Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
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CHAPTER 122

HOUSE BILL 2294

AN ACT

AMENDING SECTIONS 20-1098, 20-1098.01, 20-1098.03, 20-1098.04, 20-1098.06, 20-1098.07, 20-1098.08, 20-1098.11, 20-1098.15, 20-1098.16, 20-1098.17 AND 20-1098.18, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 4, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 20-1098.19, 20-1098.20, 20-1098.21, 20-1098.22 AND 20-1098.23; RELATING TO CAPTIVE INSURERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 20-1098, Arizona Revised Statutes, is amended to read:

20-1098. Definitions

In this article, unless the context otherwise requires:

1. "Affiliate" has the same meaning prescribed in section 20-481.

2. "Agency captive insurer" means a captive insurer that is owned by one or more business entities that are licensed in any state as insurance producers or managing general agents and that only insure risks on policies placed through their owners.

3. "ALIEN CAPTIVE INSURER" MEANS ANY INSURER THAT IS FORMED TO WRITE INSURANCE BUSINESS FOR ITS AFFILIATES AND THAT IS LICENSED PURSUANT TO THE LAWS OF AN ALIEN JURISDICTION THAT IMPOSES STATUTORY OR REGULATORY STANDARDS THAT ARE ACCEPTABLE TO THE DIRECTOR ON COMPANIES TRANSACTING THE BUSINESS OF INSURANCE IN SUCH A JURISDICTION.

~~3.~~ 4. "Association" means any lawfully formed association of individuals~~, corporations~~ or ~~partnerships~~ BUSINESS ENTITIES that has been in existence for at least one year and that is organized for a primary purpose other than ~~insuring~~ PROCURING OR PROVIDING INSURANCE FOR its members.

5. "ASSOCIATION CAPTIVE INSURER" MEANS A CAPTIVE INSURER THAT IS COMPLETELY UNDER THE DIRECT OR INDIRECT VOTING CONTROL OF AN ASSOCIATION.

6. "BRANCH BUSINESS" MEANS ANY INSURANCE BUSINESS THAT IS TRANSACTED BY A BRANCH CAPTIVE INSURER IN THIS STATE.

7. "BRANCH CAPTIVE INSURER" MEANS AN ALIEN CAPTIVE INSURER THAT IS LICENSED PURSUANT TO THIS CHAPTER TO TRANSACT THE BUSINESS OF INSURANCE THROUGH A BUSINESS UNIT WITH A PRINCIPAL PLACE OF BUSINESS IN THIS STATE.

8. "BRANCH OPERATIONS" MEANS ANY BUSINESS OPERATIONS OF A BRANCH CAPTIVE INSURER IN THIS STATE.

~~4.~~ 9. "Business entity" ~~has the same meaning prescribed in section 20-281~~ MEANS ANY LEGAL ENTITY OTHER THAN AN INDIVIDUAL OR SOLE PROPRIETORSHIP.

~~5.~~ 10. "Captive insurer" means any pure captive insurer, agency captive insurer, group captive insurer or protected cell captive insurer that is domiciled in this state and that is formed and licensed under this article.

~~6.~~ 11. "Controlled unaffiliated business" means ~~a company~~ AN INDIVIDUAL OR BUSINESS ENTITY that satisfies all of the following:

(a) Is not an affiliate of the captive insurer providing coverage or reinsurance.

(b) Has ~~an existing~~ A contractual relationship with an affiliate of the captive insurer providing coverage or reinsurance ~~out of which the subject risk of loss arises~~.

(c) Whose risk management function THAT IS RELATED TO THE COVERED RISK OF LOSS is controlled by an affiliate of the captive insurer providing coverage or reinsurance.

12. "DEDUCTIBLE REIMBURSEMENT" MEANS INSURANCE COVERAGE THAT REIMBURSES THE INSURED FOR THE DEDUCTIBLE IT PAID UNDER A SEPARATE COMMERCIAL INSURANCE POLICY ISSUED TO THE SAME INSURED, WITHOUT OTHER CONDITIONS RELATED TO THE UNDERLYING LOSS.

13. "DIRECT OR DIRECTLY", WHEN USED IN THIS ARTICLE TO DESCRIBE THE TRANSACTION OF INSURANCE BUSINESS BY A CAPTIVE INSURER, MEANS A TRANSACTION IN WHICH THE CAPTIVE INSURER ISSUES AN INSURANCE POLICY THAT PROVIDES PRIMARY COVERAGE TO THE INSURED UNDER THE POLICY AND THAT DOES NOT PROVIDE REINSURANCE COVERAGE TO ANOTHER INSURER.

~~7.~~ 14. "Group CAPTIVE INSURER" means ~~either~~ ANY OF THE FOLLOWING:

(a) A risk retention group ~~formed pursuant to section 20-2402 and either the product liability risk retention act of 1981 (15 United States Code section 3901) or the liability risk retention act of 1986 (P.L. 99-563)~~.

(b) An industry group ~~or~~ CAPTIVE INSURER.

