REFERENCE TITLE: insurance holding companies; enterprise risk

State of Arizona
Senate
Fifty-first Legislature
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2014

SB 1089

Introduced by
Senator Yarbrough

AN ACT

AMENDING SECTIONS 20-481, 20-481.01, 20-481.02, 20-481.03, 20-481.06, 20-481.07, 20-481.09, 20-481.10, 20-481.12, 20-481.13, 20-481.18, 20-481.19, 20-481.20, 20-481.21, 20-481.23, 20-481.25 AND 20-481.26, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 2, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 20-481.31 AND 20-481.32; AMENDING SECTION 20-510, ARIZONA REVISED STATUTES; RELATING TO INSURANCE HOLDING COMPANY SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 20-481, Arizona Revised Statutes, is amended to read:

20-481. Definitions

In this article, unless the context otherwise requires:

1. "Affiliate" or person "affiliated" with a specific person means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.

2. "Continuing proxies" means proxies that are valid for more than one annual or special meeting of security holders and any adjournments thereof.

3. "Control" and "controlling" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten per cent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 20-481.18 that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

4. "ENTERPRISE RISK" MEANS ANY ACTIVITY, CIRCUMSTANCE, EVENT OR SERIES OF EVENTS INVOLVING ONE OR MORE AFFILIATES OF AN INSURER THAT IF NOT REMEDIED PROMPTLY IS LIKELY TO HAVE A MATERIAL ADVERSE EFFECT ON THE FINANCIAL CONDITION OR LIQUIDITY OF THE INSURER OR ITS INSURANCE HOLDING COMPANY SYSTEM AS A WHOLE, INCLUDING CAUSING THE INSURER'S RISK-BASED CAPITAL TO DECREASE TO OR BELOW A COMPANY ACTION LEVEL UNDER SECTION 20-488.02 OR WOULD CAUSE AN INSURER TO BE IN HAZARDOUS FINANCIAL CONDITION PURSUANT TO SECTION 20-220.01.

~~4.~~ 5. "Insurance holding company system" means two or more affiliated persons, one or more of whom is an insurer.

~~5.~~ 6. "Insurer" means every person engaged in the business of making contracts of insurance except:

(a) Agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state.

~~(b) Fraternal benefit societies.~~

~~(c)~~ (b) Nonprofit medical and hospital service associations.

~~(d)~~ (c) Credit life and disability reinsurers as defined in section 20-1082 that are not affiliated with another insurer as defined in section 20-104.

~~6.~~ 7. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization and any similar entity or any combination of the foregoing acting in concert but does not include any ~~securities broker performing no more than the usual and customary broker's function~~ JOINT VENTURE PARTNERSHIP EXCLUSIVELY ENGAGED IN OWNING, MANAGING, LEASING OR DEVELOPING REAL OR TANGIBLE PERSONAL PROPERTY.

~~7.~~ 8. "Security holder of a specified person" means a person who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

~~8.~~ 9. "Subsidiary of a specified person" means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

10. "SUPERVISORY COLLEGE" MEANS A TEMPORARY OR PERMANENT FORUM FOR COMMUNICATION AND COOPERATION BETWEEN REGULATORS CHARGED WITH THE SUPERVISION OF ENTITIES THAT BELONG TO AN INSURANCE HOLDING COMPANY SYSTEM THAT HAS INTERNATIONAL OPERATIONS.

~~9.~~ 11. "Voting security" means a security that carries with it a right to vote in decisions and also includes securities that are convertible into or evidence a right to acquire a security that includes such right to vote.

Sec. 2. Section 20-481.01, Arizona Revised Statutes, is amended to read:

20-481.01. Investment limitations; exemptions

A. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries subject to the limitations of this article. Such subsidiaries may conduct any kind of business or businesses and the authority to do so shall not be limited by reason of the fact that such subsidiaries are subsidiaries of a domestic insurer.

B. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this title, a domestic insurer ~~may~~, pursuant to subsection A of this section, MAY:

1. Invest in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries in amounts ~~which~~ THAT do not exceed the lesser of ten per cent of such insurer's assets or fifty per cent of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries and health care service organizations shall be excluded, and there shall be included total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary including all organizational expenses and

contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

2. Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries that is engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer if each subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph 1 of this subsection or in chapter 3, article 2 of this title, applicable to the insurer. For the purpose of this paragraph, "the total investment of the insurer" includes any direct investment by the insurer in an asset and the insurer's proportionate share of the investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

3. With the approval of the director, invest any GREATER amount in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

C. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection B of this section ~~shall~~ ARE not ~~be~~ subject to any of the otherwise applicable restrictions or prohibitions contained in this title applicable to such investment of insurers.

D. Whether any investment pursuant to subsection B of this section meets the applicable requirements is to be determined before the investment is made by calculating the applicable investment limitations as if the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made, NET OF ANY RETURN OF CAPITAL INVESTED, NOT INCLUDING DIVIDENDS.

E. If an insurer ceases to control a subsidiary, it shall dispose of any investment in the subsidiary made pursuant to this section within three years from the time of the cessation of control or within such further times as the director may prescribe, unless at any time after such investment has been made, such investment has met the requirements for investment under any other section of this title, and the insurer has so notified the director.

F. For THE purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the

insurer's outstanding liabilities and adequate to its financial needs, the following factors shall be considered:

1. ~~The minimum expendable surplus amount required by section 20-211.~~ THE QUALITY AND LIQUIDITY OF INVESTMENTS IN AFFILIATES. THE DIRECTOR MAY TREAT ANY INVESTMENT AS A DISALLOWED ASSET FOR PURPOSES OF DETERMINING THE ADEQUACY OF SURPLUS AS REGARDS POLICYHOLDERS IF IN THE JUDGMENT OF THE DIRECTOR THE INVESTMENT WARRANTS IT.

2. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

3. The extent to which the insurer's business is diversified among the several lines of insurance.

4. The number and size of risks insured in each line of business.

5. The extent of the geographical dispersion of the insurer's insured risks.

6. The nature and extent of the insurer's reinsurance program.

7. The quality, diversification and liquidity of the insurer's investment portfolio.

8. The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

9. The surplus as regards policyholders maintained by other comparable insurers.

10. The adequacy of the insurer's reserves.

Sec. 3. Section 20-481.02, Arizona Revised Statutes, is amended to read:

20-481.02. Tender offers; required statements; disclosures; approval or disapproval by director; definition

A. No person other than the issuer shall make a tender for or a request or invitation for tenders of a voting security of a domestic insurer or enter into any agreement to exchange securities or seek to acquire in the open market or in any other place any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, by conversion or by the exercise of any right to acquire, be in control of such insurer. No person may enter into an agreement to merge with or to otherwise acquire control of a domestic insurer or a person who controls a domestic insurer unless, at the time the offer, request or invitation is made or the agreement is entered into or ~~prior to~~ BEFORE the acquisition of the securities, if no offer or agreement is involved, such person has filed with the director and has sent to such insurer a statement containing the information required by section 20-481.03 and the offer, request, invitation, agreement or acquisition has been approved by the director. ~~For purposes of this section, a "domestic insurer" shall include any other person controlling a domestic insurer, unless such other person, as determined by the director, is either directly, or through its affiliates, primarily engaged in business other than the business of insurance.~~

B. With respect to the acquisition of a domestic insurer by a person, directly or indirectly through an affiliate or affiliates, who is not required to file a statement pursuant to subsection A of this section because such person is not primarily engaged in the business of insurance, such person ~~shall~~, at least thirty days ~~prior to~~ BEFORE the effective date of the acquisition of the domestic insurer, SHALL file with the director a statement containing the information required by section 20-481.03. If the director finds that the acquisition does not meet the requirements of section 20-481.07, subsection A, the director shall issue an order disapproving the acquisition of the domestic insurer and shall require the person to make an expeditious divestiture of such insurer. The director shall have the authority to take such actions as are necessary to assure such divestiture.

C. A CONTROLLING PERSON OF A DOMESTIC INSURER THAT SEEKS TO DIVEST ITS CONTROLLING INTEREST IN THE DOMESTIC INSURER SHALL FILE WITH THE DIRECTOR, WITH A COPY TO THE INSURER, A CONFIDENTIAL NOTICE OF ITS PROPOSED DIVESTITURE AT LEAST THIRTY DAYS BEFORE THE CESSATION OF CONTROL. THE DIRECTOR SHALL DETERMINE IF THE PARTY SEEKING TO DIVEST OR TO ACQUIRE A CONTROLLING INTEREST IN THE INSURER WILL BE REQUIRED TO FILE FOR AND OBTAIN APPROVAL OF THE TRANSACTION. THE INFORMATION SHALL REMAIN CONFIDENTIAL UNTIL THE CONCLUSION OF THE TRANSACTION UNLESS THE DIRECTOR DETERMINES THAT CONFIDENTIAL TREATMENT WILL INTERFERE WITH ENFORCEMENT OF THIS SECTION. THIS SUBSECTION DOES NOT APPLY IF THE STATEMENT REFERRED TO IN SUBSECTION A OF THIS SECTION IS FILED.

~~C.~~ D. The director may employ insurance analysts, hearing examiners and such other staff as necessary to ~~insure~~ ENSURE compliance with this section. Such costs shall be paid by the insurance examiners' revolving fund in accordance with section 20-159.

~~D.~~ E. The filing requirements provided in subsection A of this section shall not be deemed in conflict with federal securities acts where such federal securities acts apply. No offer, transaction, proposed transaction, agreement or acquisition subject to approval of the director pursuant to subsection A of this section shall become effective until approved by the director.

F. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, THE ACQUIRING PERSON SHALL FILE A PREACQUISITION NOTIFICATION WITH THE DIRECTOR THAT CONTAINS THE INFORMATION PRESCRIBED IN SECTION 20-481.25, SUBSECTION C FOR ALL TRANSACTIONS UNDER THIS SECTION.

G. FOR THE PURPOSES OF THIS SECTION:

1. "DOMESTIC INSURER" INCLUDES ANY OTHER PERSON CONTROLLING A DOMESTIC INSURER, UNLESS THE DIRECTOR DETERMINES THAT THE OTHER PERSON IS EITHER DIRECTLY OR THROUGH ITS AFFILIATES PRIMARILY ENGAGED IN BUSINESS OTHER THAN THE BUSINESS OF INSURANCE.

2. PERSON DOES NOT INCLUDE ANY SECURITIES BROKER IN THE USUAL AND CUSTOMARY BROKER'S FUNCTION HOLDING LESS THAN TWENTY PER CENT OF THE VOTING SECURITIES OF AN INSURANCE COMPANY OR OF ANY PERSON THAT CONTROLS AN INSURANCE COMPANY.

