work
30 provided for in the contract, this obligation is void.
31 Otherwise it remains in full force and effect.

32 Provided, however, that this bond is executed pursuant to the
33 provisions of title 34, chapter 2, article 2, Arizona Revised
34 Statutes, and all liabilities on this bond shall be determined
35 in accordance with the provisions, conditions and limitations
36 of title 34, chapter 2, article 2, Arizona Revised Statutes,
37 to the same extent as if they were copied at length in this
38 agreement.

39 The prevailing party in a suit on this bond shall recover as a
40 part of the judgment reasonable attorney fees that may be
41 fixed by a judge of the court.

42 G. The conditions and provisions in the performance bond regarding
43 the surety's obligations shall follow the following form:

44 Now, therefore, the condition of this obligation is such, that
45 if the principal faithfully performs and fulfills all of the

1 undertakings, covenants, terms, conditions and agreements of
2 the contract during the original term of the contract and any
3 extension of the contract, with or without notice to the
4 surety, and during the life of any guaranty required under the
5 contract, and also performs and fulfills all of the
6 undertakings, covenants, terms, conditions and agreements of
7 all duly authorized modifications of the contract that may
8 hereafter be made, notice of which modifications to the surety
9 being hereby waived, the above obligation is void. Otherwise
10 it remains in full force and effect.

11 Provided, however, that this bond is executed pursuant to the
12 provisions of title 34, chapter 2, article 2, Arizona Revised
13 Statutes, and all liabilities on this bond shall be determined
14 in accordance with the provisions of title 34, chapter 2,
15 article 2, Arizona Revised Statutes, to the extent as if it
16 were copied at length in this agreement.

17 The prevailing party in a suit on this bond shall recover as
18 part of the judgment reasonable attorney fees that may be
19 fixed by a judge of the court.

20 H. If the prime contract or specifications require any persons
21 supplying labor or materials in the prosecution of the work to furnish
22 payment or performance bonds, these bonds shall be executed solely by a
23 surety company or companies holding a certificate of authority to transact
24 surety business in this state issued by the director of the department of
25 insurance AND FINANCIAL INSTITUTIONS pursuant to title 20, chapter 2,
26 article 1. Notwithstanding the provisions of any other statute, the bonds
27 shall not be executed by an individual surety or sureties, even if the
28 requirements of section 7-101 are satisfied.

29 I. All bonds given by a contractor and surety, pursuant to the
30 provisions of this article, regardless of their actual form, will be
31 deemed by law to be the form required and set forth in this article and no
32 other.

33 Sec. 152. Section 34-608, Arizona Revised Statutes, is amended to
34 read:

35 34-608. Bid security for design-build and
36 job-order-contracting construction services

37 A. As a guarantee that the contractor will enter into a contract,
38 bid security is required for all design-build construction services and
39 all job-order-contracting construction services awarded by an agent by
40 competitive sealed proposals pursuant to section 34-603, subsection F or
41 34-604, subsection F if the agent estimates that the budget for
42 construction, excluding the cost of any finance services, maintenance
43 services, operations services, design services, preconstruction services
44 or other related services, will be more than the amount prescribed in
45 section 41-2535, subsection D. Each proposal for design-build

1 construction services or job-order-contracting construction services shall
2 be accompanied by a certified check, cashier's check or surety bond. The
3 bid security amount for design-build construction services shall be an
4 amount equal to ten ~~per cent~~ PERCENT of the agent's budget for
5 construction, excluding any finance services, maintenance services,
6 operations services, design services, preconstruction services or other
7 related services, for the project as stated in the request for
8 proposals. The bid security amount for job-order-contracting construction
9 services shall be the amount determined by the agent and stated in the
10 request for proposals and shall not be more than ten ~~per cent~~ PERCENT of
11 the agent's reasonably estimated budget for construction that the agent
12 believes is likely to actually be done during the first year of the
13 job-order-contracting contract, excluding any finance services,
14 maintenance services, operations services, design services,
15 preconstruction services or other related services that are included in
16 the contract.

17 B. The agent shall return the certified check, cashier's check or
18 surety bond to the contractors whose proposals are not accepted and to the
19 successful contractor on the execution of satisfactory payment and
20 performance bonds, insurance and the contract as provided in this chapter.

21 C. Notwithstanding any other statute, the surety bond shall be
22 executed solely by a surety company or companies holding a certificate of
23 authority to transact surety business in this state issued by the director
24 of the department of insurance AND FINANCIAL INSTITUTIONS pursuant to
25 title 20, chapter 2, article 1. The bond shall not be executed by an
26 individual surety or sureties, even if the requirements of section 7-101
27 are satisfied.

28 D. The conditions and provisions of the surety bond regarding the
29 surety's obligations shall follow the following form:

30 Now, therefore, if the obligee accepts the proposal of the
31 principal and the principal enters into a contract with the
32 obligee in accordance with the terms of the proposal and gives
33 the bonds and certificates of insurance as specified in the
34 standard specifications with good and sufficient surety for
35 the faithful performance of the contract and for the prompt
36 payment of labor and materials furnished in the prosecution of
37 the contract, or in the event of the failure of the principal
38 to enter into the contract and give the bonds and certificates
39 of insurance, if the principal pays to the obligee the
40 difference not to exceed the penalty of the bond between the
41 amount specified in the proposal and any larger amount for
42 which the obligee may contract in good faith with another
43 party to perform the work covered by the proposal, this
44 obligation is void. Otherwise it remains in full force and
45 effect. Provided, however, that this bond is executed

1 pursuant to section 34-608, Arizona Revised Statutes, and all
2 liabilities on this bond shall be determined in accordance
3 with the provisions of the section to the extent as if it were
4 copied at length in this agreement.

5 E. If the request for proposals requires security, noncompliance
6 requires that the agent reject the proposal for noncompliance with the
7 security requirement, unless the agent determines that the bid fails to
8 comply in a nonsubstantial manner with the security requirements.

9 F. After the agent opens the proposals, the proposals are
10 irrevocable for the period specified in the request for proposals, except
11 as provided in section 34-603, subsection F or section 34-604,
12 subsection F. If a proposer is ~~permitted~~ ALLOWED to withdraw its proposal
13 before award, no action may be had against the proposer or the bid
14 security.

15 G. All bonds given by a contractor and surety pursuant to this
16 section, regardless of their actual form, are deemed by law to be the form
17 required and set forth in this section.

18 Sec. 153. Section 34-610, Arizona Revised Statutes, is amended to
19 read:

20 34-610. Construction-manager-at-risk, design-build and
21 job-order-contracting construction services surety
22 bond required; suit on bond; limitations

23 A. Except if specifically exempted by statute, before an agent
24 executes any contract with any person or firm for
25 construction-manager-at-risk construction services, design-build
26 construction services or job-order-contracting construction services, the
27 person or firm shall furnish to the agent entering into the contract the
28 following bonds, except that the bonds shall be furnished only on and at
29 the same time as execution of a contract or an amendment to a contract
30 that commits the contractor to provide construction for a fixed price, a
31 guaranteed maximum price or any other fixed amount within a designated
32 time frame:

33 1. A performance bond in an amount equal to the full contract
34 amount conditioned on the faithful performance of the contract in
35 accordance with plans, specifications and conditions of the contract,
36 except that:

37 (a) For job-order-contracting construction services, the
38 performance bond shall cover the full amount of construction under the
39 job-order-contracting construction services contract, shall not include
40 any design services, preconstruction services, finance services,
41 maintenance services, operations services or other related services
42 included in the contract, may be a single bond for the full term of the
43 contract, a separate bond for each year of a multiyear contract or a
44 separate bond for each job order, as determined by the agent, and, if a
45 single bond for the full term of the contract or a separate bond for each

1 year of a multiyear contract, shall initially be based on the agent's
2 reasonable estimate of the amount of construction that the agent believes
3 is likely to actually be done during the full term of the contract or
4 during the particular year of a multiyear contract, as applicable.

5 (b) For construction-manager-at-risk construction services and
6 design-build construction services, the amount of the performance bond
7 shall be the price of construction and shall not include the cost of any
8 design services, preconstruction services, finance services, maintenance
9 services, operations services or any other related services included in
10 the contract. The performance bond shall be solely for the protection of
11 the public body awarding the contract.

12 2. A payment bond in an amount equal to the full contract amount
13 solely for the protection of claimants supplying labor or materials to the
14 contractor or the contractor's subcontractors in the prosecution of the
15 construction and not for the protection of persons providing any design
16 services, preconstruction services, finance services, maintenance
17 services, operations services or other related services provided for in
18 the contract, except that:

19 (a) For job-order-contracting construction services, the payment
20 bond shall cover the full amount of construction under the
21 job-order-contracting construction services contract, shall not include
22 any design services, preconstruction services, finance services,
23 maintenance services, operations services or other related services
24 included in the contract, may be a single bond for the full term of the
25 contract, a separate bond for each year of a multiyear contract or a
26 separate bond for each job order, as determined by the agent, and, if a
27 single bond for the full term of the contract or a separate bond for each
28 year of a multiyear contract, shall initially be based on the agent's
29 reasonable estimate of the amount of construction that the agent believes
30 is likely to actually be done during the full term of the contract or
31 during the particular year of a multiyear contract, as applicable.

32 (b) For construction-manager-at-risk construction services and
33 design-build construction services, the amount of the payment bond shall
34 be the price of construction and shall not include the cost of any design
35 services, preconstruction services, finance services, maintenance
36 services, operations services or any other related services included in
37 the contract.

38 B. Each bond shall include a provision allowing the prevailing
39 party in a suit on the bond to recover as a part of the judgment any
40 reasonable attorney fees as may be fixed by the court.

41 C. Notwithstanding any other statute, each bond shall be executed
42 solely by a surety company or companies holding a certificate of authority
43 to transact surety business in this state issued by the director of the
44 department of insurance AND FINANCIAL INSTITUTIONS pursuant to title 20,
45 chapter 2, article 1. The bonds shall not be executed by an individual

1 surety or sureties, even if the requirements of section 7-101 are
2 satisfied. The bonds shall be payable to the public body concerned.

3 D. The bonds shall be filed in the office of the department, board,
4 commission, institution, agency or other contracting body awarding the
5 contract.

6 E. It is illegal for a request for qualifications or a request for
7 proposals pursuant to section 34-603 or 34-604, or any person acting or
8 purporting to act on behalf of the contracting body, to require that bonds
9 be furnished by a particular surety company, or through a particular agent
10 or broker.

11 F. The conditions and provisions in the payment bond regarding the
12 surety's obligations shall follow the following form:

13 Now, therefore, the condition of this obligation is that if
14 the principal promptly pays all monies due to all persons
15 supplying labor or materials to the principal or the
16 principal's subcontractors in the prosecution of the
17 construction provided for in the contract, this obligation is
18 void. Otherwise it remains in full force and effect.
19 Provided, however, that this bond is executed pursuant to
20 title 34, chapter 6, Arizona Revised Statutes, and all
21 liabilities on this bond shall be determined in accordance
22 with the provisions, conditions and limitations of title 34,
23 chapter 6, Arizona Revised Statutes, to the same extent as if
24 they were copied at length in this agreement. The prevailing
25 party in a suit on this bond shall recover as a part of the
26 judgment reasonable attorney fees that may be fixed by the
27 court.

28 G. The conditions and provisions in the performance bond regarding
29 the surety's obligations shall follow the following form:

30 Now, therefore, the condition of this obligation is that if
31 the principal faithfully performs and fulfills all of the
32 undertakings, covenants, terms, conditions and agreements of
33 the contract during the original term of the contract and any
34 extension of the contract, with or without notice to the
35 surety, and during the life of any guaranty required under the
36 contract, and also performs and fulfills all of the
37 undertakings, covenants, terms, conditions and agreements of
38 all duly authorized modifications of the contract that may
39 hereafter be made, notice of which modifications to the surety
40 being hereby waived, the above obligation is void. Otherwise
41 it remains in full force and effect. Provided, however, that
42 this bond is executed pursuant to title 34, chapter 6, Arizona
43 Revised Statutes, and all liabilities on this bond shall be
44 determined in accordance with title 34, chapter 6, Arizona
45 Revised Statutes, to the extent as if it were copied at length

1 in this agreement. The prevailing party in a suit on this
2 bond shall recover as part of the judgment reasonable attorney
3 fees that may be fixed by the court. The performance under
4 this bond is limited to the construction to be performed under
5 the contract and does not include any design services,
6 preconstruction services, finance services, maintenance
7 services, operations services or any other related services
8 included in the contract.

9 H. If the prime contract or specifications require any persons
10 supplying labor or materials in the prosecution of the work to furnish
11 payment or performance bonds, these bonds shall be executed solely by a
12 surety company or companies holding a certificate of authority to transact
13 surety business in this state issued by the director of the department of
14 insurance AND FINANCIAL INSTITUTIONS pursuant to title 20, chapter 2,
15 article 1. Notwithstanding any other statute, the bonds shall not be
16 executed by an individual surety or sureties, even if the requirements of
17 section 7-101 are satisfied.

18 I. All bonds given by a contractor and surety pursuant to this
19 section, regardless of their actual form, are deemed by law to be in the
20 form required and set forth in this section.

21 Sec. 154. Section 35-457, Arizona Revised Statutes, is amended to
22 read:

23 35-457. Sale of bonds; bids; forfeiture of deposit;
24 definitions

25 A. Any or all of the bonds may be sold at public sale or through an
26 online bidding process in a manner prescribed by the governing body or
27 board that includes the following:

28 1. If sold by public sale before the sale of any bonds the
29 governing body or board shall meet and enter on its record an order
30 directing the sale of the bonds and the date and hour of the sale, and
31 cause a copy of the order to be published at least once a week for two
32 successive weeks in cities having a population of fifteen thousand or more
33 persons, and once a week for four successive weeks in all other political
34 subdivisions before the sale in one or more designated daily or weekly
35 newspapers, together with a notice that sealed proposals will be received
36 for purchase of the bonds on the date and hour named in the order.

37 2. If sold through an online bidding process, bids for the bonds
38 that are entered into the system may be concealed until a specified time
39 or disclosed in the online bidding process, may be subject to improvement
40 in favor of the political subdivision before a specified time and may be
41 for an entire issue of bonds or specified maturities according to the
42 manner, terms and notice provisions ordered by the governing body.

43 B. If the bonds are sold by public sale or through an online
44 bidding process, all proposals shall be received on the date and hour or
45 in the manner stated in the order and the governing body or board shall

1 award the bonds to the highest and most responsible bidder. The
2 successful bidder shall provide a bid guarantee for not less than two
3 percent of the total par value of the bonds within twenty-four hours after
4 the date and time the bid is awarded. The bid guarantee may be in the
5 form of a certified check or a bond issued by a surety company licensed by
6 the department of insurance AND FINANCIAL INSTITUTIONS to do business in
7 this state. The governing body or board may reject any and all bids. If
8 the successful bidder does not carry out the terms of the proposal to
9 purchase the bonds, the bid guarantee shall be forfeited as stipulated and
10 liquidated damages.

11 C. Notwithstanding any other provision of this section, bonds may
12 be sold by negotiated sale on terms the governing body deems to be the
13 best then available and may bear interest payable at such times as shall
14 be determined by the governing body.

15 D. The bonds may be sold below, at or above par. If an issue of
16 bonds is sold below par, the aggregate amount of discount plus interest to
17 be paid on the bonds must not exceed the amount of interest that would be
18 payable on the bonds over the maturity schedule prescribed by the
19 governing body at the maximum rate set out in the resolution calling the
20 election at which the bonds were voted. The amount of net premium
21 associated with a bond issue may be used only for one or more of the
22 following:

23 1. To pay costs incurred in issuing the bonds, subject to section
24 35-452, subsection C.

25 2. As a deposit in a debt service fund and used only to pay
26 interest on the bonds.

27 3. For any other purpose, if the political subdivision has voter
28 authorization and available capacity under its debt limitations and the
29 amount of net premium used for such purpose will reduce in an equal amount
30 both:

31 (a) The available aggregate indebtedness capacity of the political
32 subdivision under the statutes and constitution of this state.

33 (b) The principal amount authorized at the election for the
34 political subdivision from which the issue of bonds is being sold.

35 E. Any net premium used as provided in subsection D, paragraph 3 of
36 this section shall be amortized for all debt limitation purposes on a pro
37 rata basis each year by multiplying the net premium used by a percentage
38 equal to the percentage of the total principal amount of the bond issue
39 that matures in that year.

40 F. For the purposes of this section:

41 1. "Net premium" means the difference between the par amount of the
42 bond issue and the bond issue price determined pursuant to United States
43 treasury regulations.