(c) AN association ~~that directly or through its members satisfies at least one of the following criteria:~~

~~(i) Owns or controls, or holds with power to vote, all outstanding voting securities of a group captive insurer incorporated as a stock insurer.~~

~~(ii) Has complete voting control over a group captive insurer incorporated as a mutual insurer.~~

~~(iii) Constitutes all of the subscribers of a group captive insurer formed as a reciprocal insurer.~~

~~8. "Group captive insurer" means a captive insurer that insures only the risks of the group members and their affiliates~~ CAPTIVE INSURER.

~~9.~~ 15. "Industry group" means two or more ~~individuals or~~ business entities that ~~each:~~

~~(a) Procure the insurance of any risk or risks by use of the services of a full-time employee or third party consultant acting as an insurance manager or buyer.~~

~~(b) Have aggregate annual premiums for insurance on all risks that total at least twenty-five thousand dollars~~ ARE ENGAGED IN BUSINESSES OR ACTIVITIES SIMILAR OR RELATED WITH RESPECT TO THE LIABILITY THAT THEY ARE EXPOSED TO BY VIRTUE OF ANY RELATED, SIMILAR OR COMMON BUSINESS, TRADE, PRODUCT, SERVICES, PREMISES OR OPERATIONS.

16. "INDUSTRY GROUP CAPTIVE INSURER" MEANS A CAPTIVE INSURER THAT IS COMPLETELY UNDER THE DIRECT OR INDIRECT VOTING CONTROL OF AN INDUSTRY GROUP.

~~10.~~ 17. "Manager" means a person who is experienced in the field of captive insurance and who maintains all documents relating to a captive insurer's operations, transactions and affairs in this state and assists the captive insurer in its management and compliance with this article.

18. "MEMBER" MEANS ANY INDIVIDUAL OR BUSINESS ENTITY THAT BELONGS TO A GROUP CAPTIVE INSURER.

~~11.~~ 19. "Participant" means an entity and any affiliates of the entity that are insured by a protected cell captive insurer pursuant to a participant contract.

~~12.~~ 20. "Participant contract" means a contract by which a protected cell captive insurer insures ~~a participant's~~ risks OF ONE OR MORE PARTICIPANTS and limits ~~the participant's~~ losses UNDER THE CONTRACT to the assets of ~~the~~ A protected cell.

~~13.~~ 21. "Protected cell" means a separate account THAT IS established and maintained by a protected cell captive insurer ~~for one~~ PURSUANT TO A participant CONTRACT.

~~14.~~ 22. "Protected cell captive insurer" means a captive insurer:

(a) In which the minimum capital and surplus required by applicable law is provided by one or more sponsors.

(b) That is formed and licensed under this article.

(c) That insures the risks of ~~separate~~ participants through ~~a contract~~ PARTICIPANT CONTRACTS.

(d) That segregates ~~each participant's~~ liability UNDER A PARTICIPANT CONTRACT through one or more protected cells.

~~15.~~ 23. "Pure captive insurer" means ~~any company~~ A CAPTIVE INSURER that insures ONLY THE risks of its ~~affiliate or~~ AFFILIATES AND controlled unaffiliated business.

24. "RISK RETENTION GROUP" MEANS A CAPTIVE INSURER THAT IS ORGANIZED PURSUANT TO THE LIABILITY RISK RETENTION ACT OF 1986 (15 UNITED STATES CODE SECTIONS 3901 AND 3902) AND CHAPTER 14 OF THIS TITLE.

~~16.~~ 25. "Sponsor" means an entity that meets the requirements of section 20-1098.06 and that the director has approved to provide all or part of the capital and surplus required by applicable law to operate a protected cell captive insurer.

Sec. 2. Section 20-1098.01, Arizona Revised Statutes, is amended to read:

20-1098.01. Licensing; authority

A. If allowed by its articles of incorporation, bylaws or other organizational document, ~~a captive insurer~~ AN APPLICANT may apply to the director for a license to transact ~~any~~ CAPTIVE insurance, except that:

1. A pure captive insurer shall not insure risks other than the risks of its affiliates ~~or~~ AND controlled unaffiliated business.

2. A group captive insurer, OTHER THAN A RISK RETENTION GROUP, shall not insure risks other than the risks of its group members, ~~and the members' affiliates~~ ITS AFFILIATES AND CONTROLLED UNAFFILIATED BUSINESS. A RISK RETENTION GROUP SHALL INSURE ONLY THE RISKS OF ITS GROUP MEMBERS.

3. An agency captive insurer shall not:

(a) Insure any risks other than those placed by or through its owners.

(b) DIRECTLY insure life or disability insurance risks.

4. A protected cell captive insurer shall not insure any risks other than those ~~of its participants~~ PRESCRIBED IN ITS PARTICIPANT CONTRACTS.

B. THE FOLLOWING APPLY TO THE TRANSACTION OF INSURANCE BY A CAPTIVE INSURER ON A DIRECT BASIS:

~~5.~~ 1. ~~In addition to any other applicable restrictions,~~ A captive insurer shall not DIRECTLY insure any of the following types of insurance business:

(a) Hospital service corporations, medical service corporations, dental service corporations, optometric service corporations or hospital, medical, dental and optometric service corporations as defined in section 20-822.

(b) Health care services organizations as defined in section 20-1051.

(c) Prepaid dental plan organizations as defined in section 20-1001.

(d) Prepaid legal insurance contracts as defined in section 20-1097.