Sec. 4. Section 20-481.03, Arizona Revised Statutes, is amended to read:

20-481.03. Contents of statement

A. The statement to be filed with the director as provided in section 20-481.02 shall be made under oath or affirmation and shall contain the following ~~information~~:

1. The name and address of each person by whom or on whose behalf the tender offer, merger or other acquisition of control referred to in section 20-481.02 is to be effected.

2. If the acquiring party is an individual, his principal occupation and all offices and positions held during the past five years and any convictions of crimes other than minor traffic violations during the past ten years.

3. If the acquiring party is not an individual:

(a) A report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence.

(b) An informative description of the business intended to be done by such person and such person's subsidiaries.

(c) A list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph 2 of this subsection.

4. The source, nature and amount of the consideration used or to be used in effecting the ~~tender offer,~~ merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose including a pledge of the insurer's stocks or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, provided that if a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

5. Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party or for such lesser period as such acquiring party and any predecessors thereof have been in existence and similar unaudited information as of a date not earlier than ninety days ~~prior to~~ BEFORE the filing of the statement. If audited financial information is unavailable, unaudited financial information may be substituted if such information is acceptable to the director.

6. Any plans or proposals ~~which~~ THAT each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person or to make any other material change in its business or corporate structure or management.

7. The number of shares of any security referred to in section 20-481.02 ~~which~~ THAT each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in section 20-481.02 and a statement as to the method by which the fairness of the proposal was arrived at.

8. The amount of each class of any security referred to in section 20-481.02 ~~which~~ THAT is beneficially owned or about which there is a right to acquire beneficial ownership by each acquiring party or ~~which~~ THAT each acquiring party has the right to acquire.

9. A full description of any contracts, arrangements or understandings with respect to any security referred to in section 20-481.02 in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

10. A description of the purchase of any security referred to in section 20-481.02 during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchases, names of the purchasers and consideration paid or agreed to be paid therefor.

11. A description of any recommendations to purchase any security referred to in section 20-481.02 made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based ~~upon~~ ON interviews or at the suggestion of such acquiring party.

12. Copies of all tender offers for, requests or invitations for tenders of exchange offers for and agreements to acquire or exchange any securities referred to in section 20-481.02 and any additional soliciting material relating thereto.

13. The terms of any PROPOSED OR EXECUTED agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in section 20-481.02 for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

14. AN AGREEMENT BY THE PERSON REQUIRED TO FILE THE STATEMENT REFERRED TO IN SECTION 20-481.02 THAT THE PERSON WILL FILE WITH THE DIRECTOR THE ANNUAL ENTERPRISE RISK REPORT PURSUANT TO SECTION 20-481.10, SUBSECTION D WHILE IN CONTROL OF THE INSURER.

15. AN ACKNOWLEDGEMENT BY THE PERSON REQUIRED TO FILE THE STATEMENT REFERRED TO IN SECTION 20-481.02 THAT THE PERSON AND ALL SUBSIDIARIES IN ITS CONTROL IN THE INSURANCE HOLDING COMPANY SYSTEM WILL PROVIDE ALL INFORMATION REQUESTED BY THE DIRECTOR FOR THE DIRECTOR TO EVALUATE ENTERPRISE RISK TO THE INSURER.

~~14.~~ 16. Such additional information as the director may by rule prescribe as necessary or appropriate for the protection of policyholders and security holders of the insurer or in the public interest.

B. The director may require each statement to be accompanied by the fingerprints of any individual named in such statement as an acquiring party or as directors or executive officers of an acquiring party. Such fingerprints shall be taken in an approved manner and certified by a municipal police department, a sheriff's office or ~~other~~ ANOTHER recognized authority acceptable to the director.

Sec. 5. Section 20-481.06, Arizona Revised Statutes, is amended to read:

20-481.06. Use of other statements

If any ~~tender~~ offer, ~~for or~~ request, ~~or~~ invitation, ~~for tenders~~ AGREEMENT OR ACQUISITION referred to in section 20-481.02 is proposed to be made by means of a registration statement under the securities act of 1933 or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in section 20-481.02 may ~~utilize such~~ USE THE documents in furnishing the information ~~called for by~~ PROVIDED IN that statement.

Sec. 6. Section 20-481.07, Arizona Revised Statutes, is amended to read:

20-481.07. Approval and issues; notice; hearings

A. ~~The tender offer for or request or invitation for tenders, merger or other acquisition of control may not be consummated until it is approved by the director.~~ The director shall approve ~~the transaction~~ ANY MERGER OR OTHER ACQUISITION OF CONTROL DESCRIBED IN SECTION 20-481.02 unless the director finds THAT:

1. The ~~tender offer for or request or invitation for tenders,~~ merger or other acquisition of control:

~~1.~~ (a) Is contrary to law.

~~2.~~ (b) Is inequitable to the shareholders of any domestic insurer involved.

~~3.~~ (c) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

~~4.~~ 2. After the change of control the domestic insurer would not be able to satisfy the requirements for the reissuance of a certificate of authority to write the line or lines of insurance for which it is presently licensed.

~~5.~~ 3. The effect of ~~which~~ THE MERGER OR OTHER ACQUISITION OF CONTROL would substantially lessen competition in insurance in this state or tend to create a monopoly. In applying the competitive standard in this paragraph:

(a) The informational requirements of section 20-481.25, subsection C and the standards of section 20-481.25, subsection D apply.

(b) The merger or other acquisition shall not be disapproved if the director finds that any of the situations meeting the criteria provided by section 20-481.25 exist.

(c) The director may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

~~6.~~ 4. The financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.

~~7.~~ 5. The plans or proposals that the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and are not in the public interest.

~~8.~~ 6. The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

~~9.~~ 7. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

B. The director may conduct a hearing as prescribed in section 20-161 ~~regarding~~ FOR any transaction REQUIRING THE DIRECTOR'S APPROVAL pursuant to section 20-481.02.

C. ~~Any public hearing conducted pursuant to subsection B of this section shall be held within thirty days after the statement required by section 20-481.02 is filed, and at least twenty days after the director gives written notice of the hearing to the person filing the statement.~~ The person filing the statement REQUIRED BY SECTION 20-481.02 shall give at least ten days' written notice of the hearing to the insurer and to any other persons designated by the director. The insurer shall give the written notice to its security holders.

D. If the director does not give notice of a hearing pursuant to ~~subsections~~ SUBSECTION B ~~and C~~ of this section, the person filing the statement shall give written notice of the filing on a form prescribed by the director to the insurer and to any other persons designated by the director. The insurer shall give the written notice to its security holders. The person filing the statement, the insurer, any designated recipient of the written notice of the filing and any person whose interests may be affected by the filing have ten days from the date of the written notice to request that the director hold a hearing on the filing pursuant to this section. The request shall specify the grounds for the hearing and the interests that would be affected by the filing.

E. If the director finds that the request is made in good faith, that the interests of the person requesting the hearing would be affected by the filing if the grounds are established~~,~~ and that the grounds otherwise

justify holding a hearing, the director shall grant the request for a hearing and issue a notice of hearing to all persons entitled to the notice pursuant to subsection C of this section. ~~The hearing shall be held no earlier than twenty days from the date of the notice.~~

F. If a hearing is scheduled, the person filing the statement, the insurer, any person to whom written notice of hearing was sent and any other person whose interests may be affected shall have the right to present evidence, examine and cross-examine the witnesses and offer oral and written arguments at the hearing. ~~Prior to the hearing, persons shall be entitled to take depositions upon oral examination in the same manner as is allowed in the superior court of this state. All depositions shall be concluded not later than three days prior to the commencement of the public hearing. The director shall make a determination within thirty days after the conclusion of the hearing. Except as otherwise provided in this subsection the provisions of title 41, chapter 6, article 10 shall apply to hearings, orders and appeals.~~

G. IF THE PROPOSED ACQUISITION OF CONTROL WILL REQUIRE THE APPROVAL OF OTHER STATES IN ADDITION TO THIS STATE, THE DIRECTOR MAY HOLD A PUBLIC HEARING ON A CONSOLIDATED BASIS FOR THE PURPOSE OF RECEIVING PUBLIC COMMENT ON A PROPOSED AGENCY ACTION ON REQUEST OF THE PERSON FILING THE STATEMENT REFERRED TO IN SECTION 20-481.02. THE PERSON SHALL FILE THE STATEMENT REFERRED TO IN SECTION 20-481.02 WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS WITHIN FIVE DAYS AFTER MAKING THE REQUEST FOR A PUBLIC HEARING. THE DIRECTOR MAY OPT OUT OF A CONSOLIDATED HEARING AND SHALL PROVIDE NOTICE TO THE APPLICANT OF THE OPT OUT WITHIN TEN DAYS AFTER RECEIVING THE STATEMENT REFERRED TO IN SECTION 20-481.02. A HEARING HELD BY THE DIRECTOR AND CONDUCTED ON A CONSOLIDATED BASIS MUST BE PUBLIC AND HELD IN THE UNITED STATES.

H. IN CONNECTION WITH A CHANGE OF CONTROL OF A DOMESTIC INSURER, THE DIRECTOR SHALL MAKE A DETERMINATION THAT THE PERSON ACQUIRING CONTROL OF THE INSURER IS REQUIRED TO MAINTAIN OR RESTORE THE CAPITAL OF THE INSURER TO THE LEVEL REQUIRED BY THE LAWS AND RULES OF THIS STATE WITHIN SIXTY DAYS AFTER THE DATE OF NOTIFICATION OF THE CHANGE IN CONTROL THAT IS SUBMITTED PURSUANT TO SECTION 20-481.03.

I. THE DIRECTOR MAY RETAIN AT THE ACQUIRING PERSON'S EXPENSE ATTORNEYS, ACTUARIES, ACCOUNTANTS AND OTHER EXPERTS NOT PART OF THE DIRECTOR'S STAFF AS MAY BE REASONABLY NECESSARY TO ASSIST THE DIRECTOR IN REVIEWING THE PROPOSED ACQUISITION OF CONTROL.

~~G.~~ J. All statements, amendments or other material filed pursuant thereto, and all notices of public hearing held pursuant to this section, shall be mailed by the insurer to its shareholders within five business days after the insurer has received the statements, amendments, other material or notices. The ~~expenses of mailing shall be paid by the~~ person making the filing SHALL PAY THE EXPENSES OF MAILING. As security for the payment of the

expenses, the person shall file with the director an acceptable bond or other deposit in an amount to be determined by the director.