1 B. The contractor shall not deduct any disallowance or penalty
2 imposed by the administration pursuant to this chapter from the financial
3 information submitted to the director of THE DEPARTMENT OF insurance AND
4 FINANCIAL INSTITUTIONS.

5 C. Each contractor shall file the estimated tax and documentation
6 with the director of THE DEPARTMENT OF insurance AND FINANCIAL
7 INSTITUTIONS on a form prescribed by the director of THE DEPARTMENT OF
8 insurance AND FINANCIAL INSTITUTIONS to pay the estimated tax. A
9 contractor shall make estimated tax payments to the director of THE
10 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS for deposit in the
11 state general fund pursuant to sections 35-146 and 35-147. The tax
12 payments are due on or before September 15, December 15, March 15 and June
13 15 of each year. The amount of the payments shall be an estimate of the
14 tax due for the quarter that ends in the month that payment is due.

15 D. On or before April 1, 2004 and annually on or before April 1
16 thereafter, the director of THE DEPARTMENT OF insurance AND FINANCIAL
17 INSTITUTIONS shall use data provided by the administration to reconcile
18 the amount paid by each contractor pursuant to this section with the
19 actual amount of title XIX and title XXI reimbursement made by the
20 administration to the contractor in the preceding calendar year. If there
21 is a discrepancy in the two amounts, the director of THE DEPARTMENT OF
22 insurance AND FINANCIAL INSTITUTIONS shall notify the contractor of the
23 difference, provide a notice of right of appeal and bill the contractor
24 for the unpaid amount of the premium tax or, if there is an overpayment,
25 the director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS
26 shall either refund the amount of the overpayment to the contractor or
27 issue a credit for the amount of the overpayment that the contractor can
28 apply against future tax obligations prescribed by this section.

29 E. A contractor that fails to file an estimated payment or pay an
30 unpaid premium tax as prescribed by this section is subject to a civil
31 penalty equal to the greater of ~~twenty-five dollars~~ \$25 or five percent of
32 the amount due and is subject to interest on the amount due at the rate of
33 one percent per month from the date the amount was due.

34 F. From and after December 31, 2017, the director of THE DEPARTMENT
35 OF insurance AND FINANCIAL INSTITUTIONS may require that reports and
36 payments under this section be submitted electronically. If the director
37 requires electronic submission, the director shall include on the
38 department of ~~insurance's~~ INSURANCE AND FINANCIAL INSTITUTION'S official
39 website a list of one or more acceptable methods by which a contractor
40 must submit reports and payments.

1 total capitation, including reinsurance, and any other reimbursement paid
2 to the program contractor by the administration for persons eligible
3 pursuant to section 36-2931, paragraph 5. The tax shall be paid in four
4 payments pursuant to subsection C of this section and deposited in the
5 state general fund pursuant to sections 35-146 and 35-147.

6 B. The program contractor shall not deduct any disallowance or
7 penalty imposed by the administration pursuant to this chapter from the
8 financial information submitted to the director of THE DEPARTMENT OF
9 insurance AND FINANCIAL INSTITUTIONS.

10 C. Each program contractor shall file the estimated tax and
11 documentation with the director of THE DEPARTMENT OF insurance AND
12 FINANCIAL INSTITUTIONS on a form prescribed by the director of THE
13 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS. A program contractor
14 shall make estimated tax payments to the director of THE DEPARTMENT OF
15 insurance AND FINANCIAL INSTITUTIONS for deposit in the state general fund
16 pursuant to sections 35-146 and 35-147. The tax payments are due on or
17 before September 15, December 15, March 15 and June 15 of each year. The
18 amount of the payments shall be an estimate of the tax due for the quarter
19 that ends in the month that payment is due.

20 D. On or before April 1, 2004 and annually on or before April 1
21 thereafter, the director of THE DEPARTMENT OF insurance AND FINANCIAL
22 INSTITUTIONS shall use data provided by the administration to reconcile
23 the amount paid by each program contractor pursuant to this section with
24 the actual amount of title XIX reimbursement made by the administration to
25 the program contractor in the preceding calendar year. If there is a
26 discrepancy in the two amounts, the director of THE DEPARTMENT OF
27 insurance AND FINANCIAL INSTITUTIONS shall notify the program contractor
28 of the difference, provide a notice of right of appeal and bill the
29 program contractor for the unpaid amount of the premium tax or, if there
30 is an overpayment, the director of THE DEPARTMENT OF insurance AND
31 FINANCIAL INSTITUTIONS shall either refund the amount of the overpayment
32 to the contractor or issue a credit for the amount of the overpayment that
33 the program contractor can apply against future tax obligations prescribed
34 by this section.

35 E. A contractor that fails to file an estimated payment or pay an
36 unpaid premium tax as prescribed by this section is subject to a civil
37 penalty equal to the greater of ~~twenty-five dollars~~ \$25 or five percent of
38 the amount due and is subject to interest on the amount due at the rate of
39 one percent per month from the date the amount was due.

40 F. From and after December 31, 2017, the director of THE DEPARTMENT
41 OF insurance AND FINANCIAL INSTITUTIONS may require that reports and
42 payments under this section be submitted electronically. If the director
43 requires electronic submission, the director shall include on the
44 department of ~~insurance's~~ INSURANCE AND FINANCIAL INSTITUTION'S official

1 website a list of one or more acceptable methods by which a contractor
2 must submit reports and payments.

3 Sec. 159. Section 36-2999.51, Arizona Revised Statutes, is amended
4 to read:

5 36-2999.51. Definitions

6 In this article, unless the context otherwise requires:

7 1. "Continuing care retirement community" means an entity that
8 provides nursing facility services and assisted living or independent
9 living services on a contiguous campus that is either registered as a life
10 care facility with the department of insurance AND FINANCIAL INSTITUTIONS
11 or has assisted living and independent living beds in the aggregate that
12 equal at least twice the number of nursing facility beds. For the
13 purposes of this paragraph, "contiguous" means land that adjoins or
14 touches the other property held by the same or a related organization and
15 land divided by a public road.

16 2. "Fiscal year" means the period beginning on October 1 and ending
17 on September 30.

18 3. "Medicare resident days" means resident days that are funded by
19 the medicare program, a medicare advantage or special needs plan or the
20 medicare hospice program.

21 4. "Net patient service revenue" means gross inpatient revenues
22 from services that are provided to nursing facility patients minus
23 reductions from gross inpatient revenue. For the purposes of this
24 paragraph, inpatient revenues from services do not include nonpatient care
25 revenues such as beauty and barber income, vending income, interest and
26 contributions, revenues from the sale of meals and all outpatient
27 revenues.

28 5. "Nursing facility" means a health care institution that provides
29 inpatient beds or resident beds and nursing services to persons who need
30 nursing services on a continuing basis but who do not require hospital
31 care or direct daily care from a physician. Nursing facility does not
32 include the Arizona veterans' homes.

33 6. "Reductions from gross inpatient revenue" includes bad debts,
34 contractual adjustments, uncompensated care, administrative, courtesy and
35 policy discounts, adjustments and other similar revenue deductions.

36 7. "Resident day" means a calendar day of care provided to a
37 nursing facility resident, including the day of admission and excluding
38 the day of discharge. Resident day includes a day on which a bed is held
39 for a patient and for which the facility receives compensation for holding
40 the bed.

41 8. "Upper payment limit" means the limitation established pursuant
42 to 42 Code of Federal Regulations section 447.272 that disallows federal
43 matching funds if a state medicaid agency pays certain classes of nursing
44 facilities an aggregate amount for services that would exceed the amount

1 that would be paid for the same services furnished by that class of
2 nursing facilities under medicare payment principles.

3 Sec. 160. Section 38-871, Arizona Revised Statutes, as amended by
4 Laws 2019, chapter 252, section 48, is amended to read:

5 38-871. Deferred compensation governing committee; members;
6 powers and duties

7 A. The governing committee for deferred compensation plans is
8 established that consists of the following seven members:

9 1. Three members who are appointed by the governor and who are
10 either of the following:

11 (a) Individuals who have an account balance in a deferred
12 compensation plan that is overseen by the governing committee. These
13 individuals may be contributing or noncontributing participants in a
14 deferred compensation plan and may be retired or nonretired.

15 (b) Members of the public who are not deferred compensation plan
16 participants and who have at least ten years of relevant experience in
17 either finance, investment management, pension plans or retirement plans.

18 2. The director of the department of administration or the
19 director's designee.

20 3. The superintendent of the financial institutions division of the
21 department of insurance and financial institutions or the superintendent's
22 designee.

23 4. The director of THE DEPARTMENT OF insurance and financial
24 institutions or the director's designee.

25 5. The director of the Arizona state retirement system or the
26 director's designee.

27 B. Governing committee members are subject to the conflict of
28 interest provisions of chapter 3, article 8 of this title.

29 C. The governing committee may:

30 1. Investigate and approve deferred compensation plans that give
31 state employees income tax benefits authorized by title 26, United States
32 Code Annotated.

33 2. In carrying out the purposes of this article, enter into
34 agreements with companies with demonstrable expertise in the areas
35 encompassed by this article.

36 3. Adopt rules.

37 D. The governing committee shall:

38 1. Arrange for consolidated billing and efficient administrative
39 services so that any plans approved operate without cost or contribution
40 from this state except for the incidental expenses of statutorily required
41 administrative duties and the administration of payroll salary deduction
42 or reduction and remittance of the monies to the administrator, trustee or
43 custodian of the plan or plans.

44 2. Meet quarterly or more frequently as the committee deems
45 necessary.

- 1 3. Arrange for an annual financial audit of the plans.
- 2 4. Arrange for a performance review of the plans or participation
- 3 in benchmarking surveys or studies at least every five years.
- 4 Sec. 161. Section 41-621, Arizona Revised Statutes, is amended to
- 5 read:
- 6 41-621. Purchase of insurance; coverage; limitations;
- 7 exclusions; definitions
- 8 A. The department of administration shall obtain insurance against
- 9 loss, to the extent it is determined necessary and in the best interests
- 10 of ~~the~~ THIS state as provided in subsection F of this section, on the
- 11 following:
- 12 1. All ~~state-owned~~ STATE-OWNED buildings, including those of the
- 13 universities, excluding buildings of community colleges, whether financed
- 14 in whole or in part by state monies or buildings in which the state has an
- 15 insurable interest as determined by the department of administration.
- 16 2. Contents in any buildings owned, leased or rented, in whole or
- 17 in part, by or to ~~the~~ THIS state, excluding buildings of community
- 18 colleges, and reported to the department of administration.
- 19 3. ~~The~~ THIS state and its departments, agencies, boards and
- 20 commissions and all officers, agents and employees thereof and such others
- 21 as may be necessary to accomplish the functions or business of the state
- 22 and its departments, agencies, boards and commissions against liability
- 23 for acts or omissions of any nature while acting in authorized
- 24 governmental or proprietary capacities and in the course and scope of
- 25 employment or authorization except as prescribed by this chapter.
- 26 4. All personal property reported to the department of
- 27 administration, including vehicles and aircraft owned by the state and its
- 28 departments, agencies, boards and commissions and all ~~non-owned~~ NONOWNED
- 29 personal property ~~which~~ THAT is under the clear responsibility of this
- 30 state because of written leases or other written agreements.
- 31 5. ~~The~~ THIS state and its departments, agencies, boards and
- 32 commissions against casualty, use and occupancy and liability losses of
- 33 every nature except as prescribed by this chapter.
- 34 6. Workers' compensation and employers' liability insurance.
- 35 7. Design and construction of buildings, roads, environmental
- 36 remediations and other construction projects.
- 37 8. Other exposures to loss where insurance may be required to
- 38 protect this state and its departments, agencies, boards and commissions
- 39 and all officers, agents and employees acting in the course and scope of
- 40 employment or authorization except as prescribed by this chapter.
- 41 B. To the extent it is determined necessary and in the best
- 42 interests of ~~the~~ THIS state, the department of administration shall obtain
- 43 insurance or provide for state self-insurance against property damage
- 44 caused by clients and liability coverage resulting from the direct or
- 45 incidental care of clients participating in programs of ~~the~~ THIS state and

1 its departments, agencies, boards or commissions relating to custodial
2 care. The insurable programs shall include foster care, programs for ~~the~~
3 persons with developmental disabilities, an independent living program
4 pursuant to section 8-521 and respite-sitter service programs. The
5 department shall obtain insurance or provide for state self-insurance
6 pursuant to this subsection to protect the clients participating in these
7 programs and individual providers of these program services on behalf of
8 ~~the~~ THIS state and its departments, agencies, boards or commissions. The
9 insurance provided under this subsection does not include medical or
10 workers' compensation coverage for providers. The department may include
11 in its annual budget request pursuant to section 41-622, subsection D a
12 charge for the insurance or self-insurance provided in this subsection.
13 To assist in carrying out ~~the provisions of~~ this subsection, the
14 department shall establish a ~~seven member~~ SEVEN-MEMBER advisory board in
15 accordance with the following provisions:

16 1. The board shall consist of three members appointed by the
17 director of the department of administration, at least one of whom shall
18 be a foster parent, one member appointed by the director of the department
19 of economic security, one member appointed by the director of the
20 department of child safety, one member appointed by the director of the
21 state department of corrections, and one member appointed by the
22 administrative director of the courts.

23 2. The board shall elect a chairman from among its members.

24 3. The board shall hold at least two meetings a year or shall meet
25 at the call of the chairman.

26 4. Board members shall serve for ~~three year~~ THREE-YEAR terms.

27 5. Board members are not eligible to receive compensation but are
28 eligible for reimbursement of expenses pursuant to title 38, chapter 4,
29 article 2.

30 6. The board shall provide advice to the department regarding
31 coverage and administration of ~~the provisions of~~ this subsection and shall
32 assist the department in coordinating its activities pursuant to this
33 subsection with state departments, agencies, boards and commissions.

34 C. The department of administration may obtain insurance against
35 loss, to the extent it is determined necessary and in the best interests
36 of ~~the~~ THIS state as provided in subsection F of this section for the
37 professional liability of individual physicians and psychiatrists who
38 provide services under a contract with the state department of
39 corrections. Coverage is limited to acts and omissions committed inside a
40 state department of corrections facility while in the performance of the
41 contract and to individual physicians and psychiatrists who demonstrate to
42 the satisfaction of the state department of corrections that they cannot
43 otherwise obtain professional liability coverage for the services required
44 by the contract. The director of the department of administration may
45 impose on the state department of corrections a deductible for each loss

1 that arises out of a professional liability claim pursuant to this
2 subsection. Any changes in deductible amounts established by the director
3 shall be subject to review by the joint legislative budget committee.

4 D. The department of administration may obtain property, liability,
5 disability or workers' compensation insurance, self-insure or develop risk
6 retention pools to provide for payment of property loss or casualty claims
7 or disability insurance claims against contractors of this state with the
8 approval of the joint legislative budget committee. With respect to
9 insurance, self-insurance or risk retention pools for contractors licensed
10 and contracted to do work for this state, the coverage afforded applies
11 with respect to the conduct of the business entity of that contractor.
12 The pool is available to all contractors regardless of the amount that the
13 ~~state contracted~~ STATE-CONTRACTED work bears in relation to the amount of
14 nonstate contracted work. The contractor shall be terminated from the
15 pool if the contractor ceases to be a state contractor.

16 E. The department of administration may determine, in the best
17 interests of ~~the~~ THIS state, that state self-insurance is necessary or
18 desirable and, if that decision is made, shall provide for state
19 self-insurance for losses arising out of state property, liability or
20 workers' compensation claims prescribed by subsection A of this section.
21 If the department of administration provides state self-insurance, such
22 coverage shall be excess over any other valid and collectible insurance.
23 The director of the department of administration may impose on state
24 departments, agencies, boards and commissions a deductible for each loss
25 that arises out of a property, liability or workers' compensation loss
26 pursuant to this subsection. Any changes in deductible amounts
27 established by the director shall be subject to review by the joint
28 legislative budget committee.

29 F. In carrying out ~~the provisions of~~ this chapter, the department
30 of administration shall establish and provide the state with some or all
31 of the necessary risk management services, or shall contract for risk
32 management services pursuant to chapter 23 of this title, as the director
33 of the department of administration deems necessary in the best interest
34 of the state, and ~~may~~, in addition to other specifications of such
35 coverage as deemed necessary, MAY determine self-insurance to be
36 established. ~~The provisions of~~ Chapter 23 of this title ~~shall~~ DOES not
37 apply to the department of administration's procurement of insurance to
38 cover losses arising out of state property or liability claims prescribed
39 in subsections A and D of this section or excess loss insurance for the
40 state's workers' compensation liability for individual or aggregate
41 claims, or both, in such amounts and at such primary retention levels as
42 the department of administration deems in the best interest of ~~the~~ THIS
43 state. In purchasing insurance to cover losses arising out of state
44 property or liability claims prescribed by subsection A of this section,

1 the department of administration is not subject to ~~the provisions of~~ title
2 20, chapter 2, article 5.