(e) Business of title insurance as defined in section 20-1562.

(f) Personal motor vehicle or homeowner's insurance coverage or any component of that insurance coverage.

~~(g) Commercial motor vehicle insurance policies unless the insured affiliate qualifies as a self-insurer pursuant to section 28-4007 or substantially similar self-insurance requirements of another state.~~

~~(h)~~ (g) Mortgage guaranty insurance as defined in section 20-1541.

~~(i)~~ (h) Workers' compensation or employers' liability insurance policies except in connection with a self-insurance program as prescribed in ~~subsections B and C of this section~~ THIS SUBSECTION.

~~6. Nothing in paragraphs 1 through 5 of this subsection prohibits a captive insurer from accepting reinsurance.~~

2. A PURE CAPTIVE INSURER SHALL NOT PROVIDE DIRECT COVERAGE OF WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY IN THIS STATE UNLESS THE COVERAGE IS PROVIDED UNDER A SELF-INSURANCE PROGRAM THAT IS APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA PURSUANT TO SECTION 23-961. A CAPTIVE INSURANCE PROGRAM THAT IS AUTHORIZED BY SECTION 23-961 IS SUBJECT TO AND SHALL COMPLY WITH ALL REQUIREMENTS OF TITLE 23, CHAPTER 6 THAT ARE APPLICABLE TO SELF-INSURANCE.

3. A PURE CAPTIVE INSURER SHALL NOT PROVIDE DIRECT COVERAGE OF WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY INSURANCE IN ANOTHER STATE UNLESS THE COVERAGE IS PROVIDED UNDER A SELF-INSURANCE PROGRAM THAT IS QUALIFIED AS A SELF-INSURANCE PROGRAM UNDER THE APPLICABLE STATE OR FEDERAL LAW, AS DETERMINED BY THE AGENCY OR OTHER ENTITY THAT HAS JURISDICTION OVER THE SELF-INSURANCE PROGRAM.

4. THIS SUBSECTION DOES NOT PROHIBIT A CAPTIVE INSURER FROM DIRECTLY INSURING DEDUCTIBLE REIMBURSEMENT RISK.

C. A captive insurer shall not accept or cede reinsurance except as provided in section 20-1098.11.

~~7.~~ D. A captive insurer that writes life insurance or disability insurance shall comply with all applicable state and federal laws.

~~B. A pure captive insurer may provide direct coverage of workers' compensation in this state if the workers' compensation coverage is provided under a self-insurance program approved by the industrial commission of Arizona under section 23-961. A captive insurance program authorized by~~

~~section 23-961 is subject to and shall comply with all requirements of title 23, chapter 6, applicable to self-insurance.~~

~~C. A pure captive insurer may provide direct coverage of workers' compensation or employers' liability insurance in another state in connection with a self-insurance program that is qualified as a self-insurance program under the applicable state or federal law, as determined by the agency or other entity that has jurisdiction over the self-insurance program.~~

~~D.~~ E. A captive insurer shall ~~not transact insurance business in this state unless~~:

~~1. It first obtains from the director a license authorizing it to transact captive insurance business in this state.~~

~~2.~~ 1. HOLD AT LEAST ONE MEETING OF its board of directors or, for reciprocal insurers, its subscribers' advisory committee~~, holds at least one meeting~~ each year in this state.

~~3.~~ 2. ~~It maintains~~ MAINTAIN its principal place of business in this state.

~~4.~~ 3. ~~It appoints~~ APPOINT a resident statutory agent to accept service of process and to otherwise act on its behalf in this state and ~~files~~ SHALL FILE the appointment with the director. In the case of a captive insurer formed as a corporation or reciprocal insurer, if the statutory agent cannot with reasonable diligence be found at the registered office of the captive insurer, the director is an agent of the captive insurer on whom any process, notice or demand may be served.

~~E.~~ F. Before receiving a license, AN APPLICANT FOR a captive insurer LICENSE shall file with the director the following:

1. If formed as a corporation, a certified copy of its articles of incorporation, ARTICLES OF ORGANIZATION OR OTHER ORGANIZATIONAL DOCUMENT, A COPY OF ITS DULY ADOPTED bylaws or other ~~organizational document~~ GOVERNANCE RULES, a statement under oath of its president and secretary showing its financial condition and any other statement or document required by the director.

2. If formed as a reciprocal insurer, a ~~certified~~ copy of the power of attorney of its attorney-in-fact, a ~~certified~~ copy of its subscribers' agreement, A COPY OF ITS DULY ADOPTED BYLAWS OR OTHER GOVERNANCE RULES, a statement under oath of its attorney-in-fact showing its financial condition and any other statement or document required by the director.

~~F.~~ G. In addition to the information required by subsection ~~E~~ F of this section, each applicant FOR A captive insurer LICENSE shall file with the director evidence of all of the following:

1. The amount and liquidity of its assets relative to the risks to be assumed.

2. The adequacy of the expertise, experience and character of the ~~person or persons who will manage~~ DIRECTORS AND OFFICERS OF the captive insurer.

3. The overall soundness of its plan of operation.

4. The adequacy of the loss prevention programs of its insureds.

5. The engagement of a competent manager that ~~resides~~ DOES BUSINESS AT A LOCATION in this state.

6. The establishment of business relationships with any accountants, banks, attorneys and other professionals that are acceptable to the department.