Sec. 7. Section 20-481.09, Arizona Revised Statutes, is amended to read:

20-481.09. Registration of insurers; deadline

A. Every insurer ~~which~~ THAT is authorized to do business in this state and ~~which~~ THAT is a member of an insurance holding company system shall register with the director, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile ~~which~~ THAT are substantially similar to those contained in this article.

B. Any insurer ~~which~~ THAT is subject to registration under this article shall register within fifteen days after the insurer becomes subject to registration and by March 31 of each year unless the director for good cause extends the time for registration.

C. The director may require any authorized insurer ~~which~~ THAT is a member of ~~a~~ AN INSURANCE holding company system ~~which~~ THAT is not subject to registration under this section to furnish a copy of the registration statement, THE SUMMARY PRESCRIBED IN SECTION 20-481.10 or other information filed by such insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

Sec. 8. Section 20-481.10, Arizona Revised Statutes, is amended to read:

20-481.10. Form and content of registration statement; disclosure of information; enterprise risk filing

A. Every insurer subject to registration shall file a registration statement on a form provided by the director, which shall contain current information concerning:

1. The capital structure, general financial condition, ownership and management of the insurer and the identity of any person controlling the insurer.

2. The identity of every member of the insurance holding company system ~~which~~ THAT directly or indirectly controls the insurer.

3. The following agreements in force, relationships subsisting and transactions currently outstanding OR THAT HAVE OCCURRED DURING THE LAST CALENDAR YEAR between such insurer and its affiliates:

(a) Loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(b) Purchases, sales or exchanges of assets.

(c) Transactions not in the ordinary course of business.

(d) Guarantees or undertakings for the benefit of any affiliate ~~which~~ THAT result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(e) All management and service contracts and all cost sharing arrangements~~, other than cost allocation arrangements based upon generally accepted accounting principles~~.

(f) Reinsurance agreements.

(g) Dividends and other distributions to shareholders.

(h) Consolidated tax allocation agreements.

4. A pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to a member of the insurance holding company system.

5. IF REQUESTED BY THE DIRECTOR, FINANCIAL STATEMENTS OF OR WITHIN AN INSURANCE HOLDING COMPANY SYSTEM, INCLUDING ALL AFFILIATES. FINANCIAL STATEMENTS MAY INCLUDE ANNUAL AUDITED FINANCIAL STATEMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE SECURITIES ACT OF 1933 OR THE SECURITIES EXCHANGE ACT OF 1934. AN INSURER REQUIRED TO FILE FINANCIAL STATEMENTS PURSUANT TO THIS PARAGRAPH MAY SATISFY THE REQUEST BY PROVIDING THE DIRECTOR WITH THE MOST RECENT PARENT CORPORATION FINANCIAL STATEMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION.

~~5.~~ 6. Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director.

7. A STATEMENT THAT THE INSURER'S BOARD OF DIRECTORS IS RESPONSIBLE FOR AND OVERSEES CORPORATE GOVERNANCE AND INTERNAL CONTROLS OF THE INSURER AND THAT THE INSURER'S OFFICERS OR SENIOR MANAGEMENT HAVE APPROVED, IMPLEMENTED AND MAINTAIN AND MONITOR CORPORATE GOVERNANCE AND INTERNAL CONTROL PROCEDURES.

8. ANY OTHER INFORMATION REQUIRED BY THE DIRECTOR BY RULE.

B. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

C. A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if this information is reasonably necessary to enable the insurer to comply with ~~the provisions of~~ this article.

D. THE ULTIMATE CONTROLLING PERSON OF EACH INSURER SUBJECT TO REGISTRATION SHALL FILE AN ANNUAL ENTERPRISE RISK REPORT THAT TO THE BEST OF THE ULTIMATE CONTROLLING PERSON'S KNOWLEDGE AND BELIEF IDENTIFIES THE MATERIAL RISKS WITHIN THE INSURANCE HOLDING COMPANY SYSTEM THAT COULD POSE ENTERPRISE RISK TO THE INSURER. THE ULTIMATE CONTROLLING PERSON SHALL FILE THE REPORT ACCORDING TO THE PROCEDURES OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' FINANCIAL ANALYSIS HANDBOOK.

Sec. 9. Section 20-481.12, Arizona Revised Statutes, is amended to read:

20-481.12. Standards

A. Transactions within ~~a~~ AN INSURANCE holding company system to which an insurer subject to registration is a party are subject to the following standards:

1. The terms are fair and reasonable.

2. AGREEMENTS FOR COST SHARING OR MANAGEMENT SERVICES AND MANAGEMENT MUST INCLUDE PROVISIONS THAT ARE REQUIRED BY RULE.

~~2.~~ 3. Charges or fees for services performed are reasonable.

~~3.~~ 4. Expenses incurred and payment received are allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

~~4.~~ 5. The books, accounts and records of each party to all transactions clearly and accurately disclose the nature and details of the transactions including any accounting information that is necessary to support the reasonableness of the charges or fees to the respective parties.

~~5.~~ 6. The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

B. The following transactions involving a domestic insurer and any person in its INSURANCE holding company system, INCLUDING AMENDMENTS AND MODIFICATIONS OF AFFILIATE AGREEMENTS PREVIOUSLY FILED PURSUANT TO THIS SECTION THAT ARE SUBJECT TO ANY MATERIALITY STANDARDS CONTAINED IN PARAGRAPHS 1, 2, 3, 4 AND 5 OF THIS SUBSECTION, may not be entered into unless the insurer notifies the director in writing not less than thirty days before entering the transaction, unless the director permits a shorter notification period, of its intention to enter into the transaction and the director does not disapprove the transaction within that period:

1. Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments if the transactions equal or exceed, with respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders as of December 31 next preceding or, with respect to life insurers, three per cent of the insurer's admitted assets as of December 31 next preceding.

2. Loans or extensions of credit to any person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of or to make investments in any affiliate of the insurer making such loans or extensions of credit if the transactions equal or exceed, with respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders as of December 31 next preceding or, with respect to life

insurers, three per cent of the insurer's admitted assets as of December 31 next preceding.

3. Reinsurance agreements or modifications to reinsurance agreements, INCLUDING:

(a) ALL REINSURANCE POOLING AGREEMENTS.

(b) AGREEMENTS in which the reinsurance premium or a change in the insurer's liabilities, OR THE PROJECTED REINSURANCE PREMIUM OR A CHANGE IN THE INSURER'S LIABILITIES IN ANY OF THE NEXT THREE YEARS, equals or exceeds five per cent of the insurer's surplus as regards policyholders as of December 31 next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate if an agreement or understanding exists between the insurer and the nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer.

4. All management agreements, service contracts, TAX ALLOCATION AGREEMENTS, GUARANTEES and cost-sharing arrangements.

5. GUARANTEES AT THE TIME EXECUTED BY A DOMESTIC INSURER, PROVIDED THAT A GUARANTEE THAT IS QUANTIFIABLE AS TO AMOUNT IS NOT SUBJECT TO THE NOTICE REQUIREMENTS OF THIS SUBSECTION UNLESS THE GUARANTEE EXCEEDS THE LESSER OF ONE-HALF OF ONE PER CENT OF THE INSURER'S ADMITTED ASSETS OR TEN PER CENT OF THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS AS OF DECEMBER 31 NEXT PRECEDING THE EXECUTION OF THE GUARANTEE. ALL GUARANTEES THAT ARE NOT QUANTIFIABLE AS TO AMOUNT ARE SUBJECT TO THE NOTICE REQUIREMENTS OF THIS SUBSECTION.

6. DIRECT OR INDIRECT ACQUISITIONS OR INVESTMENTS IN A PERSON THAT CONTROLS THE INSURER OR IN AN AFFILIATE OF THE INSURER IN AN AMOUNT THAT, TOGETHER WITH ITS PRESENT HOLDING IN SUCH INVESTMENTS, EXCEEDS TWO AND ONE-HALF PER CENT OF THE INSURER'S SURPLUS TO POLICYHOLDERS. DIRECT OR INDIRECT ACQUISITIONS OR INVESTMENTS IN SUBSIDIARIES ACQUIRED PURSUANT TO SECTION 20-481.01, OR IN NONSUBSIDIARY INSURANCE AFFILIATES THAT ARE SUBJECT TO THIS ARTICLE, ARE EXEMPT FROM THIS REQUIREMENT.

~~5.~~ 7. Any material transaction that is specified by rule and that the director determines may adversely affect the interests of the insurer's policyholders.

C. THE NOTICE PRESCRIBED IN SUBSECTION B OF THIS SECTION FOR AMENDMENTS OR MODIFICATIONS MUST INCLUDE THE REASONS FOR THE CHANGE AND THE FINANCIAL IMPACT ON THE DOMESTIC INSURER. INFORMAL NOTICE SHALL BE GIVEN WITHIN THIRTY DAYS AFTER A TERMINATION OF A PREVIOUSLY FILED AGREEMENT TO THE DIRECTOR FOR DETERMINATION OF THE TYPE OF FILING REQUIRED, IF ANY.

~~C.~~ D. ~~Nothing contained in~~ Subsection B of this section ~~is deemed to~~ DOES NOT authorize or permit any transactions that would be otherwise contrary to law.

~~D.~~ E. A domestic insurer shall not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the

statutory threshold amount and thereby avoid the review that otherwise would occur. If the director determines that separate transactions were entered into during any twelve month period for that purpose, the director may order the insurer to cease and desist under section 20-481.26.

~~E.~~ F. In reviewing transactions pursuant to subsection B of this section, the director shall consider if the transactions comply with the standards set forth in subsection A of this section and if they adversely affect the interests of policyholders.

~~F.~~ G. Within thirty days of an investment of a domestic insurer in any one corporation the director shall be notified of the investment if the total investment in the corporation by the insurance holding company system exceeds ten per cent of the corporation's voting securities.

~~G.~~ H. The director may adopt rules to exempt transactions involving nonmaterial amounts from the notice requirements of this section.

Sec. 10. Section 20-481.13, Arizona Revised Statutes, is amended to read:

20-481.13. Material changes; amended statement; time; reporting of dividends

A. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the director within fifteen days after the end of each ~~calendar year~~ MONTH in which it learns of each such change or addition.

B. Subject to ~~the provisions of~~ section 20-481.19, each registered insurer shall report to the director all dividends and other distributions to shareholders within ~~fifteen~~ FIVE business days following the declaration AND AT LEAST TEN BUSINESS DAYS BEFORE PAYMENT OF THE DIVIDEND OR DISTRIBUTION.

