

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

[R04-546]

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

10 A.A.R. 2988, July 30, 2004

2. Sections Affected

R20-6-2002

Rulemaking Action

Amend

3. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 20-167(H)

Implementing statutes: A.R.S. §§ 20-167(H), 20-1098, 20-1098.01(G), 20-1098.05, 20-1098.06 and 20-1098.07

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Margaret McClelland

Address: Department of Insurance
2910 N. 44th St., Second Floor
Phoenix, AZ 85018

Telephone: (602) 912-8456

Fax: (602) 912-8452

5. An explanation of the rule, including the agency's reasons for initiating the rule:

Laws 2001, Chapter 327 established a captive insurance program in Arizona. Effective July 1, 2002, A.R.S. § 20-1098.01(J) required the Director of the Department of Insurance to establish fees for the issuance and renewal of a captive insurer license under A.R.S. 20-167(H). In 2002, the Department promulgated rules to establish such fees for captive insurers in R20-6-2002. In 2003, the Arizona legislature, in HB 2152, amended the captive insurance law to allow the creation of protected cell captive insurers. The existing R20-6-2002 does not specify fees for protected cell captive insurers, a subset of captive insurers.

Currently, all other states that have captive statutes have the ability to collect revenues via premium taxes from the protected cell captive insurer for each protected cell. Arizona is a fee-based state and under the current rule, the Department can collect only \$1000 for the initial license and \$5500 for the annual renewal license from the protected cell captive insurer, regardless of the number of protected cells.

The work that the Department performs in reviewing, approving, and processing a protected cell applicant is similar to that for reviewing, approving and processing a regular captive insurer. ADOI is incurring additional costs when reviewing, approving and processing a protected cell, but is not being compensated for the work. This rulemaking will provide for the Department to be compensated for the work.

6. An explanation of the substantial change which resulted in this supplemental notice:

R20-6-2002(B) is revised to clarify that the protected cell captive insurer shall pay an annual renewal fee of \$2500 for each protected cell in addition to the \$5500 annual renewal fee that the protected cell captive insurer will pay. In the original Notice of Proposed Rulemaking, the word "also" was included in the proposed new language in R20-6-2002(A), but inadvertently omitted from the proposed new language in subsection (B). A comment received at the oral proceeding for the proposed rule requested clarification as to whether subsection (B) should be interpreted to include the word "also". To avoid confusion and make clear the Department's intent, this notice revises subsection (B) to add "also."

Arizona Administrative Register / Secretary of State
Notices of Supplemental Proposed Rulemaking

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business and consumer impact:

There will be economic impacts to protected cell captive insurers as a result of this rule due to the fees imposed. Because protected cell captive insurers are typically established only by large enterprises that would otherwise be capable of self-insuring their risks, and are not subject to any premium taxes as are regular insurers, the economic impact is estimated to be minimal to moderate.

There will be a minimal economic impact on the Department, the Secretary of State and the Governor's Regulatory Review Council for costs associated with the rulemaking process.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Margaret McClelland
Address: Department of Insurance
2910 N. 44th St., Second Floor
Phoenix, AZ 85018
Telephone: (602) 912-8456
Fax: (602) 912-8452

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: Wednesday, February 23, 2005 (*see Notice of Public Information in this issue*)
Time: 9:00 a.m.
Location: Department of Insurance
2910 N. 44th St.
Second Floor Conference Room
Phoenix Arizona
Nature: Oral proceeding to receive oral or written comments
Close of record: 5:00 p.m., Friday, February 25, 2005 or the Department will accept written comments postmarked by February 25, 2005

ADOI is committed to complying with the Americans with Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADOI at least 72 hours before the hearing.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rule:

None

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 20. CAPTIVE INSURERS

Section

R20-6-2002. Fees; Examination Costs

ARTICLE 20. CAPTIVE INSURERS

R20-6-2002. Fees; Examination Costs

- A. A corporation applying for a license to do business as a captive insurer, as defined in A.R.S. § ~~20-1098(4)~~ 20-1098(5), shall pay a nonrefundable fee of \$1,000.00 to the Department for issuance of the license. A protected cell captive insurer, as defined in A.R.S. § 20-1098(14), also shall pay to the Department a nonrefundable fee of \$1,000 for issuance of each license for each protected cell. The fee is payable in full at the time the applicant submits the application for license to the Department under A.R.S. § 20-1098.01.

Notices of Supplemental Proposed Rulemaking

- B. A captive insurer shall pay a nonrefundable annual renewal fee of \$5,500.00 to the Department at the time of filing its annual report under A.R.S. § 20-1098.01(G). A protected cell captive insurer also shall pay to the Department a nonrefundable annual renewal fee of \$2,500.00 for each protected cell at the time of filing its annual report under A.R.S. § 20-1098.05(B)(6).
- C. In addition to the fees prescribed in subsections (A) and (B), an applicant for a captive insurer license or a licensed captive insurer shall pay the costs of any examination conducted by the Director, in accordance with A.R.S. § 20-1098.06.