7. The ability of the captive insurer's owners OR MEMBERS to pay claims to third parties if the captive insurer is unable to pay those claims.

8. Other factors deemed relevant by the director in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.

~~G.~~ H. In addition to the information required by subsections ~~E~~ F and ~~F~~ G of this section, if the applicant is seeking authority as a protected cell captive insurer, the applicant shall file:

1. A business plan that demonstrates, in a manner acceptable to the director, how the applicant will account for the loss and expense experience of each protected cell and report that information to the director.

2. A statement acknowledging that all financial records of the protected cell captive insurer, including records pertaining to protected cells, shall be available for inspection or examination by the director or the director's designee.

3. Its form for all participant contracts.

4. Evidence that the protected cell captive insurer will allocate expenses fairly and equitably to each protected cell.

~~H.~~ I. ~~A captive insurer~~ BEFORE THE ISSUANCE OF A LICENSE, AN APPLICANT shall PROMPTLY notify the director ~~within thirty days~~ of any material change in the information filed pursuant to this section.

~~I. Notwithstanding title 39, chapter 1, information submitted pursuant to this section is confidential and the director and the director's employees and agents shall not provide the information to any other person without the written consent of the captive insurer, except that:~~

~~1. This section does not apply to the department's use of information submitted by a captive insurer for any regulatory purpose, disciplinary action or hearing.~~

~~2. The director shall provide information submitted by a captive insurer that is required by a subpoena issued in connection with an administrative, civil or criminal investigation by a government agency.~~

~~3. The information may be discoverable by a party in a civil action or contested case to which the captive insurer that submitted the information is a party, if the party seeking to discover the information demonstrates all of the following:~~

~~(a) The information sought is relevant to and necessary for the furtherance of the action or case.~~

~~(b) The information sought is unavailable from other nonconfidential sources.~~

~~(c) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the director.~~

~~4. The director may disclose the information to a public official that has jurisdiction over the regulation of insurance in another state if the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves allow or require the information to be and remain confidential.~~

~~5. The director may provide the information to the industrial commission. The industrial commission shall maintain the confidentiality of the information in accordance with this subsection.~~

J. AN APPLICANT FOR A captive insurer LICENSE shall pay to the director a nonrefundable fee for the issuance ~~and renewal~~ of a captive insurance license pursuant to section 20-167. The captive insurer shall pay the LICENSE renewal fee PURSUANT TO SECTION 20-167 when the captive insurer files the annual report prescribed in section 20-1098.07.

K. If the director is satisfied that the documents and statements that the ~~captive insurer~~ APPLICANT has filed comply with this article, the director may grant the APPLICANT A captive insurer ~~a~~ license that authorizes the captive insurer to transact CAPTIVE insurance business in this state. ~~If the plan of operation includes the reinsurance of workers' compensation or employers' liability risks resident, located or to be performed in this state, the director may provide the industrial commission with an opportunity to review the plan of operation and advise the director as to its soundness.~~

L. The director shall approve or deny an application for a license to transact captive insurance business within thirty days after the director deems the application complete.

Sec. 3. Section 20-1098.03, Arizona Revised Statutes, is amended to read:

20-1098.03. <u>Minimum capital and surplus; letter of credit; borrowed surplus</u>

A. The director shall not issue a license to a captive insurer unless the insurer possesses and thereafter maintains minimum unimpaired paid-in capital and surplus in combination as follows:

1. In the case of a pure captive insurer, at least two hundred fifty thousand dollars.

2. In the case of a group captive insurer, at least five hundred thousand dollars.

3. In the case of an agency captive insurer, at least five hundred thousand dollars.

4. In the case of a protected cell captive insurer, at least ~~one million~~ FIVE HUNDRED THOUSAND dollars.

5. In the case of a captive insurer that is organized as a reciprocal insurer, at least five hundred thousand dollars ~~in free surplus~~.

6. In the case of a pure or group captive insurer that transacts only reinsurance, one-half of the applicable amount prescribed in paragraph 1 or 2 of this subsection.

B. All minimum capital and surplus requirements shall be in the form of cash or an irrevocable and unconditional letter of credit that contains an evergreen clause, that is payable to, filed with and held by the director in trust for the protection of all policyholders, ceding insurers and related expenses and that meets the following conditions:

1. The letter of credit shall be issued or confirmed by a qualified United States financial institution as defined in section 20-261.03, subsection A and shall comply with the requirements prescribed by the director.

2. The captive insurer shall not be directly or contingently liable for any letter of credit comprising its capital or surplus, and its assets shall not be pledged as security for the letter of credit.

C. The director may prescribe additional capital and surplus requirements based on the type, volume and nature of insurance. The captive insurer may pledge, with the approval of the department, any additional prescribed capital and surplus, whether in the form of cash, another allowable asset or any irrevocable and unconditional letter of credit that contains an evergreen clause.

D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, A WRITTEN AGREEMENT UNDER WHICH A CAPTIVE INSURER BORROWS MONIES THAT ARE REQUIRED TO BE REPAID ONLY OUT OF THE INSURER'S SURPLUS IN EXCESS OF THAT STIPULATED IN THE AGREEMENT MAY PROVIDE FOR INTEREST AT ANY RATE AGREED ON AND APPROVED BY THE DIRECTOR.