C. The director may adopt rules ~~which~~ THAT provide for an extension of the reporting times prescribed in subsections A and B of this section.

Sec. 11. Section 20-481.18, Arizona Revised Statutes, is amended to read:

20-481.18. Disclaimer of affiliation or control; contents; effect on duty to register

A. Any person may file with the director a disclaimer of affiliation or control with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system.

B. The disclaimer shall fully disclose all material relationships and bases for affiliation or control between such person and such insurer as well as the basis for disclaiming such affiliation or control.

~~C. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under any of the provisions of this act, unless and until the director disallows such a disclaimer.~~

~~D. The director shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.~~

C. A DISCLAIMER OF AFFILIATION SHALL BE DEEMED TO HAVE BEEN APPROVED UNLESS THE DIRECTOR WITHIN THIRTY DAYS FOLLOWING RECEIPT OF A COMPLETE DISCLAIMER NOTIFIES THE FILING PARTY THAT THE DISCLAIMER IS DISALLOWED. IF THE DIRECTOR DISALLOWS THE DISCLAIMER, THE DISCLAIMING PARTY MAY REQUEST AN ADMINISTRATIVE HEARING, WHICH SHALL BE GRANTED. THE DISCLAIMING PARTY IS NOT REQUIRED TO REGISTER UNDER THIS SECTION IF THE DIRECTOR APPROVES THE DISCLAIMER OR IF THE DISCLAIMER IS DEEMED TO HAVE BEEN APPROVED.

Sec. 12. Section 20-481.19, Arizona Revised Statutes, is amended to read:

20-481.19. Extraordinary dividend or distribution; time; notice; approval by director; definition

A. No insurer subject to registration under section 20-481.09 shall pay an extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the director has received notice of the declaration thereof and has not within such period disapproved such payment, or the director shall have approved such payment. Notice of the declaration shall be provided to the director no more than five business days after the declaration.

~~C.~~ B. Notwithstanding any other law ~~to the contrary~~, an insurer may declare an extraordinary dividend or distribution ~~which~~ THAT is conditional ~~upon~~ ON the approval of the director, and such a declaration shall confer no rights ~~upon~~ ON shareholders until the director has either approved the payment of such dividend or distribution or has not disapproved such payment within thirty days after the notice of such declaration has been received.

~~B.~~ C. For the purposes of this section, ~~an~~ "extraordinary dividend or distribution" includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the ~~greater~~ LESSER of either ten per cent of such insurer's surplus as regards policyholders as of December 31 next preceding, or the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, for the twelve month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

Sec. 13. Section 20-481.20, Arizona Revised Statutes, is amended to read:

20-481.20. Examination of registered insurers; powers; limits; expense

A. In addition to the powers ~~which~~ THAT the director has under sections 20-156 to 20-160, inclusive, relating to the examination of insurers, the director shall also have the power to ~~order any insurer registered under section 20-481.09 to produce such records, books or other information papers in the possession of the insurer or its affiliates insofar as the records, books or other information papers relate to transactions between the affiliates and such insurer. If such insurer fails to comply~~

~~with such order, the director shall have the power to examine records, books or other information papers in the possession of any affiliate of the insurer insofar as such records, books or other information papers in the possession of any affiliate relate to any transactions between or among the insurer and any of its affiliates.~~ EXAMINE ANY INSURER REGISTERED UNDER SECTION 20-481.09 AND ITS AFFILIATES TO ASCERTAIN THE FINANCIAL CONDITION OF THE INSURER, INCLUDING THE ENTERPRISE RISK TO THE INSURER BY THE ULTIMATE CONTROLLING PARTY OR BY ANY ENTITY OR COMBINATION OF ENTITIES WITHIN THE INSURANCE HOLDING COMPANY SYSTEM OR BY THE INSURANCE HOLDING COMPANY SYSTEM ON A CONSOLIDATED BASIS.

B. TO DETERMINE COMPLIANCE WITH THIS ARTICLE, THE DIRECTOR MAY ORDER ANY INSURER REGISTERED UNDER SECTION 20-481.09 TO PRODUCE:

1. ALL RECORDS, BOOKS OR OTHER INFORMATION PAPERS IN THE POSSESSION OF THE INSURER OR ITS AFFILIATES INSOFAR AS THE RECORDS, BOOKS OR OTHER INFORMATION PAPERS IN THE POSSESSION OF ANY AFFILIATE RELATE TO ANY TRANSACTIONS BETWEEN OR AMONG THE INSURER AND ANY OF ITS AFFILIATES.

2. INFORMATION NOT IN THE POSSESSION OF THE INSURER IF THE INSURER HAS THE RIGHT TO ACCESS TO THE INFORMATION PURSUANT TO CONTRACTUAL RELATIONSHIPS, STATUTORY OBLIGATIONS OR ANY OTHER METHOD.

C. IF THE INSURER CANNOT OBTAIN THE INFORMATION REQUESTED UNDER SUBSECTION B OF THIS SECTION, THE INSURER SHALL PROVIDE THE DIRECTOR WITH A DETAILED EXPLANATION OF THE REASON THAT THE INSURER CANNOT OBTAIN THE INFORMATION AND THE IDENTITY OF THE HOLDER OF THE INFORMATION. IF THE DIRECTOR DETERMINES THAT THE DETAILED EXPLANATION IS WITHOUT MERIT, THE DIRECTOR, AFTER NOTICE AND A HEARING PURSUANT TO SECTION 20-161, MAY ORDER THAT THE INSURER PAY A PENALTY OF NOT MORE THAN TWO HUNDRED DOLLARS FOR EACH DAY'S DELAY OR THAT THE INSURER'S CERTIFICATE OF AUTHORITY BE SUSPENDED OR REVOKED.

~~B.~~ D. The director shall exercise his examination power under subsection A of this section only if the examination of the insurer under sections 20-156 ~~to~~ THROUGH 20-160, inclusive, is inadequate or the interests of the policyholders of such insurer may be adversely affected.

~~C.~~ E. Each registered insurer shall be liable for and shall pay the expenses of such examination in accordance with section 20-159.

F. IF AN INSURER FAILS TO COMPLY WITH AN ORDER UNDER SUBSECTION C OF THIS SECTION, THE DIRECTOR MAY EXAMINE RECORDS, BOOKS OR OTHER INFORMATION PAPERS IN THE POSSESSION OF ANY AFFILIATE OF THE INSURER INSOFAR AS SUCH RECORDS, BOOKS OR OTHER INFORMATION PAPERS IN THE POSSESSION OF ANY AFFILIATE RELATE TO ANY TRANSACTIONS BETWEEN OR AMONG THE INSURER AND ANY OF ITS AFFILIATES. THE DIRECTOR MAY ALSO ISSUE SUBPOENAS, ADMINISTER OATHS AND EXAMINE UNDER OATH ANY PERSON FOR PURPOSES OF DETERMINING COMPLIANCE WITH THIS SECTION. IF A PERSON FAILS OR REFUSES TO OBEY A SUBPOENA, THE DIRECTOR MAY PETITION A COURT OF COMPETENT JURISDICTION SEEKING RELIEF FROM THE COURT. THE COURT MAY ENTER AN ORDER COMPELLING THE WITNESS TO APPEAR AND TESTIFY OR PRODUCE DOCUMENTARY EVIDENCE. EACH WITNESS IS ENTITLED TO THE SAME FEES AND

MILEAGE, IF CLAIMED, AS IF THE PERSON WAS A WITNESS IN SUPERIOR COURT PURSUANT TO SECTION 12-303 AND THE COSTS OF THOSE FEES AND MILEAGE AND ANY ACTUAL EXPENSE NECESSARILY INCURRED IN SECURING THE ATTENDANCE OF WITNESSES SHALL BE ITEMIZED AND CHARGED AGAINST AND PAID BY THE COMPANY BEING EXAMINED.

Sec. 14. Section 20-481.21, Arizona Revised Statutes, is amended to read:

20-481.21. Confidential records; consent to release; release without consent; information sharing

A. All documents, materials or other information that is in the possession or control of the department and that is obtained by or disclosed to the director or any other person in the course of a filing, an examination or an investigation made pursuant to sections 20-481.03, 20-481.10, 20-481.12, 20-481.19 and 20-481.20 is confidential and privileged, is not subject to title 39, chapter 1, article 2 and is not subject to subpoena. The director may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the director determines, after giving the insurer and its affiliates who would be affected by the publication notice and an opportunity to be heard, that the interests of policyholders, shareholders or the public will be served by the publication. The director may then publish all or any part of the documents, materials or other information as the director deems appropriate.

B. The director may:

1. Share nonpublic documents, materials or other information with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries and with state, federal and international law enforcement authorities, INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE DESCRIBED IN SECTION 20-481.31, if the recipient agrees and warrants that it has the authority to maintain the confidentiality and privileged status of the documents, materials or other information AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY.

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

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

C. THE DIRECTOR SHALL ENTER INTO WRITTEN AGREEMENTS WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS THAT GOVERN THE SHARING AND USE OF

INFORMATION PROVIDED PURSUANT TO THIS ARTICLE AND THAT ARE CONSISTENT WITH THIS SECTION AND THAT DO ALL OF THE FOLLOWING:

1. SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE CONFIDENTIALITY AND SECURITY OF INFORMATION SHARED WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES PURSUANT TO THIS ARTICLE, INCLUDING PROCEDURES AND PROTOCOLS FOR SHARING INFORMATION BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS WITH OTHER STATE, FEDERAL OR INTERNATIONAL REGULATORS.

2. SPECIFY THAT THE DIRECTOR HAS OWNERSHIP OF ALL INFORMATION SHARED WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES PURSUANT TO THIS ARTICLE AND THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' USE OF THE INFORMATION IS SUBJECT TO THE DIRECTION OF THE DIRECTOR.

3. REQUIRE PROMPT NOTICE TO BE GIVEN TO AN INSURER WHOSE CONFIDENTIAL INFORMATION IN THE POSSESSION OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS AFFILIATES OR SUBSIDIARIES PURSUANT TO THIS ARTICLE IS SUBJECT TO A REQUEST OR SUBPOENA TO THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS AFFILIATES OR SUBSIDIARIES FOR DISCLOSURE OR PRODUCTION.

4. REQUIRE THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES TO CONSENT TO INTERVENTION BY AN INSURER IN ANY JUDICIAL OR ADMINISTRATIVE ACTION IN WHICH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES MAY BE REQUIRED TO DISCLOSE CONFIDENTIAL INFORMATION ABOUT THE INSURER SHARED WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES PURSUANT TO THIS ARTICLE.