3 G. ~~No~~ A successful bidder for risk management services pursuant to
4 this section ~~shall be~~ IS NOT entitled to receive directly or indirectly
5 any sales commission, contingent commission, excess profit commission, or
6 other commissions, or anything of value, as payment for the risk
7 management services except those amounts received directly from this state
8 as payment for the risk management services.

9 H. The department of administration shall pay for purchased risk
10 management services, premiums for insurance on state property and state
11 liability and workers' compensation pursuant to ~~the provisions of~~ this
12 chapter.

13 I. A state officer, agent or employee acting in good faith, without
14 wanton disregard of ~~his~~ statutory duties and under the authority of an
15 enactment that is subsequently declared to be unconstitutional, invalid or
16 inapplicable, is not personally liable for an injury or damage caused
17 thereby except to the extent that ~~he~~ THE OFFICER, AGENT OR EMPLOYEE would
18 have been personally liable had the enactment been constitutional, valid
19 and applicable.

20 J. A state officer, agent or employee, except as otherwise provided
21 by statute, is not personally liable for an injury or damage resulting
22 from ~~his~~ AN act or omission in a public official capacity where the act or
23 omission was the result of the exercise of the discretion vested in ~~him~~
24 THE OFFICER, AGENT OR EMPLOYEE AND if the exercise of the discretion was
25 done in good faith without wanton disregard of ~~his~~ statutory duties.

26 K. ~~The~~ THIS state and its departments, agencies, boards and
27 commissions are immune from liability for losses arising out of a judgment
28 for ~~willful~~ WILFUL and wanton conduct resulting in punitive or exemplary
29 damages.

30 L. The following exclusions shall apply to subsections A, B and E
31 of this section:

32 1. Losses against this state and its departments, agencies, boards
33 and commissions that arise out of and are directly attributable to an act
34 or omission determined by a court to be a felony by a person who is
35 provided coverage pursuant to this article unless the state knew of the
36 person's propensity for that action, except those acts arising out of the
37 operation or use of a motor vehicle.

38 2. Losses arising out of contractual breaches.

39 M. If self-insurance coverage is determined to exist, the attorney
40 general, with funds provided by the department of administration, shall
41 provide for the defense, either through ~~his~~ THE ATTORNEY GENERAL'S office
42 or by appointment of outside legal counsel, of ~~the~~ THIS state and its
43 departments, agencies, boards and commissions and all officers, agents and
44 employees thereof and such others as are insured by the department of
45 administration for or on account of their acts or omissions covered

1 pursuant to this chapter. All state departments, agencies, boards and
2 commissions, all officers, agents and employees thereof and such others as
3 are insured by the department of administration shall cooperate fully with
4 the attorney general and department of administration in the defense of
5 claims arising pursuant to this chapter.

6 N. A claim for liability damages made pursuant to this chapter may
7 be settled and payment made up to the amount of ~~twenty-five thousand~~
8 ~~dollars~~ \$25,000 or such higher limit as may be established by the joint
9 legislative budget committee with the approval of the director of the
10 department of administration. A claim over the amount of ~~twenty-five~~
11 ~~thousand dollars~~ \$25,000 up to ~~fifty thousand dollars~~ \$50,000 or such
12 higher limit as may be established by the joint legislative budget
13 committee may be settled and payment made with the approval of the
14 director of the department of administration and the attorney general.
15 Any claim over the amount of ~~fifty thousand dollars~~ \$50,000 or such higher
16 limit as may be established by the joint legislative budget committee may
17 be settled and payment made with the approval of the director of the
18 department of administration, the attorney general and the joint
19 legislative budget committee. If it is in the best interest of this
20 state, the joint legislative budget committee may establish higher
21 settlement limits. Any settlements involving amounts in excess of ~~fifty~~
22 ~~thousand dollars~~ \$50,000 or such higher limit as may be established by the
23 joint legislative budget committee shall be approved by the department of
24 administration, the attorney general and the joint legislative budget
25 committee pursuant to the authority granted. The settlement of liability
26 claims shall be solely the authority of the department of administration,
27 the attorney general and the joint legislative budget committee. No state
28 department, agency, board or commission or any officer, agent or employee
29 of this state may voluntarily make any payment, assume any obligation,
30 incur any expense or maintain the individual right of consent for
31 liability claims made pursuant to this chapter except as provided by this
32 section.

33 O. Neither the authority provided by this section to insure, nor
34 the exercise of such authority, shall:

35 1. Impose any liability on this state or the departments, agencies,
36 boards and commissions or any officers, agents and employees of this state
37 unless such liability otherwise exists.

38 2. Impair any defense this state or the departments, agencies,
39 boards and commissions or any officers, agents and employees of this state
40 otherwise may have.

41 P. The department of administration shall pay, on behalf of any
42 state officer, agent or employee, any damages, excluding punitive damages,
43 for which the officer, agent or employee becomes legally responsible if
44 the acts or omissions resulting in liability were within the officer's,
45 agent's or employee's course and scope of employment. The department of

1 administration may pay for all damages however designated ~~which~~ THAT the
2 officer, agent or employee becomes legally responsible for if the acts or
3 omissions resulting in liability are determined by the director of the
4 department of administration to be within the person's course and scope of
5 employment.

6 Q. The department of administration shall adopt such rules as are
7 deemed necessary to carry out, implement and limit ~~the provisions of~~ this
8 chapter.

9 R. For the purposes of determining whether a state officer, agent
10 or employee is entitled to coverage under this chapter, "within the course
11 and scope of employment or authorization" means:

12 1. The acts or omissions that the state officer, agent or employee
13 is employed or authorized to perform.

14 2. The acts or omissions of the state officer, agent or employee
15 occur substantially within the authorized time and space limit.

16 3. The acts or omissions are activated at least in part by a
17 purpose to serve this state or its departments, agencies, boards or
18 commissions.

19 S. To the extent it is determined necessary and in the best
20 interest of this state, the department of administration may obtain design
21 and construction insurance or provide for self-insurance against property
22 damage caused by this state, its departments, agencies, boards and
23 commissions and all officers and employees of this state in connection
24 with the construction of public works projects. Workers' compensation
25 liability insurance may be purchased to cover both general contractors and
26 subcontractors doing work on a specific contracted ~~work site~~ WORKSITE.
27 The department may include in its annual budget request, pursuant to
28 section 41-622, subsection D, the cost of the insurance purchased or
29 provided. In connection with the construction of public works projects,
30 the department of administration may also use an owner-controlled or
31 wrap-up insurance program if all of the following conditions are met:

32 1. The total cost of the project is over ~~fifty million dollars~~
33 \$50,000,000.

34 2. The program maintains completed operations coverage for a term
35 during which coverage is reasonably commercially available as determined
36 by the director of the department of insurance AND FINANCIAL INSTITUTIONS,
37 but in no event for less than three years.

38 3. Bid specifications clearly specify for all bidders the insurance
39 coverage provided under the program and the minimum safety requirements
40 that shall be met.

41 4. The program does not prohibit a contractor or subcontractor from
42 purchasing any additional insurance coverage that a contractor believes is
43 necessary for protection from any liability arising out of the contract.
44 The cost of the additional insurance shall not be passed through to this
45 state on a contract bid.

1 5. The program does not include surety insurance.

2 T. The state may purchase an owner-controlled or wrap-up policy
3 that has a deductible or self-insured retention as long as the deductible
4 or self-insured retention does not exceed ~~one million dollars~~ \$1,000,000.

5 U. For the purposes of subsections S and T of this section:

6 1. "Owner-controlled or wrap-up insurance" means a series of
7 insurance policies issued to cover this state and all of the contractors,
8 subcontractors, architects and engineers on a specified contracted ~~work~~
9 ~~site~~ WORKSITE for purposes of general liability, property damage and
10 workers' compensation.

11 2. "Specific contracted ~~work site~~ WORKSITE" means construction
12 being performed at one site or a series of contiguous sites separated only
13 by a street, roadway, waterway or railroad right-of-way, or along a
14 continuous system for the provision of water and power.

15 V. Notwithstanding any other statute the department of
16 administration may:

17 1. Limit the liability of a person who contracts to provide goods,
18 software or other services to this state.

19 2. Allow the person to disclaim incidental or consequential
20 damages.

21 3. Indemnify or hold harmless any party to the contract.

22 Sec. 162. Section 41-621.01, Arizona Revised Statutes, is amended
23 to read:

24 41-621.01. Contractors or subcontractors; pooling of
25 property, liability and workers' compensation
26 coverage; exemptions; board of trustees;
27 contract; termination; audit; insolvency

28 A. Pursuant to section 41-621, subsection D and section 41-622.01
29 two or more contractors or subcontractors licensed to do work for this
30 state or any political subdivision of this state may with the approval of
31 the department of administration enter into contracts or agreements
32 pursuant to this section for the joint purchase of insurance, to pool
33 retention of their risks for property and liability losses and to provide
34 for the payment of the property loss or claim of liability made against
35 any member of the pool on a cooperative or contract basis with one another
36 or may jointly form a nonprofit corporation or enter into a trust
37 agreement to carry out ~~the provisions of~~ this section in their behalf
38 directly or by contract with a private party, if the department of
39 administration has determined to sanction such a pool. Two or more
40 contractors may also enter into contracts or agreements pursuant to this
41 section to establish a workers' compensation pool to provide for the
42 payment of workers' compensation claims pursuant to title 23, chapter 6 on
43 a cooperative or contract basis with one another or may jointly form a
44 nonprofit corporation or enter into a trust agreement to carry out ~~the~~
45 ~~provisions of~~ this section in their behalf directly or by contract with a

1 private party. A workers' compensation pool established pursuant to this
2 subsection may provide coverage for workers' compensation, employers'
3 liability and occupational disease claims. A workers' compensation pool
4 is subject to approval as a self-insurer by the industrial commission OF
5 ARIZONA pursuant to section 23-961, subsection A, paragraph 2 and is
6 subject to title 23, chapter 6 and rules adopted pursuant to that chapter
7 in addition to the requirements of this section. The industrial
8 commission OF ARIZONA, by rule, resolution or order, may adopt
9 requirements for the administration of a workers' compensation pool under
10 this subsection, including separation or commingling of funds, accounting,
11 auditing, reporting, actuarial standards and procedures.

12 B. In addition to other authority granted pursuant to this title,
13 two or more contractors or subcontractors licensed to do work for this
14 state or any political subdivision of this state may enter into contracts
15 or agreements for the joint purchase of life insurance, disability
16 insurance, accident insurance or health benefits plan insurance, to pool
17 retention of their risks of loss for life, disability, health or accident
18 claims made against any contractor or subcontractor member of the pool or
19 to jointly provide the health and medical services authorized in section
20 36-2907. Contractors and subcontractors may establish pools for the
21 purposes of this subsection by any of the following methods:

22 1. On a cooperative or contract basis.
23 2. By the formation of a nonprofit corporation.
24 3. By a contract or intergovernmental agreement with the Arizona
25 health care cost containment system administration.

26 4. By the execution of a trust agreement directly by the
27 contractors and subcontractors or by contracting with a third party.

28 C. Contractors or subcontractors of a political subdivision of this
29 state that is a member of a risk retention pool authorized under title 11
30 may obtain life insurance, disability insurance, accident insurance or
31 health benefits plan insurance coverage directly from that political
32 subdivision if coverage is available and as authorized by section
33 11-952.01, subsection C.

34 D. Section 10-11301 does not apply to nonprofit corporations formed
35 pursuant to this section.

36 E. Chapter 23 of this title does not apply to the procurement of
37 insurance or to the procurement of the services provided for in subsection
38 I, paragraph 8 of this section by any pool established pursuant to this
39 section.

40 F. Title 43 does not apply to any pool established pursuant to this
41 section. Any pool established pursuant to this section is exempt from
42 taxation under title 43.

43 G. Each pool shall be operated by a board of trustees consisting of
44 at least five members. The board of trustees of each group shall do all
45 of the following:

- 1 1. Establish terms and conditions of coverage within the pool
- 2 including exclusions of coverage.
- 3 2. Ensure that all claims are paid promptly.
- 4 3. Take all necessary precautions to safeguard the assets of the
- 5 group.
- 6 4. Maintain minutes of its meetings.
- 7 5. Designate an administrator to carry out the policies established
- 8 by the board of trustees and to provide day to day management of the group
- 9 and delineate in the written minutes of its meetings the areas of
- 10 authority it delegates to the administrator.
- 11 6. Notify the director of the department of insurance AND FINANCIAL
- 12 INSTITUTIONS of the existence of the pool and file a copy of the agreement
- 13 with the director and with the attorney general.
- 14 7. If the pool is a workers' compensation pool, file a copy of the
- 15 agreement with the director of the industrial commission OF ARIZONA.
- 16 H. The board of trustees shall not:
- 17 1. Extend credit to individual members for payment of a premium
- 18 except pursuant to payment plans established by the board.
- 19 2. Borrow any monies from the group or in the name of the group
- 20 except in the ordinary course of business.
- 21 I. A contract or agreement made pursuant to subsection A of this
- 22 section shall contain the following:
- 23 1. A provision for a system or program of loss control.
- 24 2. A provision for termination of membership including either:
- 25 (a) Cancellation of individual members of the pool by the pool.
- 26 (b) Election by an individual member of the pool to terminate its
- 27 participation.
- 28 3. A provision requiring the pool to pay all claims for which each
- 29 member incurs liability during each member's period of membership.
- 30 4. A provision stating that each member is not relieved of its
- 31 liability incurred during the member's period of membership except through
- 32 the payment of losses by the pool or by the member.
- 33 5. A provision for the maintenance of claims reserves equal to
- 34 known incurred losses and an estimate of incurred but not reported claims.
- 35 6. A provision for a final accounting and settlement of the
- 36 obligations of or refunds to a terminating member to occur when all
- 37 incurred claims are concluded, settled or paid.
- 38 7. A provision that the pool may establish offices where necessary
- 39 in this state and employ necessary staff to carry out the purposes of the
- 40 pool.
- 41 8. A provision that the pool may retain legal counsel, actuaries,
- 42 auditors, engineers, private consultants and advisors.
- 43 9. A provision that the pool may make and alter bylaws and rules
- 44 pertaining to the exercise of its purpose and powers.

1 10. A provision that the pool may purchase, lease or rent real and
2 personal property it deems necessary.

3 11. A provision that the pool shall enter into a financial services
4 agreement with banks and that it may issue checks in its own name.

5 J. A pool or a terminating member shall provide at least ninety
6 days' written notice of the termination or cancellation. A workers'
7 compensation pool shall notify the industrial commission OF ARIZONA of the
8 termination or cancellation of a member thirty days before the termination
9 or cancellation of the member.

10 K. The pool shall be audited annually at the expense of the pool by
11 a certified public accountant, with a copy of the report submitted to the
12 governing body or chief executive officer of each member of the pool and
13 to the director of the department of insurance AND FINANCIAL INSTITUTIONS.
14 The board of trustees of the pool shall obtain an appropriate actuarial
15 evaluation of the claim reserves of the pool including an estimate of the
16 incurred but not reported claims. The department of insurance AND
17 FINANCIAL INSTITUTIONS shall examine each contractor pool once every five
18 years. The director of the department of insurance AND FINANCIAL
19 INSTITUTIONS may examine a contractor pool sooner than five years from the
20 preceding examination if the director has reason to believe that the pool
21 is insolvent. The costs of any examination shall be paid by the pool
22 subject to the examination.

23 L. If, as a result of the annual audit or an examination by the
24 director of the department of insurance AND FINANCIAL INSTITUTIONS, it
25 appears that the assets of the pool are insufficient to enable the pool to
26 discharge its legal liabilities and other obligations, the director of the
27 department of insurance AND FINANCIAL INSTITUTIONS shall notify the
28 administrator and the board of trustees of the pool of the deficiency and
29 provide the director's list of recommendations to abate the deficiency,
30 including a recommendation not to add any new members until the deficiency
31 is abated. If the pool fails to comply with the recommendations within
32 sixty days after the date of the notice, the director shall notify the
33 chief executive officer or the governing bodies, if any, of the members of
34 the pool, the governor, the president of the senate and the speaker of the
35 house of representatives that the pool has failed to comply with the
36 recommendations of the director.