E. A CAPTIVE INSURER THAT IS ESTABLISHED SOLELY FOR THE PURPOSE OF REINSURING RISKS AS PART OF A PROGRAM FILED AND APPROVED BY THE DIRECTOR TO FACILITATE THE SECURITIZATION OF RISKS CEDED TO THE CAPTIVE INSURER MAY BE A PARTY TO CONTRACTS THAT PROVIDE THAT SUBSEQUENT PURCHASERS OF INTERESTS IN THE PROGRAM ASSUME THE INTERESTS ON A NONRECOURSE BASIS, BOTH AS TO THE CAPTIVE INSURER AND ANY AFFILIATE.

Sec. 4. Section 20-1098.04, Arizona Revised Statutes, is amended to read:

20-1098.04. <u>Formation of captive insurers; redomestication</u>

A. An agency captive insurer or protected cell captive insurer shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders. EACH OWNER OF AN AGENCY CAPTIVE INSURER SHALL BE LICENSED AS AN INSURANCE PRODUCER OR MANAGING GENERAL AGENT.

B. A group captive insurer may be formed in any of the following ways:

1. Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

2. Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

3. Organized as a reciprocal insurer pursuant to article 2 of this chapter~~, except that three or more persons may organize a captive reciprocal insurer and the captive reciprocal insurer subscribers' advisory committee must have one person that is a resident of this state~~.

4. Incorporated as a nonprofit corporation pursuant to title 10, chapter 25.

C. A pure captive insurer may be formed in any of the following ways:

1. Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

2. Incorporated as a nonprofit corporation pursuant to title 10, chapter 25.

3. INCORPORATED AS A LIMITED LIABILITY CORPORATION PURSUANT TO TITLE 29, CHAPTER 4.

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

D. THE CAPITAL STOCK OF A CAPTIVE INSURER THAT IS INCORPORATED AS A STOCK INSURER MAY BE AUTHORIZED WITH NO PAR VALUE.

E. A captive insurer THAT IS FORMED AS A CORPORATION shall have at least three incorporators, at least one of whom shall be a resident of this state. A CAPTIVE INSURER THAT IS FORMED AS A RECIPROCAL INSURER SHALL BE ORGANIZED BY THREE OR MORE SUBSCRIBERS, AT LEAST ONE OF WHOM SHALL BE A RESIDENT OF THIS STATE.

~~F. The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.~~

F. A PURE CAPTIVE INSURER SHALL HAVE AT LEAST ONE DIRECTOR. ANY OTHER KIND OF CORPORATE CAPTIVE INSURER SHALL HAVE AT LEAST THREE DIRECTORS. ANY GROUP CAPTIVE INSURER FORMED AS A RECIPROCAL INSURER SHALL HAVE AT LEAST THREE SUBSCRIBERS' ADVISORY COMMITTEE MEMBERS. IN ADDITION TO INDEPENDENT DIRECTORS, A GROUP CAPTIVE INSURER MAY HAVE AS MANY DIRECTORS AS IT HAS MEMBERS.

G. A CAPTIVE INSURER THAT IS FORMED AS A CORPORATION SHALL HAVE AT LEAST ONE MEMBER OF THE BOARD OF DIRECTORS WHO IS A RESIDENT OF THIS STATE. A CAPTIVE INSURER THAT IS FORMED AS A RECIPROCAL INSURER SHALL HAVE AT LEAST ONE MEMBER OF THE SUBSCRIBERS' ADVISORY COMMITTEE WHO IS A RESIDENT OF THIS STATE.

~~G.~~ H. The articles of incorporation or bylaws of a captive insurer that is formed as a corporation WITH MORE THAN ONE DIRECTOR may authorize a quorum of a board of directors to consist of at least one-third of the fixed or prescribed number of directors, BUT AT LEAST TWO DIRECTORS. The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members, BUT AT LEAST TWO MEMBERS.

~~H. A captive insurer organized as a stock insurer shall have at least one member of the board of directors who is a resident of this state. A~~

~~captive insurer that is formed as a reciprocal insurer shall have at least one member of the subscribers' advisory committee who is a resident of this state.~~

I. Any foreign or alien insurer may become a domestic captive insurer by complying with the requirements of this article relating to the ~~organization and~~ licensing of a domestic captive insurer ~~of the same type,~~ and by complying with all applicable requirements of the laws of this state relating to the ~~formation and authorization~~ DOMESTICATION of a corporation TO THIS STATE. ~~The domestic captive insurer is entitled to a license to continue its business and is subject to the authority and jurisdiction of this state.~~ THE EFFECTIVE DATE OF A LICENSE THAT IS ISSUED TO A FOREIGN OR ALIEN INSURER DOMESTICATED TO THIS STATE SHALL BE THE DATE OF FILING ITS ARTICLES OF DOMESTICATION WITH THE CORPORATION COMMISSION.