D. NOTWITHSTANDING SUBSECTION B, PARAGRAPH 1 OF THIS SECTION, THE DIRECTOR MAY SHARE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIAL OR INFORMATION REPORTED PURSUANT TO SECTION 20-481.10, SUBSECTION D ONLY WITH THE DIRECTORS OR COMMISSIONERS OF INSURANCE OF OTHER STATES HAVING STATUTES OR REGULATIONS SUBSTANTIALLY SIMILAR TO SUBSECTION A OF THIS SECTION AND WHO HAVE AGREED IN WRITING NOT TO DISCLOSE SUCH INFORMATION. THE SHARING OF INFORMATION BY THE DIRECTOR PURSUANT TO THIS ARTICLE DOES NOT CONSTITUTE A DELEGATION OF REGULATORY AUTHORITY BY THE DIRECTOR AND THE DIRECTOR IS SOLELY RESPONSIBLE FOR THE ADMINISTRATION, EXECUTION AND ENFORCEMENT OF THIS ARTICLE.

~~C.~~ E. A disclosure to or by the director pursuant to this section or as a result of sharing information pursuant to subsection B of this section is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information disclosed or shared.

F. DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE POSSESSION OR CONTROL OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS AFFILIATES OR SUBSIDIARIES PURSUANT TO THIS ARTICLE IS CONFIDENTIAL BY LAW AND PRIVILEGED, IS NOT SUBJECT TO TITLE 39, CHAPTER 1, ARTICLE 2, IS NOT SUBJECT TO SUBPOENA AND IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION.

Sec. 15. Section 20-481.23, Arizona Revised Statutes, is amended to read:

20-481.23. Violations

The following acts or omissions shall be deemed to be violations of this article:

1. The intentional failure to file or make any statement, amendment or other material required to be filed pursuant to sections 20-481.02, 20-481.03, 20.481.04 and 20-481.05.

2. The ~~consummation of a tender offer or request or invitation for tenders which~~ EFFECTUATION OR ANY ATTEMPT TO EFFECTUATE AN ACQUISITION OF CONTROL OF, DIVESTITURE OF OR MERGER WITH A DOMESTIC INSURER THAT is subject to ~~the provisions of~~ section 20-481.02 without the required approval of the director pursuant to section 20-481.07.

3. The intentional failure to file a registration statement or any amendment thereto required by this article within the time specified for such filing.

4. The payment of a dividend in violation of section 20-481.19.

Sec. 16. Section 20-481.25, Arizona Revised Statutes, is amended to read:

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

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

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

~~1. An acquisition otherwise subject to approval or disapproval by the director pursuant to this article.~~

~~2.~~ 1. A purchase of securities solely for investment purposes as long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control ~~under~~ AS DEFINED IN section 20-481, the purchase of securities is not solely for investment purposes unless the director of insurance of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary insurance director to the director of insurance of this state.

~~3.~~ 2. The acquisition of a person by another person if both persons are neither directly nor through affiliates primarily engaged in the business of insurance and if preacquisition notification is filed with the director pursuant to subsection C of this section thirty days before the proposed effective date of the acquisition. Preacquisition notification is not

required if the acquisition would otherwise be excluded from this section by any other provision of this subsection.

~~4.~~ 3. The acquisition of already affiliated persons.

~~5.~~ 4. If, as an immediate result of an acquisition, the combined market share of the involved insurers in any market would not exceed five per cent of the total market, there would not be an increase in any market share or the combined market share of the involved insurers in any market would not exceed twelve per cent of the total market and the market share increases by more than two per cent of the total market. For the purposes of this paragraph, "market" means direct written insurance premiums in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

~~6.~~ 5. An acquisition for which a preacquisition notification is required pursuant to this section because of the resulting effect on the ocean marine insurance line of business.

~~7.~~ 6. An acquisition of an insurer whose domiciliary director of insurance finds that the insurer is failing, that there is no feasible alternative to improve the insurer's condition and that the public benefits that would result from improving the insurer's condition through the acquisition exceed the public benefits that would result from not lessening competition and the domiciliary director of insurance communicates these findings to the director of insurance of this state.

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

D. No acquisition subject to the provisions of this section shall substantially lessen competition in any line of insurance in this state or tend to create a monopoly. The director may enter a cease and desist order under subsection F of this section if there is substantial evidence that the effect of the acquisition may be to substantially lessen competition in any line of insurance in this state or may tend to create a monopoly or if the insurer fails to file adequate information pursuant to subsection C of this section. The director has the burden of showing prima facie evidence of a violation of this subsection. In determining if a proposed acquisition would lessen competition or tend to create a monopoly, the director shall consider the following:

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

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

	Insurer A	Insurer B
(i)	four per cent	four per cent or more
(ii)	ten per cent	two per cent or more
(iii)	fifteen per cent	one per cent or more

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

	Insurer A	Insurer B
(i)	five per cent	five per cent or more
(ii)	ten per cent	four per cent or more
(iii)	fifteen per cent	three per cent or more
(iv)	nineteen per cent	one per cent or more

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

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

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

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

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

E. If an acquisition is not prima facie evidence of a violation of subsection D of this section, the director may establish the requisite anticompetitive effect based on other substantial evidence. If an acquisition is prima facie evidence of a violation of subsection D of this section, a party may establish the absence of the requisite anticompetitive effect based on other substantial evidence. Relevant factors in making a determination under this subsection include market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry and ease of entry into and exit from the market.

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

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

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

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

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

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

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

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

1. Up to and including ten thousand dollars for every day of violation.

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

J. An insurer or other person who fails to make a filing required by this section and who fails to demonstrate a good faith effort to comply with the filing requirement is subject to a civil penalty of not more than fifty thousand dollars.

K. FOR THE PURPOSES OF SUBSECTION D OF THIS SECTION:

1. "INSURER" MEANS A COMPANY OR GROUP OF COMPANIES UNDER COMMON MANAGEMENT, OWNERSHIP OR CONTROL.

2. "MARKET" MEANS THE RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS. IN DETERMINING THE RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS, THE DIRECTOR SHALL CONSIDER THE DEFINITIONS OR GUIDELINES ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND TO INFORMATION SUBMITTED BY THE PARTIES TO THE ACQUISITION. IN THE ABSENCE OF SUFFICIENT INFORMATION TO THE CONTRARY, THE RELEVANT PRODUCT MARKET IS ASSUMED TO BE THE DIRECT WRITTEN INSURANCE PREMIUM FOR A LINE OF BUSINESS THAT IS USED IN THE ANNUAL STATEMENT REQUIRED TO BE FILED BY INSURERS DOING BUSINESS IN THIS STATE. THE RELEVANT GEOGRAPHICAL MARKET IS THIS STATE.

~~K.~~ L. For the purposes of this section:

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

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

~~3.~~ 2. "Involved insurer" means an insurer that acquires or is acquired, is affiliated with an acquirer or acquired or is the result of a merger.

~~4. "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the director shall give due consideration to the definitions or guidelines, if any, adopted by the national association of insurance commissioners and to information, if any, submitted by the parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business that is used in the annual statement required to be filed by insurers doing business in this state. The relevant geographical market is this state.~~

Sec. 17. Section 20-481.26, Arizona Revised Statutes, is amended to read:

20-481.26. Penalties; cease and desist order; violation; classification

A. An insurer failing to file without just cause a registration statement required by this article after notice and a hearing shall pay a penalty of two hundred fifty dollars for each day's delay in filing, not to exceed fifty thousand dollars. The director may reduce the penalty if the insurer demonstrates that the imposition of the penalty would constitute a financial hardship to the insurer. The director shall deposit, pursuant to sections 35-146 and 35-147, the penalties collected in the state general fund.

B. Every director or officer of an insurance holding company system who knowingly violates, participates in, assents to or permits an officer or agent of the insurer to engage in transactions or make investments that have not been properly reported or submitted pursuant to section 20-481.02, 20-481.05 or 20-481.09 or who violates this article in his individual capacity after notice and a hearing shall pay a civil penalty of not more than ten thousand dollars for each violation. In determining the amount of the civil penalty, the director shall consider the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations and other matters as justice may require.

C. If it appears to the director that an insurer subject to this article or a director, officer, employee or agent of the insurer has engaged in a transaction or entered into a contract that is subject to this article and that would not have been approved had such approval been requested, the director may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and a hearing the director also may order the insurer to void the contract and restore the status quo if that action is in the best interest of the policyholders, the creditors or the public.

D. A knowing violation of this article is a class 1 misdemeanor. Notwithstanding any other law, an insurer that wilfully violates this article may be fined not more than fifty thousand dollars or an individual who wilfully violates this article may be fined in his individual capacity not more than ten thousand dollars.

E. An officer, director or employee of an insurance holding company system who wilfully and knowingly subscribes to or makes or causes to be made any false statements, reports or filings with the intent to deceive the director in the performance of his duties under this article is guilty of a class 6 felony. No insurance holding company system shall pay a fine on behalf of an officer, director or employee found guilty under this subsection.

F. WHENEVER IT APPEARS TO THE DIRECTOR THAT ANY PERSON HAS COMMITTED A VIOLATION OF SECTION 20-481.02 AND THAT VIOLATION PREVENTS A FULL UNDERSTANDING BY THE DIRECTOR OF THE ENTERPRISE RISK TO THE INSURER BY AFFILIATES OR BY THE INSURANCE HOLDING COMPANY SYSTEM, THE VIOLATION MAY SERVE AS AN INDEPENDENT BASIS FOR DISAPPROVING DIVIDENDS OR DISTRIBUTIONS AND FOR PLACING THE INSURER UNDER AN ORDER OF SUPERVISION IN ACCORDANCE SECTION 20-169.

Sec. 18. Title 20, chapter 2, article 8, Arizona Revised Statutes, is amended by adding sections 20-481.31 and 20-481.32, to read:

20-481.31. Supervisory colleges

A. WITH RESPECT TO ANY INSURER REGISTERED UNDER SECTION 20-481.09 AND IN ACCORDANCE WITH SUBSECTION C OF THIS SECTION, IN ORDER TO DETERMINE COMPLIANCE BY THE INSURER WITH THIS TITLE, THE DIRECTOR MAY PARTICIPATE IN A SUPERVISORY COLLEGE FOR ANY DOMESTIC INSURER THAT IS PART OF AN INSURANCE HOLDING COMPANY SYSTEM WITH INTERNATIONAL OPERATIONS. THE DIRECTOR, WITH RESPECT TO SUPERVISORY COLLEGES, MAY:

1. INITIATE THE ESTABLISHMENT OF A SUPERVISORY COLLEGE.

2. CLARIFY THE MEMBERSHIP AND PARTICIPATION OF OTHER SUPERVISORS IN THE SUPERVISORY COLLEGE.

3. CLARIFY THE FUNCTIONS OF THE SUPERVISORY COLLEGE AND THE ROLE OF OTHER REGULATORS, INCLUDING THE ESTABLISHMENT OF A GROUP WIDE SUPERVISOR.