37 M. If a pool is determined to be insolvent or is otherwise found to
38 be unable to discharge its legal liabilities and other obligations, each
39 agreement or contract shall provide that the members of the pool shall be
40 assessed on a pro rata basis as calculated by the amount of each member's
41 annual contribution in order to satisfy the amount of deficiency. The
42 assessment shall not exceed the amount of each member's annual
43 contribution to the pool.

44 N. If a workers' compensation pool fails to comply with title 23,
45 chapter 6 or rules adopted pursuant to that chapter, the director of the

1 industrial commission OF ARIZONA shall immediately notify the director of
2 the department of administration and the director of the department of
3 insurance AND FINANCIAL INSTITUTIONS.

4 Sec. 163. Section 41-1009, Arizona Revised Statutes, is amended to
5 read:

6 41-1009. Inspections and audits; applicability; exceptions

7 A. An agency inspector, auditor or regulator who enters any
8 premises of a regulated person for the purpose of conducting an inspection
9 or audit shall, unless otherwise provided by law:

10 1. Present photo identification on entry of the premises.

11 2. On initiation of the inspection or audit, state the purpose of
12 the inspection or audit and the legal authority for conducting the
13 inspection or audit.

14 3. Disclose any applicable inspection or audit fees.
15 NOTWITHSTANDING ANY OTHER LAW, A REGULATED PERSON BEING INSPECTED OR
16 AUDITED IS RESPONSIBLE FOR ONLY THE DIRECT AND REASONABLE COSTS OF THE
17 INSPECTION OR AUDIT AND IS ENTITLED TO RECEIVE A DETAILED BILLING
18 STATEMENT AS DESCRIBED IN PARAGRAPH 5, SUBDIVISION (e) OF THIS SUBSECTION.

19 4. Afford an opportunity to have an authorized on-site
20 representative of the regulated person accompany the agency inspector,
21 auditor or regulator on the premises, except during confidential
22 interviews.

23 5. Provide notice of the right to have on request:

24 (a) Copies of any original documents taken by the agency during the
25 inspection or audit if the agency is ~~permitted~~ ALLOWED by law to take
26 original documents.

27 (b) A split of any samples taken during the inspection if the split
28 of any samples would not prohibit an analysis from being conducted or
29 render an analysis inconclusive.

30 (c) Copies of any analysis performed on samples taken during the
31 inspection.

32 (d) Copies of any documents to be relied on to determine compliance
33 with licensure or regulatory requirements if the agency is otherwise
34 ~~permitted~~ ALLOWED by law to do so.

35 (e) A DETAILED BILLING STATEMENT THAT PROVIDES REASONABLE
36 SPECIFICITY OF THE INSPECTION OR AUDIT FEES IMPOSED PURSUANT TO PARAGRAPH
37 3 OF THIS SUBSECTION AND THAT CITES THE STATUTE OR RULE THAT AUTHORIZES
38 THE FEES BEING CHARGED.

39 6. Inform each person whose conversation with the agency inspector,
40 auditor or regulator during the inspection or audit is tape recorded that
41 the conversation is being tape recorded.

42 7. Inform each person who is interviewed during the inspection or
43 audit that:

44 (a) Statements made by the person may be included in the inspection
45 or audit report.

1 (b) Participation in an interview is voluntary, unless the person
2 is legally compelled to participate in the interview.

3 (c) The person is allowed at least twenty-four hours to review and
4 revise any written witness statement that is drafted by the agency
5 inspector, auditor or regulator and on which the agency inspector, auditor
6 or regulator requests the person's signature.

7 (d) The agency inspector, auditor or regulator may not prohibit the
8 regulated person from having an attorney or any other experts in their
9 field present during the interview to represent or advise the regulated
10 person.

11 B. On initiation of an audit or an inspection of any premises of a
12 regulated person, an agency inspector, auditor or regulator shall provide
13 the following in writing:

14 1. The rights described in subsection A of this section and section
15 41-1001.01, subsection C.

16 2. The name and telephone number of a contact person who is
17 available to answer questions regarding the inspection or audit.

18 3. The due process rights relating to an appeal of a final decision
19 of an agency based on the results of the inspection or audit, including
20 the name and telephone number of a person to contact within the agency and
21 any appropriate state government ombudsman.

22 4. A statement that the agency inspector, auditor or regulator may
23 not take any adverse action, treat the regulated person less favorably or
24 draw any inference as a result of the regulated person's decision to be
25 represented by an attorney or advised by any other experts in their field.

26 5. A notice that if the information and documents provided to the
27 agency inspector, auditor or regulator become a public record, the
28 regulated person may redact trade secrets and proprietary and confidential
29 information unless the information and documents are confidential pursuant
30 to statute.

31 6. The time limit or statute of limitations applicable to the right
32 of the agency inspector, auditor or regulator to file a compliance action
33 against the regulated person arising from the inspection or audit, which
34 applies to both new and amended compliance actions.

35 C. An agency inspector, auditor or regulator shall obtain the
36 signature of the regulated person or on-site representative of the
37 regulated person on the writing prescribed in subsection B of this section
38 and section 41-1001.01, subsection C, if applicable, indicating that the
39 regulated person or on-site representative of the regulated person has
40 read the writing prescribed in subsection B of this section and section
41 41-1001.01, subsection C, if applicable, and is notified of the regulated
42 person's or on-site representative of the regulated person's inspection or
43 audit and due process rights. The agency inspector, auditor or regulator
44 may provide an electronic document of the writing prescribed in subsection
45 B of this section and section 41-1001.01, subsection C and, at the request

1 of the regulated person or on-site representative, obtain a receipt in the
2 form of an electronic signature. The agency shall maintain a copy of this
3 signature with the inspection or audit report and shall leave a copy with
4 the regulated person or on-site representative of the regulated person.
5 If a regulated person or on-site representative of the regulated person is
6 not at the site or refuses to sign the writing prescribed in subsection B
7 of this section and section 41-1001.01, subsection C, if applicable, the
8 agency inspector, auditor or regulator shall note that fact on the writing
9 prescribed in subsection B of this section and section 41-1001.01,
10 subsection C, if applicable.

11 D. An agency that conducts an inspection shall give a copy of the
12 inspection report to the regulated person or on-site representative of the
13 regulated person either:

- 14 1. At the time of the inspection.
- 15 2. Notwithstanding any other state law, within thirty working days
16 after the inspection.
- 17 3. As otherwise required by federal law.

18 E. The inspection report shall contain deficiencies identified
19 during an inspection. Unless otherwise provided by state or federal law,
20 the agency shall provide the regulated person an opportunity to correct
21 the deficiencies unless the agency documents in writing as part of the
22 inspection report that the deficiencies are:

- 23 1. Committed intentionally.
- 24 2. Not correctable within a reasonable period of time as determined
25 by the agency.
- 26 3. Evidence of a pattern of noncompliance.
- 27 4. A risk to any person, the public health, safety or welfare or
28 the environment.

29 F. If the agency is unsure whether a regulated person meets the
30 exemptions in subsection E of this section, the agency shall provide the
31 regulated person with an opportunity to correct THE DEFICIENCIES.

32 G. If the agency allows the regulated person an opportunity to
33 correct the deficiencies pursuant to subsection E of this section, the
34 regulated person shall notify the agency when the deficiencies have been
35 corrected. Within thirty days after receipt of notification from the
36 regulated person that the deficiencies have been corrected, the agency
37 shall determine if the regulated person is in substantial compliance and
38 notify the regulated person whether or not the regulated person is in
39 substantial compliance. If the regulated person fails to correct the
40 deficiencies or the agency determines the deficiencies have not been
41 corrected within a reasonable period of time, the agency may take any
42 enforcement action authorized by law for the deficiencies.

43 H. If the agency does not allow the regulated person an opportunity
44 to correct deficiencies pursuant to subsection E of this section, on the
45 request of the regulated person, the agency shall provide a detailed

1 written explanation of the reason that an opportunity to correct was not
2 allowed.

3 I. An agency decision pursuant to subsection E or G of this section
4 is not an appealable agency action.

5 J. At least once every month after the commencement of the
6 inspection, an agency shall provide a regulated person with an update on
7 the status of any agency action resulting from an inspection of the
8 regulated person. An agency is not required to provide an update after
9 the regulated person is notified that no agency action will result from
10 the agency inspection or after the completion of agency action resulting
11 from the agency inspection.

12 K. For agencies with authority under title 49, if, as a result of
13 an inspection or any other investigation, an agency alleges that a
14 regulated person is not in compliance with licensure or other applicable
15 regulatory requirements, the agency shall provide written notice of that
16 allegation to the regulated person. The notice shall contain the
17 following information:

18 1. A citation to the statute, regulation, license or permit
19 condition on which the allegation of noncompliance is based, including the
20 specific provisions in the statute, regulation, license or permit
21 condition that are alleged to be violated.

22 2. Identification of any documents relied on as a basis for the
23 allegation of noncompliance.

24 3. An explanation stated with reasonable specificity of the
25 regulatory and factual basis for the allegation of noncompliance.

26 4. Instructions for obtaining a timely opportunity to discuss the
27 alleged violation with the agency.

28 L. Subsection K of this section applies only to inspections
29 necessary for the issuance of a license or to determine compliance with
30 licensure or other regulatory requirements. Subsection K of this section
31 does not apply to an action taken pursuant to section 11-871, 11-876,
32 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under
33 subsection K of this section is not a prerequisite to otherwise lawful
34 agency actions seeking an injunction or issuing an order if the agency
35 determines that the action is necessary on an expedited basis to abate an
36 imminent and substantial endangerment to public health or the environment
37 and documents the basis for that determination in the documents initiating
38 the action.

39 M. This section does not authorize an inspection or any other act
40 that is not otherwise authorized by law.

41 N. Except as otherwise provided in subsection L of this section,
42 this section applies only to inspections necessary for the issuance of a
43 license or to determine compliance with licensure or other regulatory
44 requirements applicable to a licensee and audits pursuant to enforcement
45 of title 23, chapters 2 and 4. This section does not apply:

1 1. To criminal investigations, investigations under tribal state
2 gaming compacts and undercover investigations that are generally or
3 specifically authorized by law.

4 2. If the agency inspector, auditor or regulator has reasonable
5 suspicion to believe that the regulated person may be engaged in criminal
6 activity.

7 3. To the Arizona peace officer standards and training board
8 established by section 41-1821.

9 4. To certificates of convenience and necessity that are issued by
10 the corporation commission pursuant to title 40, chapter 2.

11 O. If an agency inspector, auditor or regulator gathers evidence in
12 violation of this section, the violation may be a basis to exclude the
13 evidence in a civil or administrative proceeding.

14 P. Failure of an agency, board or commission employee to comply
15 with this section:

16 1. May subject the employee to disciplinary action or dismissal.

17 2. Shall be considered by the judge and administrative law judge as
18 grounds for reduction of any fine or civil penalty.

19 Q. An agency may make rules to implement subsection A, paragraph 5
20 of this section.

21 R. Nothing in this section shall be used to exclude evidence in a
22 criminal proceeding.

23 S. Subsection A, paragraph 7, subdivision (c) and subsection E of
24 this section do not apply to the department of health services for the
25 purposes of title 36, chapters 4 and 7.1.

26 T. Subsection B, paragraph 5 and subsection E of this section do
27 not apply to the corporation commission for the purposes of title 44,
28 chapters 12 and 13.

29 Sec. 164. Section 41-1525, Arizona Revised Statutes, is amended to
30 read:

31 41-1525. Arizona quality jobs incentives; tax credits for new
32 employment; qualifications; definitions

33 A. The owner of a business that is located in this state before
34 July 2025 is eligible for income tax credits under section 43-1074 or
35 43-1161 or an insurance premium tax credit under section 20-224.03 for net
36 increases in full-time employees residing in this state and hired in
37 qualified employment positions in this state.

38 B. To qualify under this section, and subject to preapproval by the
39 authority, the business must meet at least one of the following
40 requirements for each location of the business before it claims a first
41 year tax credit for the location:

42 1. Invest at least ~~five million dollars~~ \$5,000,000 of capital
43 investment and create at least twenty-five net new qualified employment
44 positions that pay compensation at least equal to one hundred percent of

1 the county median wage as computed annually by the authority in an urban
2 location.

3 2. Invest at least ~~two million five hundred thousand dollars~~
4 \$2,500,000 of capital investment and create at least twenty-five net new
5 qualified employment positions that pay compensation at least equal to one
6 hundred twenty-five percent of the county median wage as computed annually
7 by the authority in an urban location.

8 3. Invest at least ~~one million dollars~~ \$1,000,000 of capital
9 investment and create at least twenty-five net new qualified employment
10 positions that pay compensation at least equal to one hundred fifty
11 percent of the county median wage as computed annually by the authority in
12 an urban location.

13 4. Invest at least ~~five hundred thousand dollars~~ \$500,000 of
14 capital investment and create at least twenty-five net new qualified
15 employment positions that pay compensation at least equal to two hundred
16 percent of the county median wage as computed annually by the authority in
17 an urban location.

18 5. Invest at least ~~one million dollars~~ \$1,000,000 of capital
19 investment and create at least five net new qualified employment positions
20 that pay compensation at least equal to one hundred percent of the county
21 median wage as computed annually by the authority in a rural location.

22 6. Invest at least ~~five hundred thousand dollars~~ \$500,000 of
23 capital investment and create at least five net new qualified EMPLOYMENT
24 positions that pay compensation at least equal to one hundred twenty-five
25 percent of the county median wage as computed annually by the authority in
26 a rural location.

27 7. Invest at least ~~one hundred thousand dollars~~ \$100,000 of capital
28 investment and create at least five net new qualified EMPLOYMENT positions
29 that pay compensation at least equal to one hundred fifty percent of the
30 county median wage as computed annually by the authority in a rural
31 location.

32 C. The capital investment and the new qualified employment
33 positions requirements of subsection B of this section must be
34 accomplished within twelve months after the start of the required capital
35 investment. ~~No~~ Credit may NOT be claimed until both requirements are met.
36 A business that meets the requirements of subsection B of this section for
37 a location is eligible to claim first year credits for three years
38 beginning with the taxable year in which those requirements are completed.
39 Employees hired at the location before the beginning of the taxable year
40 but during the twelve-month period allowed in this subsection are
41 considered to be new employees for the taxable year in which all of those
42 requirements are completed. The employees that are considered to be new
43 employees for the taxable year under this subsection shall not be included
44 in the average number of full-time employees during the immediately
45 preceding taxable year until the taxable year in which all of the

1 requirements of subsection B of this section are completed. An employee
2 working at a temporary worksite in this state while the designated
3 location is under construction is considered to be working at the
4 designated location if all of the following occur:

5 1. The employee is hired after the start of the required investment
6 at the designated location.

7 2. The employee is hired to work at the designated location after
8 it is completed.

9 3. The payroll for the employees destined for the designated
10 location is segregated from other employees.

11 4. The employee is moved to the designated location within thirty
12 days after its completion.

13 D. ~~NO~~ NOT more than ten thousand new jobs for all employers qualify
14 for first year credits each year.

15 E. To claim a tax credit, the business must:

16 1. Obtain preapproval from the authority at a time, on a form and
17 in a manner prescribed by the authority. Preapproval shall cover all
18 first year credits intended to be claimed for the designated location and
19 all second and third year credits associated with those first year
20 credits.

21 2. Certify to the department of revenue or the department of
22 insurance AND FINANCIAL INSTITUTIONS, as applicable, on or before the due
23 date of the tax return, including any extensions for the year for which
24 the credit is claimed, in a form prescribed by the department, including
25 electronic media, information that the department may require, including
26 the ownership interests of co-owners of the business if the business is a
27 partnership, limited liability company or an S corporation, and the
28 following information for each employee in the designated location:

29 (a) The date of initial employment.

30 (b) The number of hours worked during the year.

31 (c) Whether the position was full-time.

32 (d) The employee's annual compensation.

33 (e) The total cost of health insurance for the employee and the
34 cost paid by the employer.

35 (f) Other information required by the department.

36 3. Report and certify to the authority the following information,
37 and provide supporting documentation, on a form and in a manner approved
38 by the authority, and as specified in subsection F of this section, for
39 each year in which the taxpayer earned and claimed or used credits or is
40 carrying forward amounts from previously earned and claimed credits:

41 (a) The business name and mailing address and any other contact
42 information requested by the authority.

43 (b) The physical address of the business location or locations and
44 the number of employees qualified for the credit at each location.

1 (c) The average hourly wage and the total amount of compensation
2 paid to employees qualified for the credit and for all employees.