Sec. 5. Section 20-1098.06, Arizona Revised Statutes, is amended to read:

20-1098.06. Protected cell captive insurers; sponsors; participants

A. A risk retention group shall not be either a sponsor or a participant in a protected cell captive insurer.

B. An association, corporation, limited liability company, partnership, trust or any other business entity may be a participant in any protected cell captive insurer formed or licensed under this article.

C. A sponsor may be a participant in a protected cell captive insurer.

D. A participant need not be a shareholder of a protected cell captive insurer or any affiliate of a protected cell captive insurer.

E. ~~A participant~~ EACH PROTECTED CELL shall ~~insure only its own risks through a~~ COMPLY WITH THE RESTRICTIONS PRESCRIBED IN SECTION 20-1098.01, SUBSECTION A WITH RESPECT TO THE RISKS INSURED THROUGH THE protected cell ~~captive insurer~~.

Sec. 6. Section 20-1098.07, Arizona Revised Statutes, is amended to read:

20-1098.07. Annual report

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

B. The captive insurer's financial statements shall be audited by an independent certified public accountant unless the director determines that an audit is not necessary. The audit shall include a reconciliation of

differences, if any, between the audited financial report and the statement or form filed with the department. THE AUDIT OPINION SHALL BE FILED WITH THE DIRECTOR NOT LATER THAN SIX MONTHS AFTER THE END OF THE CAPTIVE INSURER'S FISCAL YEAR.

C. Unless exempted by the director, the annual report shall include an opinion as to the adequacy of the captive insurer's loss reserves and loss expense reserves. A member in good standing of the casualty actuarial society, a member in good standing of the American academy of actuaries or an individual who has demonstrated competence in loss reserve evaluations to the director shall certify the opinion.

Sec. 7. Section 20-1098.08, Arizona Revised Statutes, is amended to read:

20-1098.08 Examinations

A. Whenever the director determines it to be prudent, the director may examine the business, transactions and affairs of each captive insurer to ascertain the captive insurer's financial condition and ability to fulfill its obligations and whether the captive insurer has complied with this article.

B. Section ~~20-1098.01, subsection I~~ 20-1098.23 applies to all examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies of any of those reports, results, papers, information or documents produced by, obtained by or disclosed to the director in the course of an examination made under this section.

C. The director may use independent contractor examiners pursuant to sections 20-148 and 20-159 to conduct examinations pursuant to this section. All examinations and examination related expenses shall be borne by the captive insurer and shall be paid by the insurance examiners' revolving fund pursuant to section 20-159.

D. AS A CONDITION OF LICENSURE, AN ALIEN CAPTIVE INSURER SHALL CONSENT TO THE EXAMINATION BY THE DIRECTOR OF THE AFFAIRS OF THE ALIEN CAPTIVE INSURER IN THE JURISDICTION IN WHICH THE ALIEN CAPTIVE INSURER IS FORMED. THE EXAMINATION OF A BRANCH CAPTIVE INSURER SHALL BE OF BRANCH BUSINESS AND BRANCH OPERATIONS ONLY, DURING THE PERIOD THE BRANCH CAPTIVE INSURER IS FORMED, AND MUST DEMONSTRATE TO THE DIRECTOR'S SATISFACTION THAT THE ALIEN CAPTIVE INSURER IS OPERATING IN A SOUND FINANCIAL CONDITION PURSUANT TO ALL THE APPLICABLE LAWS AND REGULATIONS OF THE JURISDICTION.

Sec. 8. Section 20-1098.11, Arizona Revised Statutes, is amended to read:

20-1098.11. Reinsurance

A. Except AS PROVIDED IN SUBSECTION C OF THIS SECTION OR OTHERWISE with the approval of the director, a captive insurer may ~~only provide reinsurance on risks ceded by any other insurer in accordance with~~ REINSURE RISKS ONLY PURSUANT TO the limitations prescribed in section 20-1098.01, ~~and as otherwise allowed under this article~~ SUBSECTION A.

B. A captive insurer may take credit for reserves on risks or portions of risks ceded to a reinsurer that is in compliance with sections 20-261 and 20-261.01 through 20-261.04. Prior approval of the director shall be required for ceding or taking credit for the reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with sections 20-261 and 20-261.01 through 20-261.04.

C. ~~Notwithstanding this article,~~ A ~~pure~~ captive insurer may cede to and assume risks ~~from a pooling arrangement~~ THAT ARE NOT WITHIN THE LIMITATIONS PRESCRIBED IN SECTION 20-1098.01, SUBSECTION A, subject to the approval of the director.

Sec. 9. Section 20-1098.15, Arizona Revised Statutes, is amended to read:

20-1098.15. Applicability

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

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

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

D. A CAPTIVE INSURER THAT IS FORMED AS A LIMITED LIABILITY COMPANY IS SUBJECT TO THE APPLICABLE PROVISIONS OF TITLE 29, EXCEPT AS OTHERWISE PRESCRIBED IN THIS ARTICLE.

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

Sec. 10. Section 20-1098.16, Arizona Revised Statutes, is amended to read:

20-1098.16. Captive manager

A captive insurer shall engage a manager who ~~is a resident of this state. The captive manager~~ shall maintain the books and records of the captive insurer's business, transactions and affairs at a location that is in this state and that is accessible to the director. The captive manager shall promptly notify the director of any failure of the captive insurer to comply with this article. The director may require a captive insurer to discharge a captive manager for failure to substantively fulfill the captive manager's duties under this article.