4. COORDINATE THE ONGOING ACTIVITIES OF THE SUPERVISORY COLLEGE, INCLUDING PLANNING MEETINGS, SUPERVISORY ACTIVITIES AND PROCESSES FOR INFORMATION SHARING.

5. ESTABLISH A CRISIS MANAGEMENT PLAN.

B. EACH REGISTERED INSURER SUBJECT TO THIS SECTION SHALL BE LIABLE FOR AND SHALL PAY THE REASONABLE EXPENSES OF THE DIRECTOR'S PARTICIPATION IN A SUPERVISORY COLLEGE IN ACCORDANCE WITH SUBSECTION C OF THIS SECTION, INCLUDING REASONABLE TRAVEL EXPENSES. THE DIRECTOR MAY ESTABLISH A REGULAR ASSESSMENT TO THE INSURER FOR THE PAYMENT OF THESE EXPENSES. FOR THE PURPOSES OF THIS SECTION, A SUPERVISORY COLLEGE MAY BE CONVENED AS EITHER A TEMPORARY OR PERMANENT FORUM FOR COMMUNICATION AND COOPERATION BETWEEN THE REGULATORS CHARGED WITH THE SUPERVISION OF THE INSURER OR ITS AFFILIATES.

C. THE DIRECTOR MAY PARTICIPATE IN A SUPERVISORY COLLEGE WITH OTHER REGULATORS CHARGED WITH SUPERVISION OF THE INSURER OR ITS AFFILIATES, INCLUDING OTHER STATE, FEDERAL AND INTERNATIONAL REGULATORY AGENCIES. IN ORDER TO ASSESS THE BUSINESS STRATEGY, FINANCIAL POSITION, LEGAL AND REGULATORY POSITION, RISK EXPOSURE, RISK MANAGEMENT AND GOVERNANCE PROCESSES, AND AS PART OF THE EXAMINATION OF INDIVIDUAL INSURERS IN ACCORDANCE WITH SECTION 20-481.20, THE DIRECTOR MAY ENTER INTO AGREEMENTS IN COMPLIANCE WITH SECTION 20-481.21 PROVIDING THE BASIS FOR COOPERATION BETWEEN THE DIRECTOR AND THE OTHER REGULATORY AGENCIES AND THE ACTIVITIES OF THE SUPERVISORY COLLEGE. THIS SECTION DOES NOT DELEGATE TO THE SUPERVISORY COLLEGE THE AUTHORITY OF THE DIRECTOR TO REGULATE OR SUPERVISE THE INSURER OR ITS AFFILIATES WITHIN ITS JURISDICTION.

20-481.32. Management of domestic insurers subject to registration

A. NOTWITHSTANDING THE CONTROL OF A DOMESTIC INSURER BY ANY PERSON, THE OFFICERS AND DIRECTORS OF AN INSURER MAY NOT BE RELIEVED OF ANY OBLIGATION OR LIABILITY TO WHICH THEY ARE SUBJECT BY LAW AND THE INSURER SHALL BE MANAGED SO AS TO ASSURE ITS SEPARATE OPERATING IDENTITY CONSISTENT WITH THIS ARTICLE.

B. THIS SECTION DOES NOT PRECLUDE A DOMESTIC INSURER FROM HAVING OR SHARING A COMMON MANAGEMENT OR THE COOPERATIVE OR JOINT USE OF PERSONNEL, PROPERTY OR SERVICES WITH ONE OR MORE OTHER PERSONS UNDER ARRANGEMENTS MEETING THE STANDARDS OF SECTION 20-481.12.

C. AT LEAST ONE-THIRD OF THE DIRECTORS OF A DOMESTIC INSURER AND AT LEAST ONE-THIRD OF THE MEMBERS OF EACH COMMITTEE OF THE BOARD OF DIRECTORS OF ANY DOMESTIC INSURER MUST BE COMPOSED OF PERSONS WHO ARE NOT OFFICERS OR EMPLOYEES OF THE INSURER OR OF ANY ENTITY CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH THE INSURER AND WHO ARE NOT BENEFICIAL OWNERS OF A CONTROLLING INTEREST IN THE VOTING STOCK OF THE INSURER OR ENTITY. AT LEAST ONE PERSON MUST BE INCLUDED IN ANY QUORUM FOR THE TRANSACTION OF BUSINESS AT ANY MEETING OF THE BOARD OF DIRECTORS OR ANY COMMITTEE.

D. THE BOARD OF DIRECTORS OF A DOMESTIC INSURER SHALL ESTABLISH ONE OR MORE COMMITTEES COMPOSED SOLELY OF DIRECTORS WHO ARE NOT OFFICERS OR EMPLOYEES OF THE INSURER OR OF ANY ENTITY CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH THE INSURER AND WHO ARE NOT BENEFICIAL OWNERS OF A CONTROLLING INTEREST IN THE VOTING STOCK OF THE INSURER OR ANY SUCH ENTITY. THE COMMITTEE OR COMMITTEES SHALL HAVE RESPONSIBILITY FOR NOMINATING CANDIDATES FOR DIRECTOR FOR ELECTION BY SHAREHOLDERS OR POLICYHOLDERS, EVALUATING THE PERFORMANCE OF OFFICERS DEEMED TO BE PRINCIPAL OFFICERS OF THE INSURER AND RECOMMENDING TO THE BOARD OF DIRECTORS THE SELECTION AND COMPENSATION OF THE PRINCIPAL OFFICERS.

E. SUBSECTIONS C AND D OF THIS SECTION DO NOT APPLY TO A DOMESTIC INSURER IF THE PERSON CONTROLLING THE INSURER, INCLUDING AN INSURER, A MUTUAL INSURANCE HOLDING COMPANY OR A PUBLICLY HELD CORPORATION, HAS A BOARD OF DIRECTORS AND COMMITTEES THAT MEET THE REQUIREMENTS OF SUBSECTIONS C AND D OF THIS SECTION.

F. AN INSURER MAY MAKE APPLICATION TO THE DIRECTOR FOR A WAIVER FROM THE REQUIREMENTS OF THIS SECTION IF THE INSURER'S ANNUAL DIRECT WRITTEN AND ASSUMED PREMIUM EXCLUDING PREMIUMS REINSURED WITH THE FEDERAL CROP INSURANCE CORPORATION AND FEDERAL FLOOD PROGRAM IS LESS THAN THREE HUNDRED MILLION DOLLARS. AN INSURER MAY ALSO MAKE APPLICATION TO THE DIRECTOR FOR A WAIVER FROM THE REQUIREMENTS OF THIS SECTION BASED ON UNIQUE CIRCUMSTANCES. THE DIRECTOR MAY CONSIDER VARIOUS FACTORS INCLUDING THE TYPE OF BUSINESS ENTITY, VOLUME OF BUSINESS WRITTEN, AVAILABILITY OF QUALIFIED BOARD MEMBERS AND THE OWNERSHIP OR ORGANIZATIONAL STRUCTURE OF THE ENTITY.

Sec. 19. Section 20-510, Arizona Revised Statutes, is amended to read:

20-510. Standard valuation law; operative date; definitions

A. This section may be cited as the standard valuation law.

B. For the purposes of this section, the following definitions apply on or after the operative date of the valuation manual:

1. "Accident and health insurance" means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness or medical conditions and as may be specified in the valuation manual.

2. "Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection F of this section.

3. "Company" means an entity that either:

(a) Has written, issued or reinsured life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and that has at least one such policy in force or on claim.

(b) Has written, issued or reinsured life insurance contracts, accident and health insurance contracts or deposit-type contracts in any state and that is required to hold a certificate of authority to write life insurance, accident and health insurance or deposit-type contracts in this state.

4. "Deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

5. "Life insurance" means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

6. "Policyholder behavior" means any action a policyholder, a contract holder or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section, including lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

7. "Principle-based valuation" means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and that is required to comply with subsection S of this section as specified in the valuation manual.

8. "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American academy of actuaries qualification standards for actuaries signing those statements and who meets the requirements specified in the valuation manual.

9. "Reserves" means reserve liabilities.

10. "Tail risk" means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability

distribution or where there are observed events of very significant size or magnitude.

11. "Valuation manual" means the manual of valuation instructions adopted by the national association of insurance commissioners as specified in this section.

C. The following apply to reserve valuation for policies and contracts issued before the operative date of the valuation manual:

1. The director shall annually value, or cause to be valued, the reserves for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state that are issued before the operative date of the valuation manual. In calculating reserves, the director may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of a foreign or alien insurer, the director may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction if the valuation complies with the minimum standard provided by this section.

2. Subsections G, H, I, J, K, L, M, N, O, P and Q of this section apply to all policies and contracts, as appropriate, subject to this section issued on or after the operative date of section 20-1231 and before the operative date of the valuation manual and subsections R, S and T of this section do not apply to those policies and contracts.

3. The minimum standard for the valuation of policies and contracts issued before the operative date of section 20-1231 is the standard provided by the laws in effect immediately before that date.

D. The following apply to reserve valuation for policies and contracts issued on or after the operative date of the valuation manual:

1. The director shall annually value, or cause to be valued, the reserves for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the director may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction if the valuation complies with the minimum standard provided by this section.

2. Subsections R, S and T of this section apply to all policies and contracts issued on or after the operative date of the valuation manual.

E. The following apply to actuarial opinion of reserves before the operative date of the valuation manual:

1. Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary. The opinion shall state whether the reserves and related actuarial items that are held in support of the policies and contracts specified by the director are computed appropriately, are based on assumptions that satisfy contractual provisions,

are consistent with prior reported amounts and comply with the applicable laws of this state. The director shall define the specifics of this opinion and shall add any other items to the scope of the opinion as the director deems necessary.

2. For actuarial analysis of reserves and assets supporting reserves:

(a) Every life insurance company, unless exempted by rule, shall annually include in the opinion required by paragraph 1 of this subsection an opinion of the same qualified actuary as to whether, if considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, the reserves and related actuarial items held in support of the policies and contracts specified by the director make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(b) The director may provide for a transition period for establishing any higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this section.

3. The following apply to each opinion required by paragraph 2 of this subsection:

(a) The insurance company shall prepare a memorandum to support each actuarial opinion. The memorandum shall be in a form and substance specified by the director.