3 (d) The total number of qualified employment positions and the
4 amount of income tax or premium tax credits qualified for in the taxable
5 year.

6 (e) The estimated amount of tax credits to be used in the taxable
7 year to offset tax liability.

8 (f) The estimated amount of tax credits to be available for
9 carryforward in the taxable year and the year in which the credits expire.

10 (g) The number of jobs and the amount of credits earned and claimed
11 on the prior year's tax return.

12 (h) The amount of credits used to offset tax liabilities on the
13 prior year's tax return.

14 (i) The amount of credits available for carryforward as reported on
15 the prior year's tax return and the year the credits expire.

16 (j) Capital investment made during the taxable year and the
17 preceding taxable year.

18 (k) Other information necessary for the management and reporting of
19 the incentives under this section.

20 4. For any year in which the taxpayer is claiming first year
21 credits, report and certify the following additional information and
22 provide supporting documentation to the authority on a form and in a
23 manner approved by the authority, and as specified in subsection F of this
24 section:

25 (a) That the net increase in the number of qualified employment
26 positions for which credit is sought is the least of:

27 (i) The total number of filled qualified employment positions
28 created at the designated location or locations during the taxable year.

29 (ii) The difference between the average number of full-time
30 employees in this state in the current taxable year and the average number
31 of full-time employees in this state during the immediately preceding
32 taxable year.

33 (b) That all employees filling a qualified employment position were
34 employed for at least ninety days during the first taxable year.
35 Employees hired in the last ninety days of the taxable year are excluded
36 for that taxable year and are considered to be new employees in the
37 following taxable year.

38 (c) That none of the employees filling qualified employment
39 positions were employed by the taxpayer during the twelve months before
40 the current date of hire except for those relocating to this state.

41 (d) That all employees for whom second and third year credits are
42 claimed are in qualified employment positions for which first year credits
43 were allowed and claimed by the taxpayer on the original first and second
44 year tax returns.

1 (e) That all employees for whom credits are taken performed their
2 job duties primarily at the designated locations of the business.

3 F. To qualify for first year credits, the report and certification
4 prescribed by subsection E, paragraphs 3 and 4 of this section must be
5 filed with the authority by the earlier of six months after the end of the
6 taxable year in which the qualified employment positions were created or
7 by the date the tax return is filed for the taxable year in which the
8 qualified employment positions were created. To qualify for second year
9 credits, the report and certification prescribed by subsection E,
10 paragraph 3 of this section must be filed with the authority by the
11 earlier of six months after the end of the taxable year or the date the
12 tax return is filed for the taxable year in which the second year credits
13 are allowable. To qualify for third year credits, the report and
14 certification prescribed by subsection E, paragraph 3 of this section must
15 be filed with the authority by the earlier of six months after the end of
16 the taxable year or the date the tax return is filed for the taxable year
17 in which the third year credits are allowable.

18 G. Any information submitted to the authority under subsection E,
19 paragraph 3, subdivisions (e) through (j) of this section is exempt from
20 title 39, chapter 1, article 2 and considered to be confidential and is
21 not subject to disclosure except:

22 1. To the extent that the person or organization that provided the
23 information consents to the disclosure.

24 2. To the department of revenue for use in tax administration.

25 H. Documents filed with the authority, the department of insurance
26 AND FINANCIAL INSTITUTIONS and the department of revenue under subsection
27 E of this section shall contain either a sworn statement or certification,
28 signed by an officer of the company under penalty of perjury, that the
29 information contained is true and correct according to the best belief and
30 knowledge of the person submitting the information after a reasonable
31 investigation of the facts. If the document contains information that is
32 materially false, the taxpayer is ineligible for the tax credits described
33 under subsection A of this section and is subject to recovery of the
34 amount of tax credits allowed in preceding taxable years based on the
35 false information, plus penalties and interest.

36 I. The authority may make site visits to a taxpayer's facilities if
37 it is necessary to further document or clarify reported information. The
38 taxpayer must freely provide the access.

39 J. The authority by rule shall prescribe preapproval requirements
40 and additional reporting requirements for taxpayers who claim tax credits
41 pursuant to this section.

42 K. On or before September 30 of each year, the authority shall
43 transmit a report to the governor, the president of the senate, the
44 speaker of the house of representatives and the chairpersons of the senate
45 finance committee and the house of representatives ways and means

1 committee and provide a copy of the report to the secretary of state. The
2 report shall include the following information:

3 1. The business names, locations, number of employees and amount of
4 compensation paid to employees qualifying for income tax credits as
5 reported to the authority.

6 2. The amount of capital investment, made during the preceding
7 fiscal year and cumulatively.

8 3. The total amount of income tax credits allowed for the preceding
9 taxable year and the number of qualified employment positions for which
10 credits were claimed pursuant to sections 43-1074 and 43-1161.

11 L. For the purposes of this section:

12 1. "Capital investment" means an expenditure to acquire, lease or
13 improve property that is used in operating a business, including:

14 (a) Land, buildings, machinery and fixtures.

15 (b) For taxable years beginning from and after June 30, 2011,
16 equipment.

17 2. "Designated location" means the location at which the required
18 capital investment is made under subsection B of this section.

19 3. "Location" means a single parcel or contiguous parcels of owned
20 or leased land in this state, the structures and personal property
21 contained on the land or any part of the structures occupied by the owner.
22 Parcels that are separated only by a public thoroughfare or right-of-way
23 are considered to be contiguous but a single contiguous parcel that is
24 located in both an urban location and a rural location is considered to be
25 a contiguous urban location.

26 4. "Qualified employment position" means employment that meets the
27 following requirements:

28 (a) The position consists of at least one thousand seven hundred
29 fifty hours per year of full-time permanent employment.

30 (b) The job duties are performed primarily at the location or
31 locations of the business in this state.

32 (c) The employment provides health insurance coverage for the
33 employee for which the employer pays at least sixty-five percent of the
34 premium or membership cost. If the business is self-insured, the employer
35 pays at least sixty-five percent of a predetermined fixed cost per
36 employee for an insurance program that is payable whether or not the
37 employee has filed claims.

38 (d) The employer pays compensation at least equal to the wage
39 threshold as described in subsection B of this section.

40 5. "Rural location" means a location that is within the boundaries
41 of tribal lands or a city or town with a population of less than fifty
42 thousand persons or a county with a population of less than eight hundred
43 thousand persons.

44 6. "Urban location" means a location that is within the exterior
45 boundaries of a city or town that has a population of fifty thousand

1 persons or more and that is located in a county that has a population of
2 eight hundred thousand persons or more.

3 Sec. 165. Section 41-2574, Arizona Revised Statutes, is amended to
4 read:

5 41-2574. Contract performance and payment bonds

6 A. The following bonds or security is required and is binding on
7 the parties to the contract if the value of a construction award exceeds
8 the amount established by section 41-2535:

9 1. A performance bond that is executed and furnished as required
10 under title 34, chapter 2, article 2 or chapter 6, as applicable, in an
11 amount equal to one hundred ~~per cent~~ PERCENT of the price specified in the
12 contract conditioned on the faithful performance of the contract in
13 accordance with the plans, specifications and conditions of the contract,
14 except that:

15 (a) For job-order-contracting construction services, the
16 performance bond shall cover the full amount of construction under the
17 job-order-contracting construction services contract, shall not include
18 any design services, preconstruction services, finance services,
19 maintenance services, operations services or other related services
20 included in the contract, may be a single bond for the full term of the
21 contract, a separate bond for each year of a multiyear contract or a
22 separate bond for each job order, as determined by the purchasing agency,
23 and, if a single bond for the full term of the contract or a separate bond
24 for each year of a multiyear contract, shall initially be based on the
25 purchasing agency's reasonable estimate of the amount of construction that
26 the purchasing agency believes is likely to actually be done during the
27 full term of the contract or during the particular year of a multiyear
28 contract, as applicable.

29 (b) For construction-manager-at-risk construction services and
30 design-build construction services, the amount of the performance bond
31 shall be the price of construction and shall not include the cost of any
32 design services, preconstruction services, finance services, maintenance
33 services, operations services and other related services included in the
34 contract. This bond is solely for the protection of this state. The
35 conditions and provisions of the performance bond regarding the surety's
36 obligations shall follow the form required under section 34-222,
37 subsection G or section 34-610, subsection G, as applicable.

38 2. A payment bond that is executed and furnished as required by
39 title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount
40 equal to one hundred ~~per cent~~ PERCENT of the price specified in the
41 contract for the protection of all persons supplying labor or material to
42 the contractor or its subcontractors for the performance of the
43 construction provided for in the contract, except that:

44 (a) For job-order-contracting construction services, the payment
45 bond shall cover the full amount of construction under the

1 job-order-contracting construction services contract, shall not include
2 any design services, preconstruction services, finance services,
3 maintenance services, operations services or other related services
4 included in the contract, may be a single bond for the full term of the
5 contract, a separate bond for each year of a multiyear contract or a
6 separate bond for each job order, as determined by the purchasing agency,
7 and, if a single bond for the full term of the contract or a separate bond
8 for each year of a multiyear contract, shall initially be based on the
9 purchasing agency's reasonable estimate of the amount of construction that
10 the purchasing agency believes is likely to actually be done during the
11 full term of the contract or during the particular year of a multiyear
12 contract, as applicable.

13 (b) For construction-manager-at-risk construction services and
14 design-build construction services, the amount of the payment bond shall
15 be the price of construction and shall not include the cost of any design
16 services, preconstruction services, finance services, maintenance
17 services, operations services or other related services included in the
18 contract. The conditions and provisions of the payment bond regarding the
19 surety's obligations shall follow the form required under section 34-222,
20 subsection F or section 34-610, subsection F, as applicable.

21 B. For design-bid-build construction, the bonds prescribed in
22 subsection A of this section shall be provided on and at the same time as
23 execution of the construction contract. For construction-manager-at-risk,
24 design-build and job-order-contracting construction services, the bonds
25 prescribed in subsection A of this section shall be provided only on and
26 at the same time as execution of a contract or an amendment to a contract
27 that commits the contractor to provide construction for a fixed price,
28 guaranteed maximum price or other fixed amount within a designated time
29 frame.

30 C. If the prime contract or specifications require any persons
31 supplying labor or materials in the prosecution of the work to furnish
32 payment or performance bonds, these bonds shall be executed solely by a
33 surety company or companies holding a certificate of authority to transact
34 surety business in this state issued by the director of the department of
35 insurance AND FINANCIAL INSTITUTIONS pursuant to title 20, chapter 2,
36 article 1. Notwithstanding ~~the provisions of~~ any other statute, the bonds
37 shall not be executed by an individual surety or sureties, even if the
38 requirements of section 7-101 are satisfied.

39 Sec. 166. Section 41-3451, Arizona Revised Statutes, is amended to
40 read:

41 41-3451. Automobile theft authority; powers and duties; fund;
42 audit

43 A. The automobile theft authority is established in the department
44 of insurance and financial institutions consisting of the following
45 members:

1 1. Two police chiefs who are appointed by an Arizona association of
2 chiefs of police, one of whom represents a city or town with a population
3 of one hundred thousand or more persons and one of whom represents a city
4 or town with a population of less than one hundred thousand persons, or
5 their designees.

6 2. Two sheriffs who are appointed by an Arizona sheriffs
7 association, one of whom represents a county with a population of five
8 hundred thousand or more persons and one of whom represents a county with
9 a population of less than five hundred thousand persons, or their
10 designees.

11 3. Two county attorneys who are appointed by the governor, one of
12 whom represents a county with a population of two million or more persons
13 and one of whom represents a county with a population of less than two
14 million persons, or their designees.

15 4. Two employees of insurers who are licensed to write motor
16 vehicle liability insurance in this state and who are appointed by the
17 governor.

18 5. Two members of the general public who are appointed by the
19 governor.

20 6. The assistant director for the motor vehicle division in the
21 department of transportation or the assistant director's designee.

22 7. The director of the department of public safety or the
23 director's designee.

24 B. Members serve staggered four-year terms beginning and ending on
25 the third Monday in January. At the first meeting each year, the members
26 shall select a chairman from among the members. The authority shall meet
27 at the call of the chairman or seven members.

28 C. The authority may:

29 1. Subject to chapter 4, article 4 of this title, hire staff
30 members as necessary.

31 2. Provide work facilities and equipment as necessary.

32 3. Determine the scope of the problem of motor vehicle theft,
33 including particular areas of the state where the problem is greatest.

34 4. Analyze the various methods of combating the problem of motor
35 vehicle theft.

36 5. Develop and implement a plan of operation.

37 6. Develop and implement a financial plan.

38 7. Solicit and accept gifts and grants.

39 8. Report by December 31 of each year to the governor, the
40 president of the senate, the speaker of the house of representatives and
41 the secretary of state on its activities during the preceding fiscal year.

42 D. If the chairman of the authority knows that a potential ground
43 for the removal of a member of the authority exists under this subsection,
44 the chairman shall notify the governor. The governor shall remove the
45 member if the governor finds that any of the following applies:

1 1. The member was not qualified to serve at the time the member was
2 appointed.

3 2. The member does not maintain the member's qualifications to
4 serve.

5 3. The member cannot discharge the member's duties for a
6 substantial part of the term due to illness or other disability.

7 4. The member is absent from more than one-half of the regularly
8 scheduled meetings during a calendar year unless the member's absence is
9 excused by a majority vote of the authority.

10 E. The automobile theft authority fund is established consisting of
11 any public or private monies that the authority may receive. The
12 automobile theft authority shall administer the fund. Subject to
13 legislative appropriation, monies in the fund shall ~~only~~ be used ONLY to
14 pay the expenses of the authority and to carry out the purposes of this
15 section. Monies in the fund are exempt from the provisions of sections
16 35-143.01 and 35-190 relating to lapsing of appropriations. On notice
17 from the authority, the state treasurer shall invest and divest monies in
18 the fund as provided by section 35-313, and monies earned from investment
19 shall be credited to the fund. MONIES APPROPRIATED FROM THE FUND THAT ARE
20 INCLUDED IN THE GENERAL APPROPRIATIONS ACT SHALL INCLUDE AT LEAST THE
21 FOLLOWING SEPARATE LINE ITEMS:

- 22 1. AUTOMOBILE THEFT AUTHORITY OPERATING LUMP SUM APPROPRIATION.
23 2. ARIZONA VEHICLE THEFT TASK FORCE.
24 3. LOCAL GRANTS.

25 F. The authority may accept nonmonetary contributions, including
26 the services of individuals, office and secretarial assistance, mailings,
27 printing, office equipment, facilities and supplies, that are necessary to
28 carry out its functions. The nonmonetary contributions shall not be
29 included in the costs of administration limitation prescribed by
30 subsection H of this section.

31 G. The automobile theft authority shall allocate monies in the fund
32 to public agencies for the purpose of establishing, maintaining and
33 supporting programs that are designed to prevent motor vehicle theft,
34 including:

35 1. Financial support to law enforcement and prosecution agencies
36 for programs that are designed to increase the effectiveness of motor
37 vehicle theft prosecution.

38 2. Financial support for programs that are designed to educate and
39 assist the public in the prevention of motor vehicle theft.

40 H. PURSUANT TO SECTION 20-466, SUBSECTION A, THE DIRECTOR OF THE
41 DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS SHALL APPOINT AN
42 INDIVIDUAL TO OPERATE THE AUTOMOBILE THEFT AUTHORITY IN CONJUNCTION WITH
43 OPERATING THE FRAUD UNIT ESTABLISHED BY SECTION 20-466. The costs of
44 administration shall not exceed ten percent of the monies in the fund in

1 any one year so that the greatest possible portion of the monies available
2 to the authority is expended on combating motor vehicle theft.

3 I. Monies expended from the automobile theft authority fund shall
4 be used to supplement, not supplant, other monies that are available for
5 motor vehicle theft prevention.

6 J. Each insurer issuing motor vehicle liability insurance policies
7 in this state shall pay a semiannual fee of \$.50 per vehicle insured under
8 a motor vehicle liability insurance policy issued by the insurer. The fee
9 shall be fully earned and nonrefundable at the time the insurer collects
10 the premium for the motor vehicle liability insurance policy. Each
11 insurer shall transmit the fee on or before January 31 and on or before
12 July 31 of each year to the automobile theft authority for deposit in the
13 automobile theft authority fund. The payment due on or before January 31
14 shall cover vehicles insured under policies that are issued during the
15 period from July 1 through December 31 of the previous year. The payment
16 due on or before July 31 shall cover vehicles insured under policies that
17 are issued during the period from January 1 through June 30 of the same
18 year.