Sec. 11. Section 20-1098.17, Arizona Revised Statutes, is amended to read:

20-1098.17. Effect of fees payment

~~A. The department of insurance shall submit an annual report that provides a list of the fees collected from captive insurers to the governor, the president of the senate and the speaker of the house of representatives and shall provide a copy of this report to the secretary of state and the director of the Arizona state library, archives and public records.~~

~~B.~~ The fees paid by a captive insurer pursuant to section 20-167, subsection H are payment in full and in lieu of all other demands for all state, county, district, municipal and school taxes, licenses and excises of whatever kind or character, except for:

1. A tax on real and tangible personal property that is located within this state.

2. The transaction privilege tax and the use tax that is imposed pursuant to title 42, chapter 5, articles 1 and 4.

3. The transaction privilege tax and use tax that is imposed by any county, city or town.

Sec. 12. Section 20-1098.18, Arizona Revised Statutes, is amended to read:

20-1098.18. Captive insurance regulatory and supervision fund; purpose

A. The captive insurance regulatory and supervision fund is established within the department consisting of monies deposited pursuant to section 20-1098.01, subsection J. The director shall administer the fund as prescribed in subsection B of this section. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations, except that, on the close of each fiscal year, all unencumbered monies in the fund exceeding one hundred thousand dollars revert to the state general fund.

B. The director shall use monies in the captive insurance regulatory and supervision fund to pay the costs of administering this article and for reasonable expenses incurred in promoting this state's captive insurance industry, PURSUANT TO WRITTEN GUIDELINES ADOPTED BY THE DIRECTOR.

C. The department shall not receive a general fund appropriation for operation of the captive insurance program and promotion of this state's captive insurance industry for any fiscal year in which the department had at least twenty-five captive insurers holding an active certificate of authority as of the immediately preceding calendar year end.

Sec. 13. Title 20, chapter 4, article 14, Arizona Revised Statutes, is amended by adding sections 20-1098.19, 20-1098.20, 20-1098.21, 20-1098.22 and 20-1098.23, to read:

20-1098.19. Establishment of branch captive insurer

A. A BRANCH CAPTIVE INSURER MAY BE ESTABLISHED IN THIS STATE PURSUANT TO THIS CHAPTER TO WRITE IN THIS STATE ONLY INSURANCE OR REINSURANCE OF THE EMPLOYEE BENEFIT BUSINESS, OTHER THAN WORKERS' COMPENSATION OR EMPLOYERS'

1 LIABILITY INSURANCE, OF ITS PARENT AND AFFILIATED COMPANIES THAT ARE SUBJECT
2 TO THE PROVISIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (29
3 UNITED STATES CODE SECTIONS 1001 THROUGH 1461).
4 B. A BRANCH CAPTIVE INSURER SHALL NOT CONDUCT ANY INSURANCE BUSINESS
5 IN THIS STATE UNLESS IT MAINTAINS THE PRINCIPAL PLACE OF BUSINESS FOR ITS
6 BRANCH OPERATIONS IN THIS STATE.
7 C. A BRANCH CAPTIVE INSURER SHALL BE A PURE CAPTIVE INSURER WITH
8 RESPECT TO OPERATIONS AND MINIMUM CAPITALIZATION IN THIS STATE UNLESS
9 OTHERWISE PERMITTED BY THE DIRECTOR.
10 20-1098.20. Security for branch business and branch operations
11 IN THE CASE OF A BRANCH CAPTIVE INSURER, AS SECURITY FOR THE PAYMENT OF
12 LIABILITIES ATTRIBUTABLE TO THE BRANCH OPERATIONS, THE DIRECTOR SHALL REQUIRE
13 THAT EITHER A TRUST FUND THAT IS FUNDED BY ASSETS ACCEPTABLE TO THE DIRECTOR
14 OR AN IRREVOCABLE LETTER OF CREDIT BE ESTABLISHED AND MAINTAINED IN THE
15 UNITED STATES FOR THE BENEFIT OF UNITED STATES POLICYHOLDERS AND UNITED
16 STATES CEDING INSURERS UNDER INSURANCE POLICIES ISSUED OR REINSURANCE
17 CONTRACTS ISSUED OR ASSUMED BY THE BRANCH CAPTIVE INSURER THROUGH ITS BRANCH
18 OPERATIONS. THE AMOUNT OF EACH SECURITY SHALL BE AT LEAST THE AMOUNT
19 PRESCRIBED IN SECTION 20-1098.03 AND THE RESERVES ON SUCH INSURANCE POLICIES
20 OR SUCH REINSURANCE CONTRACTS, INCLUDING RESERVES FOR LOSSES, ALLOCATED LOSS
21 ADJUSTMENT EXPENSES, INCURRED BUT NOT REPORTED LOSSES AND UNEARNED PREMIUMS
22 WITH REGARD TO BUSINESS WRITTEN THROUGH THE BRANCH OPERATIONS.
23 NOTWITHSTANDING THIS SECTION THE DIRECTOR MAY PERMIT A BRANCH CAPTIVE INSURER
24 THAT IS REQUIRED TO POST SECURITY FOR LOSS RESERVES ON BRANCH BUSINESS BY ITS
25 REINSURER TO REDUCE THE MONIES IN THE TRUST ACCOUNT OR THE AMOUNT PAYABLE
26 UNDER THE IRREVOCABLE LETTER OF CREDIT REQUIRED BY THIS SECTION BY THE SAME
27 AMOUNT IF THE SECURITY REMAINS POSTED WITH THE REINSURER. IF THE FORM OF
28 SECURITY SELECTED IS A LETTER OF CREDIT, THE LETTER OF CREDIT MUST BE
29 ESTABLISHED BY, OR ISSUED OR CONFIRMED BY, A QUALIFIED UNITED STATES
30 FINANCIAL INSTITUTION.
31 20-1098.21. Branch captive insurer reports
32 WITHIN SIXTY DAYS AFTER ITS FISCAL YEAR END, A BRANCH CAPTIVE INSURER
33 SHALL FILE WITH THE DIRECTOR A COPY OF ALL REPORTS AND STATEMENTS THAT ARE
34 REQUIRED TO BE FILED UNDER THE LAWS OF THE JURISDICTION IN WHICH THE ALIEN
35 CAPTIVE INSURER IS FORMED AND THAT ARE VERIFIED BY OATH OF TWO OF ITS
36 EXECUTIVE OFFICERS.
37 20-1098.22. Change in plan of operations
38 A CAPTIVE INSURER SHALL OBTAIN THE WRITTEN APPROVAL OF THE DIRECTOR
39 BEFORE IMPLEMENTING ANY MATERIAL CHANGE IN ITS PLAN OF OPERATIONS.
40 20-1098.23. Confidentiality of information; exceptions
41 A. NOTWITHSTANDING TITLE 39, CHAPTER 1, INFORMATION SUBMITTED PURSUANT
42 TO THIS ARTICLE IS CONFIDENTIAL AND THE DIRECTOR AND THE DIRECTOR'S EMPLOYEES
43 AND AGENTS SHALL NOT PROVIDE THE INFORMATION TO ANY OTHER PERSON WITHOUT THE
44 PERMISSION OF THE CAPTIVE INSURER, EXCEPT THAT:

1. THIS SECTION DOES NOT APPLY TO THE DEPARTMENT'S USE OF INFORMATION SUBMITTED BY A CAPTIVE INSURER FOR ANY REGULATORY PURPOSE, DISCIPLINARY ACTION OR HEARING.

2. THE DIRECTOR SHALL PROVIDE INFORMATION SUBMITTED BY A CAPTIVE INSURER THAT IS REQUIRED BY SUBPOENA ISSUED IN CONNECTION WITH AN ADMINISTRATIVE, CIVIL OR CRIMINAL INVESTIGATION BY A GOVERNMENT AGENCY.

3. THE INFORMATION MAY BE DISCOVERABLE BY A PARTY IN A CIVIL ACTION OR CONTESTED CASE TO WHICH THE CAPTIVE INSURER THAT SUBMITTED THE INFORMATION IS A PARTY, IF THE PARTY SEEKING TO DISCOVER THE INFORMATION DEMONSTRATES ALL OF THE FOLLOWING:

(a) THE INFORMATION SOUGHT IS RELEVANT TO AND NECESSARY FOR THE FURTHERANCE OF THE ACTION OR CASE.

(b) THE INFORMATION SOUGHT IS UNAVAILABLE FROM OTHER NONCONFIDENTIAL SOURCES.

(c) A SUBPOENA ISSUED BY A JUDICIAL OR ADMINISTRATIVE OFFICER OF COMPETENT JURISDICTION HAS BEEN SUBMITTED TO THE DIRECTOR.

4. THE DIRECTOR MAY DISCLOSE THE INFORMATION TO A PUBLIC OFFICIAL THAT HAS JURISDICTION OVER THE REGULATION OF INSURANCE IN ANOTHER STATE IF THE PUBLIC OFFICIAL AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY OF THE INFORMATION AND THE LAWS OF THE STATE IN WHICH THE PUBLIC OFFICIAL SERVES ALLOW OR REQUIRE THE INFORMATION TO BE AND REMAIN CONFIDENTIAL.

5. THE DIRECTOR MAY PROVIDE THE INFORMATION TO THE INDUSTRIAL COMMISSION OF ARIZONA. THE INDUSTRIAL COMMISSION SHALL MAINTAIN THE CONFIDENTIALITY OF THE INFORMATION PURSUANT TO THIS SECTION.

6. FOR THE PURPOSE OF ADMINISTERING THIS ARTICLE AND PROMOTING THIS STATE'S CAPTIVE INSURANCE INDUSTRY, THE DIRECTOR MAY DISCLOSE ONLY THE FOLLOWING INFORMATION ABOUT LICENSED CAPTIVE INSURERS:

(a) NAME OF THE CAPTIVE INSURER.

(b) DATE LICENSED.

(c) TYPE OF CAPTIVE INSURER.

(d) BUSINESS OR INDUSTRY OF THE OWNERS OR MEMBERS.

(e) LICENSE STATUS.

B. THIS SECTION DOES NOT APPLY TO RISK RETENTION GROUPS.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.