(b) If the insurance company fails to provide a supporting memorandum on the request of the director and in the period of time specified by rule or if the director determines that the supporting memorandum does not meet the standards prescribed by rule or is otherwise unacceptable, the director may engage a qualified actuary at the expense of the insurance company to review the opinion and the basis for the opinion and to prepare any supporting memorandum that the director requires.

4. The following apply to each opinion required by paragraph 1 of this subsection:

(a) The company shall submit the opinion with the annual statement reflecting the valuation of the reserves for each year ending on or after December 31, 1996.

(b) The opinion applies to all business in force, including individual and group health insurance plans, and shall be in a form and substance that the director specifies.

(c) The opinion shall be based on standards that are adopted from time to time by the actuarial standards board and on any other additional standards that the director prescribes.

(d) If an opinion is required to be submitted by an alien or foreign company, the director may accept the opinion that is filed by that company with the insurance supervisory official of another state if the director

determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(e) Except in cases of fraud or wilful misconduct, the qualified actuary is not liable for damages to any person other than the director and the insurance company for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(f) The director shall define by rule what disciplinary actions the director may take against an insurance company or qualified actuary.

(g) Except as provided in subdivisions (k), (l) and (m) of this paragraph, documents, materials or other information in the possession or control of the department that are a memorandum in support of the opinion, and any other material provided by the company to the director in connection with the memorandum, are confidential by law and privileged and are not subject to public records requests, are not subject to subpoena and are not subject to discovery or admissible in evidence in any private civil action. The director is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the director's official duties.

(h) The director or any person who received documents, materials or other information while acting under the authority of the director is not allowed or required to testify in any private civil action concerning any confidential documents, materials or information subject to subdivision (g) of this paragraph.

(i) In order to assist in the performance of the director's duties, the director may:

(i) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subdivision (g) of this paragraph, with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information.

(ii) Receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the national association of insurance commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

(iii) Enter into agreements governing sharing and use of information consistent with subdivision (g) of this paragraph and this subdivision.

(j) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of

disclosure to the director under this subsection or as a result of sharing as authorized in subdivision (i) of this paragraph.

(k) A memorandum in support of the opinion, and any other material provided by the company to the director in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by rules adopted under this section.

(l) The memorandum or other material may otherwise be released by the director with the written consent of the company or to the American academy of actuaries on request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the director for preserving the confidentiality of the memorandum or other material.

(m) Once any portion of the confidential memorandum is cited by the company in its marketing, is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum are no longer confidential.

5. For the purposes of this subsection, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth by the director.

F. The following apply to actuarial opinion of reserves after the operative date of the valuation manual:

1. Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and subject to regulation by the director shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

2. Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and subject to regulation by the director, except as exempted in the valuation manual, shall also annually include in the opinion required by paragraph 1 of this subsection an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including the benefits under and expenses associated with the policies and contracts.

3. The following apply to each opinion required by paragraph 2 of this subsection:

(a) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the director, shall be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting memorandum at the request of the director within a period specified in the valuation manual or the director determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the director, the director may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the director.

4. The following apply to all opinions subject to this subsection:

(a) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the director.

(b) The opinion shall be submitted with the annual statement reflecting the valuation of the reserves for each year ending on or after the operative date of the valuation manual.

(c) The opinion shall apply to all policies and contracts subject to this subsection, plus other actuarial liabilities as may be specified in the valuation manual.

(d) The opinion shall be based on standards adopted from time to time by the actuarial standards board or its successor, and on any additional standards as may be prescribed in the valuation manual.

(e) In the case of an opinion required to be submitted by a foreign or alien company, the director may accept the opinion filed by that company with the insurance supervisory official of another state if the director determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(f) Except in cases of fraud or wilful misconduct, the appointed actuary is not liable for damages to any person, other than the insurance company and the director, for any act, error, omission, decision or conduct with respect to the appointed actuary's opinion.

(g) Disciplinary action by the director against the company or the appointed actuary shall be defined by the director in rule.

G. Except as otherwise provided in subsections H, I, J and Q of this section, the minimum standard for the valuation of all policies and contracts that were issued before the operative date of section 20-1231 is that provided by the laws in effect immediately before January 1, 1955. Except as otherwise provided in subsections H, I, J and Q of this section, the minimum standard for the valuation of all policies and contracts that are issued on or after January 1, 1955 is the commissioners reserve valuation methods defined in subsections K, L, O and P of this section, three and one-half per cent interest or, in the case of life insurance policies and contracts, other

than annuity and pure endowment contracts, that are issued on or after July 1, 1974, four per cent interest for those policies that are issued before January 1, 1979, five and one-half per cent interest for single premium life insurance policies and four and one-half per cent interest for all other policies that are issued on and after January 1, 1979, and the following tables:

1. For all ordinary policies of life insurance that are issued on the standard basis, excluding any disability and accidental death benefits in those policies, the commissioners 1941 standard ordinary mortality table for those policies issued before the operative date of section 20-1231, subsection F, paragraph 5, subdivision (b) and the commissioners 1958 standard ordinary mortality table for those policies that are issued on or after the operative date of section 20-1231, subsection F, paragraph 5, subdivision (b) and before the operative date as provided in section 20-1231.01. If any category of these policies is issued on female risks, modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured. For policies that are issued on or after the operative date of section 20-1231.01, the following tables may be used:

(a) The commissioners 1980 standard ordinary mortality table.

(b) At the election of the insurer for any one or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten year select mortality factors.

(c) Any ordinary mortality table that is adopted after 1980 by the national association of insurance commissioners and that is approved by the director for use in determining the minimum standard of valuation for those policies.

2. For all industrial life insurance policies that are issued on the standard basis, excluding any disability and accidental death benefits in those policies, the 1941 standard industrial mortality table for those policies that are issued before the operative date of section 20-1231, subsection F, paragraph 5, subdivision (d) and for those policies that are issued on or after the operative date of section 20-1231, subsection F, paragraph 5, subdivision (d) the commissioners 1961 standard industrial mortality table or any industrial mortality table that is adopted after 1980 by the national association of insurance commissioners and that is approved by the director for use in determining the minimum standard of valuation for those policies.

3. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in those policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables that the director approves.

4. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in those policies, the group annuity mortality table for 1951, any modification of the group annuity mortality table that is approved by the director or, at the option of the insurer, any of the tables or modifications of tables that are specified for individual annuity and pure endowment contracts.

5. For total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(a) For policies or contracts that are issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the national association of insurance commissioners, that are approved by the director for use in determining the minimum standard of valuation for those policies.

(b) For policies or contracts that are issued on or after January 1, 1961 and before January 1, 1966, either of the tables that are specified in subdivision (a) of this paragraph, or at the option of the insurer, the class three disability table (1926).

(c) For policies or contracts that are issued before January 1, 1961, the class three disability table (1926).

(d) For active lives, any table that is used pursuant to subdivision (a), (b) or (c) of this paragraph shall be combined with a mortality table that is allowed for calculating the reserves for life insurance policies.

6. For accidental death benefits in or supplementary to policies:

(a) For policies that are issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table that was adopted after 1980 by the national association of insurance commissioners and that the director approves for use in determining the minimum standard of valuation for those policies.

(b) For policies that are issued on or after January 1, 1961 and before January 1, 1966, either table provided by subdivision (a) of this paragraph or, at the option of the insurer, the intercompany double indemnity mortality table.

(c) For policies that are issued before January 1, 1961, the intercompany double indemnity mortality table.

(d) A table that is allowed under subdivision (a), (b) or (c) of this paragraph shall be combined with a mortality table that is allowed for calculating the reserves for life insurance policies.

7. For group life insurance, life insurance issued on the substandard basis and other special benefits, any tables that the director approves as sufficient with relation to the benefits provided by those policies.

H. Except as provided in subsection I of this section, the minimum standard for the valuation for individual annuity and pure endowment contracts issued on or after the operative date of this subsection and

annuities and pure endowments purchased on or after the operative date of this subsection under group annuity and pure endowment contracts shall be the commissioners reserve valuation methods defined in subsections K and L of this section and the following tables and interest rates:

1. For individual annuity and pure endowment contracts that are issued before January 1, 1979, excluding any disability and accidental death benefits in those contracts, the 1971 individual annuity mortality table or any modification of the table that the director approves, and six per cent interest for single premium immediate annuity contracts, and four per cent interest for all other individual annuity and pure endowment contracts.

2. For individual single premium immediate annuity contracts that are issued on or after January 1, 1979, excluding any disability and accidental death benefits in those contracts, the 1971 individual annuity mortality table or any individual annuity mortality table adopted after 1980 by the national association of insurance commissioners and that the director approves for use in determining the minimum standard valuation for those contracts, or any modification of these tables that the director approves, and seven and one-half per cent interest.

3. For individual annuity and pure endowment contracts that are issued on or after January 1, 1979, other than single premium immediate annuity contracts and excluding any disability and accidental death benefits in those contracts, the 1971 individual annuity mortality table or any individual annuity mortality table that is adopted after 1980 by the national association of insurance commissioners and that the director approves for use in determining the minimum standard of valuation for those contracts, or any modification of these tables that the director approves, and five and one-half per cent interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent interest for all other individual annuity and pure endowment contracts.

4. For all annuities and pure endowments that are purchased before January 1, 1979 under group annuity and pure endowment contracts, excluding any disability and accidental death benefits in those contracts, the 1971 group annuity mortality table, or any modification of this table that the director approves, and six per cent interest.

5. For all annuities and pure endowments that are purchased on or after January 1, 1979 under group annuity and pure endowment contracts, excluding any disability and accidental death benefits that are purchased under those contracts, the 1971 group annuity mortality table or any group annuity mortality table that is adopted after 1980 by the national association of insurance commissioners and that the director approves for use in determining the minimum standard of valuation for those annuities and pure endowments, or any modification to these tables that the director approves, and seven and one-half per cent interest.

I. After July 1, 1974, any insurer may file with the director a written notice of its election to comply with subsection H of this section on a specified date before January 1, 1979, which shall be the operative date of subsection H of this section for that insurer if the insurer elects a different operative date for individual annuity and pure endowment contracts from the date that is elected for group annuity and pure endowment contracts. If an insurer does not make an election pursuant to this subsection, the operative date of subsection L of this section shall be January 1, 1979.

J. The minimum standard by calendar year of issue shall be computed as follows:

1. The interest rates that are used in determining the minimum standard for the valuation of the following shall be the calendar year statutory valuation interest rates as defined in this subsection:

(a) All life insurance policies that are issued in a particular calendar year on or after the operative date of section 20-1231.01.