19 K. The authority shall cause an audit to be made of the automobile
20 theft authority fund. The audit shall be conducted by a certified public
21 accountant every two years. The authority shall file a certified copy of
22 the audit with the auditor general immediately. The auditor general may
23 make further audits and examinations as the auditor general deems
24 necessary and may take appropriate action relating to the audit pursuant
25 to chapter 7, article 10.1 of this title.

26 L. Authority members are not eligible to receive compensation but
27 are eligible for reimbursement of expenses pursuant to title 38, chapter
28 4, article 2.

29 M. This section does not apply to vehicles or vehicle combinations
30 with a declared gross weight of more than twenty-six thousand pounds.
31 Motor vehicle liability insurance policies issued in this state for
32 vehicles or vehicle combinations with a declared gross weight of more than
33 twenty-six thousand pounds are exempt from subsection J of this section.

34 Sec. 167. Section 42-1102, Arizona Revised Statutes, is amended to
35 read:

36 42-1102. Taxpayer bonds; definition

37 A. If the department deems it necessary to protect the revenues to
38 be collected under this title and title 43, it may require a person liable
39 for the tax to file a bond to secure the payment of the tax, penalty or
40 interest, which may become due from that person. The bond shall be:

41 1. Issued by a surety company authorized to transact business in
42 this state and approved by the director of THE DEPARTMENT OF insurance AND
43 FINANCIAL INSTITUTIONS of this state as to solvency and responsibility or
44 composed of securities or cash that are deposited with, and kept in the
45 custody of, the department.

1 2. Except as otherwise provided in this section, in the amount
2 ~~which~~ THAT the department prescribes by administrative rule to secure the
3 payment of any tax, penalty or interest, which may become due from the
4 person.

5 B. For the purposes of licenses to sell tobacco products issued
6 under section 42-3401, the amount of the bond required under this section
7 is the greater of ~~five hundred dollars~~ \$500 or four times the average
8 monthly tax liability. For the purposes of determining the bond amount,
9 the average monthly tax liability is equal to the average monthly tax due
10 from the applicant for the preceding six consecutive months. If an
11 applicant does not have a six-month payment history, the bond amount is a
12 minimum of ~~five hundred dollars~~ \$500. If an applicant provides a surety
13 bond and the bond lapses, the applicant shall deposit with the department
14 cash or other security in an amount equal to the lapsed surety bond within
15 five business days after the applicant's receipt of written notification
16 by the department. The bond amount may be increased or decreased as
17 necessary based on any reason listed in subsection D of this section or a
18 change in the applicant's previous filing period, filing compliance record
19 or payment history. If the bond amount is increased above the amount
20 computed under this subsection, the applicant may request a hearing
21 pursuant to subsection C of this section to show why the order increasing
22 the bond amount is in error.

23 C. If the department determines that a person is to file ~~such~~ a
24 bond it shall notify ~~him~~ THE PERSON to that effect, specifying the amount
25 of the bond required. The person shall file the bond within five days
26 after the giving of notice unless within that time ~~he~~ THE PERSON requests
27 in writing a hearing before the department at which time the department
28 shall determine the necessity, propriety and amount of the bond. The
29 determination is final unless within fifteen days after the giving of
30 notice of the determination the person appeals the determination to the
31 state board of tax appeals. The board shall decide on the appeal within
32 fifteen days of its receipt. The bond, at any time without notice, may be
33 applied to any tax, penalties or interest due, and for that purpose the
34 securities may be sold at public or private sale without notice to the
35 depositor.

36 D. For purposes of this section a bond may be required if:

37 1. After investigation of financial status, the department
38 determines that an applicant for a new license would be unable to timely
39 remit amounts due.

40 2. An applicant for a new license held a license for a prior
41 business, and the remittance record for the prior business falls within
42 one of the conditions in paragraph 5 OF THIS SUBSECTION.

43 3. The department experienced collection problems while the
44 applicant was engaged in business under a prior license.

1 (i) The percentage of the annual increase, if any, in the
2 metropolitan Phoenix consumer price index published by the United States
3 DEPARTMENT OF LABOR bureau of labor statistics.

4 (ii) Two percent.

5 2. Shall preapprove tax credits under this section and section
6 20-224.06 subject to subsection D of this section.

7 3. Shall allow the tax credits under this section and section
8 20-224.06 on a first-come, first-served basis.

9 D. For the purposes of subsection C, paragraph 2 of this section,
10 before making a contribution to a school tuition organization, the
11 taxpayer under this title or title 20 must notify the school tuition
12 organization of the total amount of contributions that the taxpayer
13 intends to make to the school tuition organization. Before accepting the
14 contribution, the school tuition organization shall request preapproval
15 from the department of revenue for the taxpayer's intended contribution
16 amount. The department of revenue shall preapprove or deny the requested
17 amount within twenty days after receiving the request from the school
18 tuition organization. If the department of revenue preapproves the
19 request, the school tuition organization shall immediately notify the
20 taxpayer, and the department of insurance AND FINANCIAL INSTITUTIONS in
21 the case of a credit under section 20-224.06, that the requested amount
22 was preapproved by the department of revenue. In order to receive a tax
23 credit under this subsection, the taxpayer shall make the contribution to
24 the school tuition organization within twenty days after receiving notice
25 from the school tuition organization that the requested amount was
26 preapproved. If the school tuition organization does not receive the
27 preapproved contribution from the taxpayer within the required twenty
28 days, the school tuition organization shall immediately notify the
29 department of revenue, and the department of insurance AND FINANCIAL
30 INSTITUTIONS in the case of a credit under section 20-224.06, and the
31 department of revenue shall no longer include this preapproved
32 contribution amount when calculating the limit prescribed in subsection C,
33 paragraph 1 of this section.

34 E. If the allowable tax credit exceeds the taxes otherwise due
35 under this title on the claimant's income, or if there are no taxes due
36 under this title, the taxpayer may carry the amount of the claim not used
37 to offset the taxes under this title forward for not more than five
38 consecutive taxable years' income tax liability.

39 F. Co-owners of a business, including corporate partners in a
40 partnership and stockholders of an S corporation as defined in section
41 1361 of the internal revenue code, may each claim only the pro rata share
42 of the credit allowed under this section based on the ownership interest.
43 The total of the credits allowed all such owners may not exceed the amount
44 that would have been allowed a sole owner.

1 G. The credit allowed by this section is in lieu of any deduction
2 pursuant to section 170 of the internal revenue code and taken for state
3 tax purposes.

4 H. A taxpayer shall not claim a credit under this section and also
5 under section 43-1184 with respect to the same contribution.

6 I. The tax credit is not allowed if the taxpayer designates the
7 taxpayer's contribution to the school tuition organization for the direct
8 benefit of any specific student.

9 J. The department of revenue, with the cooperation of the
10 department of insurance AND FINANCIAL INSTITUTIONS, shall adopt rules and
11 publish and prescribe forms and procedures necessary for the
12 administration of this section.

13 Sec. 169. Section 43-1504, Arizona Revised Statutes, is amended to
14 read:

15 43-1504. Special provisions; corporate donations for
16 low-income scholarships; rules

17 A. A school tuition organization that receives contributions from a
18 corporation for the purposes of section 20-224.06 or 43-1183 must use at
19 least ninety ~~per cent~~ PERCENT of those contributions to provide
20 educational scholarships or tuition grants only to children whose family
21 income does not exceed one hundred eighty-five ~~per cent~~ PERCENT of the
22 income limit required to qualify a child for reduced price lunches under
23 the national school lunch and child nutrition acts (42 United States Code
24 sections 1751 through 1785) and to whom any of the following applies:

25 1. Attended a governmental primary or secondary school as a
26 full-time student as defined in section 15-901 or attended a preschool
27 program that offers services to students with disabilities at a
28 governmental school for at least ninety days of the prior fiscal year or
29 one full semester and transferred from a governmental school to a
30 qualified school.

31 2. Enroll in a qualified school in a kindergarten program or a
32 preschool program that offers services to students with disabilities.

33 3. Is the dependent of a member of the armed forces of the United
34 States who is stationed in this state pursuant to military orders.

35 4. Received an educational scholarship or tuition grant under
36 paragraph 1, 2 or 3 of this subsection or chapter 16, article 1 of this
37 title if the children continue to attend a qualified school in a
38 subsequent year.

39 B. A child is eligible to receive an educational scholarship or
40 tuition grant under subsection A of this section if the child meets the
41 criteria to receive a reduced price lunch but does not actually claim that
42 benefit.

43 C. In 2006, a school tuition organization shall not issue an
44 educational scholarship or a tuition grant for the purposes of section
45 20-224.06 or 43-1183 in an amount that exceeds ~~four thousand two hundred~~

1 ~~dollars~~ \$4,200 for students in a ~~disabled preschool or~~ kindergarten
2 program, A PRESCHOOL PROGRAM THAT OFFERS SERVICES TO STUDENTS WITH
3 DISABILITIES or grades one through eight or ~~five thousand five hundred~~
4 ~~dollars~~ \$5,500 for students in grades nine through twelve. In each year
5 after 2006, the limitation amount for a scholarship or a grant under this
6 subsection shall be increased by ~~one hundred dollars~~ \$100.

7 D. A school tuition organization shall require that student
8 beneficiaries use the educational scholarships or tuition grants on a
9 full-time basis. If a child leaves the school before completing an entire
10 school year, the school shall refund a prorated amount of the educational
11 scholarship or tuition grant to the school tuition organization that
12 issued the scholarship or grant. The school tuition organization shall
13 allocate any refunds it receives under this subsection for educational
14 scholarships or tuition grants.

15 E. Students who receive an educational scholarship or tuition grant
16 under this section shall be allowed to attend any qualified school of
17 their parents' choice.

18 F. The department of revenue, with the cooperation of the
19 department of insurance AND FINANCIAL INSTITUTIONS, shall adopt rules and
20 publish and prescribe forms and procedures necessary for the
21 administration of this section.

22 Sec. 170. Section 44-288, Arizona Revised Statutes, is amended to
23 read:

24 44-288. Insurance provisions of contract

25 A. The amount, if any, included for insurance, which may be
26 purchased by the holder of the retail installment contract, shall not
27 exceed the applicable premiums chargeable in accordance with the rates
28 filed with the director of THE DEPARTMENT OF insurance ~~of the Arizona~~
29 ~~corporation commission~~ AND FINANCIAL INSTITUTIONS.

30 B. If dual interest insurance on the motor vehicle is purchased by
31 the seller or seller's assignee, as the case may be, it shall within
32 thirty days after execution of the retail installment contract, ~~send or~~
33 cause to be sent to the buyer a policy, or policies, or certificates of
34 insurance written by an insurance company authorized to do business in
35 this state, clearly setting forth the amount of the premium, the kind or
36 kinds of insurance, the coverages and all the terms, options, limitations,
37 restrictions and conditions of the contract or contracts of insurance.
38 The buyer ~~shall have the privilege~~ at the time of execution of the
39 contract ~~of purchasing~~ MAY PURCHASE such insurance from an agent or broker
40 of ~~his~~ THE BUYER'S own selection and ~~of selecting~~ MAY SELECT an insurance
41 company acceptable to the holder, but in such case the inclusion of the
42 insurance premium in the retail installment contract shall be optional
43 with the seller.

44 C. If any insurance is canceled, or the premium adjusted, any
45 refund of the insurance premium received by the holder shall be credited

1 to the contract except to the extent applied toward payment for similar
2 insurance protecting the interests of the buyer and the holder or either
3 of them.

4 Sec. 171. Section 44-1273, Arizona Revised Statutes, is amended to
5 read:

6 44-1273. Limited exemptions

7 A. The following sellers are not required to register and, except
8 for section 44-1278, subsection B and section 44-1282, are exempt from
9 this article:

10 1. A person acting within the scope of a license issued under
11 title 20.

12 2. A person who is either a:

13 (a) Charitable organization as defined in section 44-6551, this
14 state or any county or municipality of this state or its agencies.

15 (b) Political party, candidate for federal, state or local office
16 or campaign committee required to file financial information with federal,
17 state or local election agencies.

18 3. A person making telephone solicitations without the intent to
19 complete and who does not complete the sales presentation during the
20 telephone solicitation but completes the sales presentation at a later
21 face-to-face meeting between the solicitor and the consumer provided that
22 the later face-to-face meeting is not for the purpose of collecting the
23 payment or delivering any item purchased.

24 4. A person who after making a telephone contact with a consumer
25 sends the consumer descriptive literature and does not require payment
26 before the consumer's review of the descriptive literature and the person
27 is not conducting a solicitation involving any of the following:

28 (a) The sale of an investment or an opportunity for an investment
29 that is not registered with any state or federal authority.

30 (b) A prize promotion or premium.

31 (c) A recovery service.

32 (d) A business opportunity or merchandise related to a business
33 opportunity.

34 5. A person or solicitor for a person who operates a retail
35 business establishment under the same name as the name used in the
36 solicitation of sales by telephone, if on a continuing basis all of the
37 following apply:

38 (a) Merchandise is displayed and offered for sale or services are
39 offered for sale and provided at the person's business establishment.

40 (b) At least fifty percent of the person's business involves the
41 buyer obtaining the merchandise at the person's business establishment.

42 (c) The person holds a transaction privilege tax license pursuant
43 to title 42, chapter 5.

44 6. A person or solicitor for a person soliciting another business
45 if all of the following apply:

1 (a) At least fifty percent of the person's dollar volume consists
2 of repeat sales to existing businesses.

3 (b) The person does not conduct a prize promotion that requires or
4 implies that to win a consumer must pay money or purchase merchandise.

5 (c) ~~Neither~~ The person ~~nor~~ HAS NOT, OR any of the person's
6 principals ~~has~~ HAVE NOT, within twenty years been convicted in any state
7 of a felony or crime of moral turpitude, breach of trust, fraud, theft,
8 dishonesty or violation of telephone solicitation laws, been subject to a
9 final judgment in a civil action involving fraud, deceit or
10 misrepresentation or been subject to an administrative order involving
11 fraud, deceit, misrepresentation or any violation of telephone
12 solicitations laws of any agency of this state, another state, the federal
13 government, a territory of the United States or another country.

14 (d) The person is not selling a business opportunity or merchandise
15 related to a business opportunity.

16 7. A person or solicitor on behalf of a person who solicits sales
17 by periodically publishing and delivering a catalog to consumers if all of
18 the following apply:

19 (a) The catalog contains a written description or illustration of
20 each item offered for sale and the price of each item offered for sale.

21 (b) The catalog includes the business address or home office
22 address of the person.

23 (c) The catalog includes at least twenty-four pages of written
24 material and illustrations.

25 (d) The catalog is distributed in more than one state and has an
26 annual circulation by mail of at least two hundred fifty thousand.

27 B. The following sellers shall file a limited registration
28 statement pursuant to section 44-1272.01 and, except for sections 44-1278
29 and 44-1282, are exempt from this article:

30 1. A person acting within the scope of a license issued under title
31 6 or 32 or by the corporation commission pursuant to this title, except
32 persons licensed under title 6, chapter 13.

33 2. If soliciting within the scope of the license, any licensed
34 securities, commodities or investments broker or dealer or investment
35 advisor or any licensed associated person of a securities, commodities or
36 investments broker or dealer or investment advisor.

37 3. An issuer or a subsidiary of an issuer that has a class of
38 securities that is subject to section 12 of the securities exchange act of
39 1934 (15 United States Code sections 78a through 78mm) and that is either
40 registered or exempt from registration under paragraph (A), (B), (C), (E),
41 (F), (G) or (H) or subsection (g)(2) of section 12 of the act. A
42 subsidiary of an issuer that qualifies for exemption under this paragraph
43 is not exempt unless at least sixty percent of the voting power of the
44 subsidiary's shares is owned by the qualifying issuer or issuers.

1 4. A person certificated or regulated by the corporation commission
2 pursuant to title 40, chapter 2 or a subsidiary of that person or a
3 federal communications commission licensed cellular telephone company or
4 radio telecommunication services provider.

5 5. A person making telephone solicitations for a newspaper of
6 general circulation, a magazine or a licensed cable television system or
7 video service provider.

8 6. An issuer or subsidiary of an issuer that is subject to
9 registration under chapter 12, article 6 or 7 of this title or that is
10 exempt from registration under section 44-1843, subsection A, paragraph 1,
11 2, 3, 4, 5, 7 or 9.

12 7. A person making telephone solicitations for the sale or purchase
13 of books, recordings, videocassettes and similar goods through a
14 membership group or club regulated by the federal trade commission or
15 through a contractual plan or arrangement such as a continuity plan,
16 subscription arrangement, series arrangement or single purchase under
17 which the seller ships goods to a consumer who has consented in advance to
18 receive those goods and the recipient is given the opportunity to review
19 goods for at least seven days and to receive a full refund for return of
20 undamaged goods.

21 8. A person or solicitor for a person when soliciting previous
22 customers, if all of the following apply:

23 (a) The person is not offering to sell or selling a security that
24 is not registered with any state or federal authority.

25 (b) The person makes the solicitation under the same name as the
26 name used to sell merchandise to the customer previously.

27 (c) The person does not operate a recovery service.

28 (d) The person does not conduct a prize promotion that requires a
29 consumer to, or implies that to win a consumer must, pay money or purchase
30 merchandise.

31 (e) The person has not, or any of its principals have not, within
32 twenty years been convicted in any state of a felony or a crime of moral
33 turpitude, breach of trust, fraud, theft, dishonesty or a violation of
34 telephone solicitation laws, been subject to a final judgment in a civil
35 action involving fraud, deceit or misrepresentation or been subject to an
36 administrative order involving fraud, deceit, misrepresentation or any
37 violation of telephone solicitation laws of any agency of this state,
38 another state, the federal government, a territory of the United States or
39 another country.

40 9. A person making telephone solicitations exclusively for the
41 purpose of the sale of telephone answering services to be provided by that
42 person or that person's employer.

43 10. Any bank holding company, bank, financial institution, trust
44 company, savings and loan association, credit union, mortgage banker or
45 broker, consumer lender or insurer that is licensed or supervised by an

1 official or agency of this state, any other state or the United States,
2 including any parent, subsidiary or affiliate of these institutions.

3 11. A person providing telemarketing sales service continuously for
4 at least five years under the same ownership and control that derives
5 seventy-five percent of its gross telemarketing sales revenues from
6 contracts with persons exempted by this section. A seller using an exempt
7 telemarketing sales service is not exempt unless otherwise qualifying for
8 an exemption under this section.

9 C. On request by the secretary of state, the director of the
10 department of insurance AND FINANCIAL INSTITUTIONS shall provide a current
11 list in a mutually acceptable electronic format to the secretary of state
12 of the requested licensees described in subsection A, paragraph 1 of this
13 section that includes all of the following information:

14 1. The true legal name of the seller.

15 2. All of the names under which the seller is doing business or
16 intends to do business.

17 3. The complete street address of the physical location of the
18 principal place of business of the seller and the telephone number for the
19 location.

20 4. The name and address of the seller's agent who is authorized to
21 receive service of process in this state.

22 D. In any civil proceeding alleging a violation of this article,
23 the burden of proving an exemption or an exception from a definition is on
24 the person claiming the exemption or exception. In any criminal
25 proceeding in which a violation of this article is alleged, the burden of
26 producing evidence to support a defense based on an exemption or an
27 exception from a definition is on the person claiming the exemption or
28 exception.

29 E. Any person or solicitor exempted in part from this article by
30 this section shall not make or submit a charge to a consumer's credit card
31 account or a consumer's checking, savings, share or similar account unless
32 any of the following applies:

33 1. The person provides that the consumer may receive a full refund
34 for the return of undamaged and unused goods or a cancellation of services
35 by providing notice to the person within seven days after the date that
36 the consumer receives the merchandise and the person processes:

37 (a) A full refund within thirty days after the date that the person
38 receives the returned merchandise from the consumer.

39 (b) A full refund within thirty days after the purchaser of
40 services cancels an order for the services or a pro rata refund for any
41 services not yet performed for the consumer.

42 2. The person provides the consumer with a signed copy of a written
43 contract that includes the person's name, address and business telephone
44 number and that fully describes the merchandise offered by the person, the

1 total price to be charged by the person and any terms or conditions
2 affecting the sale.

3 3. The person is either a:

4 (a) Charitable organization as defined in section 44-6551, this
5 state or any county or municipality of this state or its agencies.

6 (b) Political party, candidate for federal, state or local office
7 or campaign committee required to file financial information with federal,
8 state or local election agencies.

9 Sec. 172. Section 44-3152, Arizona Revised Statutes, is amended to
10 read:

11 44-3152. Exemption of certain investment advisers and
12 investment adviser representatives; private fund
13 adviser exemption; definitions

14 A. An investment adviser is not required to be licensed or make a
15 notice filing under this chapter if that investment adviser does not have
16 a place of business in this state and either:

17 1. Its only clients in this state are investment companies, other
18 investment advisers, dealers, depository institutions, insurance
19 companies, employee benefit plans with assets of not less than ~~one million~~
20 ~~dollars~~ \$1,000,000 and governmental agencies or instrumentalities, whether
21 acting for themselves or as trustees with investment control.

22 2. During the preceding twelve months it had fewer than six clients
23 who are residents of this state other than those clients specified in
24 paragraph 1 of this subsection.

25 B. An investment adviser is not required to be licensed or make a
26 notice filing under this chapter if that investment adviser is a private
27 fund adviser ~~who~~ THAT:

28 1. Satisfies each of the following conditions:

29 (a) The private fund adviser or any of its advisory affiliates are
30 not subject to an event that would disqualify an issuer under SEC rule 262
31 of regulation A (17 Code of Federal Regulations section 230.262).

32 (b) The private fund adviser to a qualifying private fund that is
33 not a venture capital company files with the commission each report and
34 each report amendment that the investment adviser is required to file with
35 the SEC pursuant to SEC rule 204-4 (17 Code of Federal Regulations section
36 275.204-4). The private fund adviser shall electronically file the
37 reports with the commission through the IARD. A report is deemed filed
38 when the report and the fee required by subdivision (c) of this paragraph
39 are accepted by the IARD on this state's behalf.

40 (c) The private fund adviser to a qualifying private fund that is
41 not a venture capital company has paid a fee of ~~one hundred twenty-five~~
42 ~~dollars~~ \$125 to the commission for each calendar year in which it relies
43 on the exemption provided by this subsection.

44 2. Except as provided in subsection H of this section, advises at
45 least one retail buyer fund and ~~who~~ THAT complies with paragraph 1 of this

1 subsection and all of the following requirements with respect to each
2 retail buyer fund advised by the private fund adviser:

3 (a) The private fund adviser only advises those retail buyer funds
4 whose outstanding securities, other than short-term paper, are
5 beneficially owned entirely by either:

6 (i) Any person ~~who~~ THAT, at the time that the securities are sold,
7 the private fund adviser reasonably believes to be an accredited investor
8 as defined in SEC rule 501(a) of regulation D (17 Code of Federal
9 Regulations section 230.501(a)) or ~~who~~ THAT is a manager, director,
10 officer or employee of the private fund adviser.

11 (ii) Any person that obtains the security through a transfer not
12 involving a sale of that security.

13 (b) At or before the time of purchase of any security of a retail
14 buyer fund, the private fund adviser discloses in writing to the purchaser
15 of the security both of the following:

16 (i) All services, if any, to be provided by the investment adviser
17 to a purchaser of securities of the retail buyer fund and to the retail
18 buyer fund itself.

19 (ii) All duties, if any, that the investment adviser owes to a
20 purchaser of securities of the retail buyer fund and to the retail buyer
21 fund itself.

22 (c) The private fund adviser obtains on an annual basis audited
23 financial statements of each retail buyer fund that is advised by the
24 private fund adviser and delivers a copy of the audited financial
25 statements to each purchaser of securities of the retail buyer fund. This
26 subdivision does not apply to a limited retail buyer fund with respect to
27 any annual period for which each owner of outstanding securities of the
28 limited retail buyer fund has waived the application of this subdivision
29 after the beginning of the annual period to which the waiver applies.

30 C. If a private fund adviser is registered with the SEC, the
31 private fund adviser is not eligible for the exemption provided by
32 subsection B of this section.

33 D. A person is not required to be licensed or to make a notice
34 filing under this chapter if the person is employed by or associated with
35 an investment adviser that is not required to be licensed or make a notice
36 filing under this chapter pursuant to subsection B of this section and the
37 person does not otherwise act as an investment adviser representative.

38 E. An investment adviser ~~who~~ THAT becomes ineligible for the
39 exemption provided by subsection B of this section must comply with all
40 applicable laws and rules requiring licensing or notice filing within
41 ninety days after the date that the investment adviser's eligibility for
42 the exemption ceases.

43 F. Subsection B, paragraph 1, subdivision (a) of this section does
44 not apply on a showing of good cause and without prejudice to any other

1 commission action if the commission determines that it is not necessary
2 under the circumstances that an exemption be denied.

3 G. Compliance with subsection B, paragraph 2, subdivision (b) of
4 this section does not relieve a private fund adviser of any disclosure
5 obligation under any other state or federal law.

6 H. An investment adviser to a retail buyer fund that existed before
7 September 1, 2016 and that does not satisfy the conditions prescribed by
8 subsection B, paragraph 2, subdivision (a) of this section on September 1,
9 2016 may be eligible for the exemption prescribed by subsection B,
10 paragraph 1 of this section if all of the following conditions are
11 satisfied:

12 1. Beginning on September 1, 2016, the retail buyer fund ceases to
13 sell securities to persons other than the persons described in subsection
14 B, paragraph 2, subdivision (a), item (i) of this section.

15 2. The investment adviser discloses in writing the information
16 described in subsection B, paragraph 2, subdivision (b) of this section to
17 each purchaser of securities of the retail buyer fund by December 1, 2016.

18 3. For every fiscal year ending after August 31, 2016, the
19 investment adviser delivers audited financial statements to each owner of
20 securities of the retail buyer fund as required by subsection B, paragraph
21 2, subdivision (c) of this section.

22 I. If the commission determines that it is not necessary for any
23 investment adviser or class of investment advisers or investment adviser
24 representative or class of investment adviser representatives to be
25 licensed to protect the public interest because of the special
26 characteristics of the securities or transactions in which the investment
27 adviser or investment adviser representative may be involved, the
28 commission may by rule or order provide limited licensure requirements or
29 exempt these persons from licensure under this article.

30 J. A dealer or salesman that is registered with the commission
31 pursuant to chapter 12, article 9 of this title is not required to be
32 licensed, make a notice filing or comply with reporting requirements under
33 this article.

34 K. The authorized use of the designation "chartered financial
35 consultant" by an insurance producer licensed by the department of
36 insurance AND FINANCIAL INSTITUTIONS does not in and of itself constitute
37 holding oneself out to the public as an investment adviser or require a
38 license under this article.

39 L. Subsection B of this section does not exempt an investment
40 adviser ~~who~~ THAT has custody of any securities or funds of any client from
41 complying with commission rules relating to the custody of client funds or
42 securities by investment advisers.

43 M. For the purposes of this section:

44 1. "Advisory affiliate" has the same meaning prescribed in the
45 glossary of terms to form ADV, which is the uniform application for

1 investment adviser registration (17 Code of Federal Regulations section
2 279.1) or its successor form.

3 2. "Affiliated person" means a person that controls, is controlled
4 by or is under common control with the other specified persons.

5 3. "Control" means possessing, directly or indirectly, the power to
6 direct or cause the direction of management and policies.

7 4. "Derivative investment" means an acquisition of securities by a
8 venture capital company in the ordinary course of its business in exchange
9 for an existing venture capital investment, either on the exercise or
10 conversion of the existing venture capital investment or in connection
11 with a public offering of securities or the merger or reorganization of
12 the operating company to which the existing venture capital investment
13 relates.

14 5. "Entity" means a partnership, corporation, trust, limited
15 liability company, limited liability partnership, sole proprietorship or
16 other organization.

17 6. "Family member":

18 (a) Means a lineal descendant, including a child related by
19 adoption or blood and an individual who was a minor when another family
20 member became the individual's legal guardian, of a common ancestor who is
21 living or deceased if the common ancestor is not more than ten generations
22 removed from the youngest generation of family members.

23 (b) Includes:

24 (i) A spouse of the lineal descendant described in subdivision (a)
25 of this paragraph.

26 (ii) A stepchild and the stepchild's spouse.

27 (iii) A foster child and the foster child's spouse.

28 7. "Former family member" means a spouse or stepchild who was a
29 family member but who is no longer a family member.

30 8. "Limited retail buyer fund" means a retail buyer fund that
31 satisfies all of the following conditions:

32 (a) Has no more than, or the private fund adviser reasonably
33 believes that the fund has no more than, fifteen purchasers of securities,
34 individually or collectively with all other limited retail buyer funds,
35 that are advised by the private fund adviser or an affiliated person. For
36 the purposes of calculating the number of purchasers under this
37 subdivision, a purchaser that is an entity shall be counted as the number
38 of individuals who are directly or indirectly beneficial owners in the
39 entity, except that all individuals who are family members or former
40 family members shall be counted as a single purchaser.

41 (b) When the securities are sold the private fund adviser
42 reasonably believes that each purchaser of securities from the limited
43 retail buyer fund that is not a qualified purchaser, as defined in section
44 2(a)(51) of the investment company act of 1940, is a qualified client as
45 defined in 17 Code of Federal Regulations section 275.205-3.

1 (c) The private fund adviser and any affiliated person do not hold
2 themselves out to the public as an investment adviser and the private fund
3 adviser and any affiliated person do not act as an investment adviser to
4 any investment company registered under the investment company act of
5 1940.

6 (d) The private fund adviser and any affiliated person have not
7 offered or sold any securities of the limited retail buyer fund by any
8 form of general solicitation or general advertising.

9 9. "Management rights" means the right, obtained contractually or
10 through ownership of securities, either through one person alone or in
11 conjunction with one or more persons acting together or through an
12 affiliated person, to substantially participate in, substantially
13 influence the conduct of or provide or offer to provide significant
14 guidance and counsel concerning the management, operations or business
15 objectives of the operating company in which the venture capital
16 investment is made.

17 10. "Operating company":

18 (a) Means an entity that is primarily engaged, directly or through
19 a ~~majority owned~~ MAJORITY-OWNED subsidiary, in the production or sale,
20 including any research or development, of a product or service other than
21 the management or investment of capital.

22 (b) Does not include an individual or sole proprietorship.

23 11. "Person" means an individual or an entity.

24 12. "Private fund adviser" means an investment adviser ~~who~~ THAT
25 provides advice solely to one or more qualifying private funds.

26 13. "Qualifying private fund" means an issuer that qualifies for
27 the exclusion from the definition of an investment company under section
28 3(c)(1), 3(c)(5) or 3(c)(7) of the investment company act of 1940.

29 14. "Retail buyer fund" means a qualifying private fund that is
30 neither a venture capital company nor a qualifying private fund that
31 qualifies for the exclusion from the definition of an investment company
32 under section 3(c)(7) of the investment company act of 1940.

33 15. "Venture capital company" means an entity that satisfies at
34 least one of the following conditions:

35 (a) The entity is a venture capital fund as defined in SEC rule
36 203(l)-1 (17 Code of Federal Regulations section 275.203(l)-1).

37 (b) The entity is a venture capital operating company as defined in
38 SEC rule 2510.3-101(d) (29 Code of Federal Regulations section
39 2510.3-101(d)).

40 (c) On at least one occasion during the annual period commencing
41 with the date of its initial capitalization, and on at least one occasion
42 during each annual period thereafter, at least fifty percent of its assets
43 other than short-term investments pending long-term commitment or
44 distribution to investors, valued at cost, are venture capital investments
45 or derivative investments.

1 16. "Venture capital investment" means an acquisition of securities
2 of an operating company as to which the investment adviser, the entity
3 advised by the investment adviser or an affiliated person of either has or
4 obtains management rights.

5 Sec. 173. Section 44-6951, Arizona Revised Statutes, is amended to
6 read:

7 44-6951. Definitions

8 In this chapter, unless the context otherwise requires:

9 1. "Audited financial ~~statement~~ REPORT" means a financial report on
10 a provider that is prepared by an independent certified public accountant.

11 2. "Department" means the department of insurance AND FINANCIAL
12 INSTITUTIONS.

13 3. "Director" means the director of the department of insurance AND
14 FINANCIAL INSTITUTIONS.

15 4. "Entrance fee" means an initial or deferred transfer to a
16 provider of a facility of a sum of money or property by a person entering
17 into a senior residential entrance fee contract that in amount or value is
18 at least six hundred ~~per cent~~ PERCENT of the periodic fee charged to a
19 resident, all or a portion of which may be refunded to that resident, a
20 benefactor or a beneficiary on the resident's termination of residence in
21 the facility.

22 5. "Facility" means a place or places in which a provider
23 undertakes to provide a resident with a living unit pursuant to a senior
24 residential entrance fee contract. Facility does not include any provider
25 that is regulated by the department of insurance AND FINANCIAL
26 INSTITUTIONS pursuant to title 20, chapter 8.

27 6. "Living unit" means any apartment, room or other area in a
28 facility set aside for the exclusive use of one or more identified
29 residents.

30 7. "Periodic fee" means the monthly calculated amount charged to a
31 resident for lodging in a living unit provided pursuant to a senior
32 residential entrance fee contract.

33 8. "Provider" means a person who provides lodging to seniors in a
34 living unit pursuant to a senior residential entrance fee contract.

35 9. "Resident" means an individual who enters into a senior
36 residential entrance fee contract with a provider or who is designated in
37 a senior residential entrance fee contract to receive lodging.

38 10. "Senior residential entrance fee contract" means a contract to
39 provide a living unit in a facility for the duration of a resident's life
40 or for a term of more than one year that is conditioned on the transfer of
41 an entrance fee to the provider in addition to or in lieu of the payment
42 of periodic charges for the living unit and that is further conditioned on
43 the resident's ability to live independently.

1 Sec. 174. Section 48-586, Arizona Revised Statutes, is amended to
2 read:

3 48-586. Form and execution of contract; liquidated damages;
4 supervision of performance; delivery of assessment

5 A. The superintendent of streets shall make all written contracts
6 and receive all bonds authorized by this article. The contracts shall
7 specify a reasonable time for completion of the improvement.

8 B. The governing body may prescribe a form of contract not
9 inconsistent with this article and fix a reasonable time for completion of
10 the work, which may be extended from time to time by the superintendent
11 with the consent of the governing body.

12 C. The governing body may prescribe in the form of the
13 contract, ~~an amount, not as a forfeit or penalty,~~ but as liquidated
14 damages, per calendar day to be paid by the contractor if the contractor
15 fails to complete the work within the time fixed in the contract or as the
16 time for completion of the work may have been extended by the
17 superintendent with the consent of the governing body. ~~Permitting~~
18 ALLOWING the contractor to finish the work or any part of the work after
19 the time fixed for its completion, or after the date to which the time
20 fixed for its completion may have been extended, does not operate as a
21 waiver by the governing body or the superintendent of any of their rights
22 under the contract or subsections E and F of this section. Any liquidated
23 damages received shall be used to decrease the amounts assessed. Any
24 assessments that are affected by a decrease in the contract amount as a
25 result of the imposition of liquidated damages may be adjusted pursuant to
26 section 48-590, subsection F, except that where the ~~city~~ MUNICIPALITY has
27 contributed its funds to the construction of the improvements, the
28 liquidated damages so received shall be prorated between the ~~city~~
29 MUNICIPALITY and the properties assessed.

30 D. The work shall be done under the direction of the
31 superintendent, but the governing body may prescribe rules and regulations
32 relating to the supervision of the work. The superintendent may appoint a
33 suitable person to take charge of and superintend the construction of an
34 improvement who shall see that the contract is fulfilled. The governing
35 body shall fix the compensation to be allowed such person.

36 E. If the work is not prosecuted with diligence, the governing
37 body, after a hearing ~~upon~~ ON notice served ~~upon~~ ON the contractor and ~~his~~
38 THE CONTRACTOR'S bondsmen, may prescribe such terms and conditions as it
39 deems proper before ~~permitting~~ ALLOWING the contractor to continue with
40 the work.

41 F. If the governing body finds that the contractor is unable to
42 continue with the work or to perform the work according to the contract,
43 the governing body shall hold the contractor in default and make demand
44 ~~upon~~ ON the surety to act in accordance with the contract and terms and
45 conditions of the performance bond. Should the surety fail to act within

1 sixty days from written notice, the governing body may order that bids be
2 received from other contractors to complete the work. After receiving
3 bids, the governing body may award the contract to the lowest responsible
4 bidder. If, after receiving the new bids, the cost of completion exceeds
5 the monies or bonds available for payment, the governing body shall make a
6 demand ~~upon~~ ON the defaulting contractor's ~~bondsman~~ SURETY for payment of
7 the differential within twenty days ~~of~~ AFTER the mailing of the notice.
8 If the ~~bondsman~~ SURETY is represented by an attorney-in-fact, the demand
9 may be served ~~upon~~ ON the attorney-in-fact or at the ~~bondsman's~~ SURETY'S
10 principal office within this state. If the ~~bondsman~~ SURETY has no
11 attorney-in-fact and no principal office within this state, the demand
12 shall be served ~~upon~~ ON the director of THE DEPARTMENT OF insurance AND
13 FINANCIAL INSTITUTIONS. The demand may not exceed the penal sum of the
14 performance bond. Monies collected from the ~~bondsman~~ SURETY shall be used
15 to pay the added costs of the work. Any difference between the actual
16 costs of the work and the amount assessed shall be advanced by the
17 municipality, which shall use its contingency funds or any other available
18 funds to make payments to the new contractor. The municipality shall
19 reimburse itself from the amounts paid by the former contractor or ~~his~~
20 ~~bondsman~~ THE FORMER CONTRACTOR'S SURETY or from assessments and bonds when
21 funds become available. All additional costs of the work not received
22 from the original contractor's ~~bondsman~~ SURETY shall ultimately be
23 assessed against the benefitting parcels of property.

24 G. If the contractor is not to be paid pursuant to section 48-597,
25 subsection G or section 48-618, subsection F, ~~upon~~ ON completion of the
26 work the contractor shall be entitled to the issuance and delivery of the
27 assessment as provided in this article.

28 Sec. 175. Section 48-924, Arizona Revised Statutes, is amended to
29 read:

30 48-924. Form and execution of contract; supervision of
31 performance; default; new bids; delivery of
32 assessment

33 A. The superintendent of streets shall make all written contracts
34 and receive all bonds authorized by this article. The contract shall
35 require the contractor to timely repair any defects in the work determined
36 to exist within one year after completion of the contract. The contracts
37 shall specify a reasonable time for the completion of the improvement.

38 B. The board of directors may prescribe a form of contract not
39 inconsistent with this article and fix a reasonable time for the
40 completion of the work, which may be extended from time to time by the
41 superintendent.

42 C. The work shall be done pursuant to contract and under the
43 direction of the superintendent, but the board of directors may prescribe
44 rules and regulations relating to the supervision of the work. The
45 superintendent may appoint a suitable person to take charge of and

1 superintend the construction of an improvement who shall see that the
2 contract is fulfilled. The board of directors shall fix the compensation
3 to be allowed such person.

4 D. If the work is not prosecuted with diligence, the board of
5 directors, after a hearing ~~upon~~ ON notice mailed or personally served ~~upon~~
6 ON the contractor, the contractor's surety and all persons shown as the
7 owners of property affected by the assessments as their names and
8 addresses appear on the last certified property tax roll, may prescribe
9 such terms and conditions as it deems proper before ~~permitting~~ ALLOWING
10 the contractor to continue with the work if the board of directors
11 determines that the contractor is capable of continuing the work. The
12 determination of the board of directors shall be final and conclusive, and
13 the determination may be reviewed only by a special action. Any such
14 action shall be given priority by the court. The board of directors may
15 cause a reporter's transcript to be made of the hearing. Such transcript,
16 when made and certified and filed with the clerk, shall be the official
17 record of the hearing. ~~Upon~~ ON request by the contractor, the surety, any
18 owner, or the superintendent of streets, the board of directors may issue
19 subpoenas or subpoenas duces tecum directed to any witness desired by any
20 party to the hearing. The subpoena shall have the same effect as
21 subpoenas in civil actions. If the subpoena is not obeyed, the board of
22 directors ~~may~~, on a majority vote of its members, MAY cite the disobedient
23 party for contempt and certify such action to the superior court. The
24 superior court shall act ~~upon~~ ON such citation in the same manner as other
25 cases of civil contempt.

26 E. If the board of directors finds that the contractor is unable to
27 continue with the work or to perform the work according to the contract or
28 has not performed the work according to the contract, the board of
29 directors shall hold the contractor in default and make demand on the
30 surety to act in accordance with the contract and terms and conditions of
31 the performance bond. If the surety fails to act within sixty days ~~from~~
32 AFTER receiving written notice, the board of directors may order that bids
33 be received from other contractors to complete the work. After receiving
34 bids, the board of directors may award the contract to the lowest
35 responsible bidder. If, after receiving the new bids, the cost of
36 completion exceeds the monies or bonds available for payment, the board of
37 directors shall make a demand on the defaulting contractor's surety for
38 payment of the difference within twenty days ~~of~~ AFTER the mailing of the
39 notice. If the surety is represented by an attorney-in-fact, the demand
40 may be served on the attorney-in-fact or at the surety's principal office
41 within this state. If the surety has no attorney-in-fact and no principal
42 office within this state, the demand shall be served ~~upon~~ ON the director
43 of the DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS. The demand may
44 not exceed the penal sum of the performance bond. Monies collected from
45 the surety shall be used to pay the added costs of the work. The district

1 shall advance any difference between the actual costs of the work and the
2 amount assessed and shall use its contingency fund or any other available
3 monies to make payments to the new contractor. The district shall
4 reimburse itself from the amounts paid by the former contractor or surety
5 or from assessments and bonds when monies become available. All
6 additional costs of the work not received from the original contractor or
7 such contractor's surety may be assessed against the benefiting parcels of
8 property if the board of directors finds that such action is necessary
9 both to prevent a default on the district's bonds and to complete the
10 work.

11 F. If the contractor is not to be paid pursuant to section 48-935,
12 subsection G or section 48-962, subsection F, ~~upon~~ ON completion of the
13 work the contractor is entitled to the issuance and delivery of the
14 assessment as provided by this article.

15 G. This section governs over any other law. Notwithstanding any
16 other law, the contractor and the surety shall not be paid interest on
17 amounts due during any period of contract suspension or termination unless
18 the findings of the board of directors are arbitrary and capricious.

19 Sec. 176. Section 48-2054, Arizona Revised Statutes, is amended to
20 read:

21 48-2054. Form and execution of contract; supervision of
22 performance; delivery of assessment

23 A. The district shall make all written contracts and receive all
24 bonds authorized by this article. The contracts shall specify a
25 reasonable time for completing the improvement.

26 B. The board may prescribe a form for the contract ~~which~~ THAT is
27 not inconsistent with this article and fix a reasonable time for
28 completing the work, which may be extended by the board.

29 C. The work shall be done under the direction of the board or its
30 engineer. The board may prescribe administrative rules relating to
31 supervising the work. The board may appoint a suitable person to take
32 charge of and superintend the construction of an improvement. The person
33 appointed is responsible for supervising fulfillment of the contract. The
34 board shall fix the compensation for such person.

35 D. If the work is not performed with diligence, the board, after a
36 hearing and service of notice on the contractor and ~~his~~ THE CONTRACTOR'S
37 surety, may prescribe such terms and conditions as it deems proper before
38 ~~permitting~~ ALLOWING the contractor to continue with the work.

39 E. If the board finds that the contractor is unable to continue
40 with the work or to perform the work according to the contract, the board
41 shall hold the contractor in default and make demand on the surety to act
42 according to the contract and the terms and conditions of the performance
43 bond. If the surety fails to act within sixty days ~~from~~ AFTER the date of
44 the written notice, the board may order that bids be received from other
45 contractors to complete the work. After receiving bids, the board may

1 award the contract to the lowest responsible bidder. If, after receiving
2 the new bids, the cost of completion exceeds the monies or bonds available
3 for payment, the board shall make a demand on the defaulting contractor's
4 surety for payment of the difference within twenty days of the mailing of
5 the notice. If the surety is represented by an attorney-in-fact, the
6 demand may be served on the attorney-in-fact or at the surety's principal
7 office in this state. If the surety has no attorney-in-fact and no
8 principal office in this state, the demand shall be served on the director
9 of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS. The demand may
10 not exceed the penal sum of the performance bond. Monies collected from
11 the surety shall be used to pay the added costs of the work. Any
12 difference between the actual costs of the work and the amount assessed
13 shall be advanced by the district, which shall use its contingency fund or
14 any other available monies to pay the new contractor. The district shall
15 reimburse itself from the amounts paid by the former contractor or ~~his~~ THE
16 CONTRACTOR'S surety or from assessments and bonds when monies become
17 available. All additional costs of the work not received from the
18 original contractor's surety shall ultimately be assessed against the
19 benefitting parcels of property.

20 F. If the contractor is not to be paid pursuant to section 48-2065,
21 subsection G or section 48-2081, subsection F, on completion of the work
22 the contractor is entitled to the issuance and delivery of the assessment
23 as provided in this article.

24 Sec. 177. Section 48-2842, Arizona Revised Statutes, is amended to
25 read:

26 48-2842. Form and execution of contract; supervision of
27 performance; surety

28 A. The district shall make all written contracts and receive all
29 bonds authorized by this article. The contracts shall specify a
30 reasonable time for completing the flood protection facility.

31 B. The board may prescribe a form for the contract that is not
32 inconsistent with this article or with title 34, chapter 6, article 1, if
33 that procurement method is chosen, and fix a reasonable time for
34 completing the work, which may be extended by the board.

35 C. The work shall be done under the direction of the board or its
36 engineer. The board may prescribe administrative rules relating to
37 supervising the work. The board may appoint its engineer or a suitable
38 person to take charge of and direct the construction of a flood protection
39 facility on behalf of the district. The person appointed is responsible
40 for supervising fulfillment of the contract. The board shall fix the
41 compensation for that person.

42 D. If the work is not performed with diligence, the board, after a
43 hearing and service of notice on the contractor and the contractor's
44 surety, may prescribe those terms and conditions as it deems proper before
45 ~~permitting~~ ALLOWING the contractor to continue with the work.

1 E. If the board finds that the contractor is unable to continue
2 with the work or to perform the work according to the contract, the board
3 shall hold the contractor in default and make demand on the surety to act
4 according to the contract and the terms and conditions of the performance
5 bond. If the surety fails to act within sixty days after the date of the
6 written notice, the board may order that proposals be received from other
7 contractors to complete the work. After receiving proposals, the board
8 may award the contract to the lowest responsible bidder. If, after
9 receiving the new proposals, the cost of completion exceeds the monies or
10 bonds available for payment, the board shall make a demand on the
11 defaulting contractor's surety for payment of the difference within twenty
12 days after the mailing of the notice. If the surety is represented by an
13 attorney-in-fact, the demand may be served on the attorney-in-fact or at
14 the surety's principal office in this state. If the surety has no
15 attorney-in-fact and no principal office in this state, the demand shall
16 be served on the director of THE DEPARTMENT OF insurance AND FINANCIAL
17 INSTITUTIONS. The demand may not exceed the penal sum of the performance
18 bond. Monies collected from the surety shall be used to pay any added
19 costs of completing the work. Any difference between the actual costs of
20 the work and the amount assessed shall be advanced by the district, which
21 shall use its contingency fund or any other available monies to pay the
22 new contractor. The district shall reimburse itself from the amounts paid
23 by the former contractor or its surety or from assessments and bonds when
24 monies become available. All additional costs of the work not received
25 from the original contractor's surety shall ultimately be assessed against
26 the benefiting parcels of property.

27 Sec. 178. Rules; exemption

28 A. The department of insurance and financial institutions shall
29 adopt rules to establish fees relating to direct and indirect costs in
30 connection with examinations pursuant to section 20-142, Arizona Revised
31 Statutes, as amended by this act.

32 B. For the purposes of this section, the department of insurance
33 and financial institutions is exempt from the rulemaking requirements of
34 title 41, chapter 6, Arizona Revised Statutes, for one year after the
35 effective date of this act.

36 Sec. 179. Conforming legislation

37 The legislative council staff shall prepare proposed legislation
38 conforming the Arizona Revised Statutes to the provisions of this act for
39 consideration in the fifty-fifth legislature, first regular session.

40 Sec. 180. Retroactivity

41 This act applies retroactively to from and after June 30, 2020.

APPROVED BY THE GOVERNOR MARCH 24, 2020.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 24, 2020.

Passed the House March 17, 20 20

Passed the Senate February 26, 20 20

by the following vote: 31 Ayes,

by the following vote: 27 Ayes,

24 Nays, 5 Not Voting

2 Nays, 1 Not Voting

W. Boyce
Speaker of the House

Karen Fann
President of the Senate

Jim Drake
Chief Clerk of the House

Susan Owens
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

18th day of March, 20 20.

at 2:03 o'clock P M.

Ryan Zuhl
Secretary to the Governor

Approved this 24th day of

March, 20 20,

at 3:04 o'clock P M.

Doug Ducey
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 24th day of March, 20 20,

at 4:29 o'clock P. M.

[Signature]
Secretary of State

S.B. 1293