(b) All individual annuity and pure endowment contracts that are issued in a particular calendar year on or after January 1, 1983.

(c) All annuities and pure endowments that are purchased in a particular calendar year on or after January 1, 1983 under group annuity and pure endowment contracts.

(d) The net increase, if any, in a particular calendar year after January 1, 1983 in the amounts that are held under guaranteed interest contracts.

2. As used in this paragraph:

(a) R1 is the lesser of R and 0.09, R2 is the greater of R and 0.09, R is the reference interest rate defined in this subsection and W is the weighting factor defined in this subsection, the calendar year statutory valuation interest rates, or I, shall be determined as follows and the results shall be rounded to the nearer one-quarter of one per cent:

(i) For life insurance:

$$I = .03 + W(R1 - .03) + W/2\ (R2 - .09).$$

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W(R - .03).$$

(iii) Except pursuant to item (ii) of this subdivision, for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options that are valued on an issue year basis, the formula for life insurance under item (i) of this subdivision applies to annuities and guaranteed interest contracts with guarantee durations of more than ten years and the formula for single premium immediate annuities under item (ii) of this subdivision applies to annuities and guaranteed interest contracts with guarantee durations of ten years or less.

(iv) For other annuities with no cash settlement options and guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities under item (ii) of this subdivision applies.

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options that are valued on a change in fund basis, the formula for single premium immediate annuities under item (ii) of this subdivision applies.

(b) If the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this subdivision differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one per cent, the calendar year statutory valuation interest rate for those life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For the purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 using the reference interest rate defined in 1979 and shall be determined for each subsequent calendar year regardless of the operative date of section 20-1231.01.

3. For the purposes of this subsection, the weighting factors referred to in the formulas stated above are given in the following tables:

(a) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
Ten years or less	.50
More than ten years, but not more than 20 years	.45
More than twenty years	.35

(b) For life insurance under subdivision (a) of this paragraph, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, that are guaranteed in the original policy.

(c) The weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80

(d) Except pursuant to subdivision (c) of this paragraph, weighting factors for other annuities and for guaranteed interest are as specified and in accordance with this subdivision:

(i) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for plan type A	B	C
Five years or less	.80	.60	.50
More than five years, but not more than ten years	.75	.60	.50
More than ten years, but not more than twenty years	.65	.50	.45
More than twenty years	.45	.35	.35

(ii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors listed in item (i) of this subdivision increased by

Plan type A	B	C
.15	.25	.05

(iii) For annuities and guaranteed interest contracts valued on an issue year basis other than those with no cash settlement options that do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis that do not guarantee interest rates on considerations received more than twelve months after the valuation date, the factors shown in item (i) of this subdivision or derived in item (ii) of this subdivision increased by

Plan type A	B	C
.05	.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration of more than twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to begin.

(v) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options shall be valued on an issue year basis. As used in this subsection, "issue year basis" means a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract and "change in fund basis" means a

valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

4. "Plan type" as used in paragraph 3, subdivision (d) of this subsection means:

(a) Plan type A: A policyholder may withdraw funds at any time only with an adjustment to reflect changes in interest rates or asset values since the insurance company received the funds, without an adjustment but in installments over a period of five years or more, as an immediate life annuity, or a policyholder may not withdraw funds.

(b) Plan type B: Before the interest rate guarantee expires, a policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since the insurance company received the funds, without an adjustment but in installments over a period of five years or more, or a policyholder may not withdraw funds. At the end of the interest rate guarantee, a policyholder may withdraw funds without an adjustment in a single sum or in installments over a period of less than five years.

(c) Plan type C: A policyholder may withdraw funds before the interest rate guarantee expires in a single sum or in installments over a period of less than five years either without an adjustment to reflect changes in interest rates or asset values since the insurance company received the funds or subject only to a fixed surrender charge that is stipulated in the contract as a percentage of the fund.

5. For the purposes of this subsection, "reference interest rate" means:

(a) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

(c) Except pursuant to subdivision (b) of this paragraph, for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options that are valued on an issue year basis, with guarantee duration of more than ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly

average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

(d) Except pursuant to subdivision (b) of this paragraph, for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options that are valued on a year of issue basis, with guaranteed duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

(e) For other annuities with no cash settlement options and guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

(f) Except pursuant to subdivision (b) of this paragraph, for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options that are valued on a change in fund basis, the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

6. If Moody's investors service, incorporated no longer publishes the monthly average of the composite yield on seasoned corporate bonds or if the national association of insurance commissioners determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investor service, incorporated is no longer appropriate for the determination of the reference interest rate, an alternative method for determination of the reference interest rate that the national association of insurance commissioners adopts and the director approves may be substituted.

K. The reserve valuation method for life insurance and endowment benefits shall be determined as follows:

1. Except as otherwise provided in subsections L, O and Q of this section, reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, are the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by those policies, over the present value of any future modified net premiums. The modified net premiums for any one policy shall be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subdivision (a) over subdivision (b) of this paragraph as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided

by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due, provided however that the net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for the benefits that are provided for in the first policy year.

2. Any life insurance policy that is issued on or after January 1, 1986 for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and that provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than the excess premium, the reserve according to the commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined for the purposes of this paragraph as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, except as otherwise provided in subsection O of this section, shall be the greater of the reserve as of the policy anniversary calculated as described in paragraph 1 of this subsection and the reserve as of the policy anniversary calculated as described in that paragraph, but with:

(a) The value defined in paragraph 1, subdivision (a) of this subsection being reduced by fifteen per cent of the amount of the excess first year premium.

(b) All present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date.

(c) The policy being assumed to mature on the date as an endowment.

(d) The cash surrender value provided on the date being considered as an endowment benefit.

In making the above comparison the mortality and interest bases stated in subsections G and J of this section shall be used.

3. Reserves according to the commissioners reserve valuation method for:

(a) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums.

(b) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation that is established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, as amended.

(c) Disability and accidental death benefits in all policies and contracts.

(d) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of paragraphs 1 and 2 of this subsection.

L. The reserve valuation method for annuity and pure endowment benefits shall be determined as follows:

1. This subsection applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation that is established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, as amended.

2. Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in those contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits that are provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable before the end of the respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

M. A company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, that are issued on or after the operative date of section 20-1231, shall not be less than the aggregate reserves calculated in accordance with the methods set forth in subsections K, L, O and P of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies. The aggregate reserves for all policies, contracts and benefits shall not be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection E of this section.

N. Optional reserves may be calculated as follows:

1. At the option of the insurer, reserves for all policies and contracts that are issued before the operative date of section 20-1231 may be calculated according to any standards that produce greater aggregate reserves for all the policies and contracts than the minimum reserves required by the laws in effect immediately before that date.

2. At the option of the insurer, reserves for any category of policies, contracts or benefits that the director establishes and that are issued on or after the operative date of section 20-1231 may be calculated according to any standards that produce greater aggregate reserves for that category than those calculated according to the minimum standard provided in this section, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for in the policy or contract.

3. An insurer that at any time has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided by this section, with the director's approval, may adopt any lower standard of valuation, but not lower than the minimum provided by this section. For the purposes of this section, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by subsection E of this section shall not be deemed to be the adoption of a higher standard of valuation.

O. Reserves when the valuation net premium exceeds the gross premium charged shall be calculated as follows:

1. If in any contract year the gross premium charged by a company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsections G and J of this section.

2. For any life insurance policy that is issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for that excess and that provides an endowment benefit or a cash surrender value or a combination in an amount greater than the excess premium, this subsection applies as if the method actually used in calculating the reserve for the policy was the method described in subsection K, paragraphs 1 and 3 of this section. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection K of this section, including paragraph 2 of that subsection, and the minimum reserve calculated in accordance with this subsection.

P. If a plan of life insurance provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or if the minimum reserves of a plan of life insurance or annuity cannot be determined by the methods described in subsections K, L and O of this section, the reserves that are held under any plan must:

1. Be appropriate in relation to the benefits and the pattern of premiums for that plan.

2. Be computed by a method that is consistent with the principles of this section, as determined by rules adopted by the director related to the minimum standards applicable to the valuation of health plans.

Q. For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection D, paragraph 1 of this section. For disability insurance contracts issued on or after the operative date of section 20-1231 and before the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the director by rule.

R. The following apply to the valuation manual for policies issued on or after the operative date of the valuation manual:

1. For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection D, paragraph 1 of this section, except as provided under paragraph 5 or 7 of this subsection.

2. The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(a) The valuation manual has been adopted by the national association of insurance commissioners by an affirmative vote of at least forty-two members, or three-fourths of the members voting, whichever is greater.

(b) The standard valuation law, as amended by the national association of insurance commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five per cent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements, health annual statements, or fraternal annual statements.

(c) The standard valuation law, as amended by the national association of insurance commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two of the following fifty-five jurisdictions:

(i) The fifty states of the United States.

(ii) American Samoa.

(iii) The United States Virgin Islands.

(iv) The District of Columbia.

(v) Guam.

(vi) The Commonwealth of Puerto Rico.

3. Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when all of the following have occurred:

(a) The change to the valuation manual has been adopted by the national association of insurance commissioners by an affirmative vote representing the following:

(i) At least three-fourths of the members of the national association of insurance commissioners voting, but not less than a majority of the total membership.

(ii) Members of the national association of insurance commissioners representing jurisdictions totaling greater than seventy-five per cent of the direct premiums written as reported in the following annual statements most recently available before the vote in item (i) of this subdivision: life, accident and health annual statements, health annual statements, or fraternal annual statements.

(b) The valuation manual becomes effective pursuant to an order of the director.

4. The valuation manual must specify all of the following:

(a) Minimum valuation standards for and definitions of the policies or contracts subject to subsection D, paragraph 1 of this section. The minimum valuation standards shall include all of the following:

(i) The director's reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection D, paragraph 1 of this section.

(ii) The director's annuity reserve valuation method for annuity contracts subject to subsection D, paragraph 1 of this section.

(iii) Minimum reserves for all other policies or contracts subject to subsection D of this section.

(b) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in subsection S of this section and the minimum valuation standards consistent with those requirements.

(c) For policies and contracts subject to a principle-based valuation under subsection S of this section:

(i) Requirements for the format of reports to the director under subsection T, paragraph ~~2~~ 3 of this section and that shall include information necessary to determine if the valuation is appropriate and in compliance with this section.

(ii) Assumptions shall be prescribed for risks over which the company does not have significant control or influence.

(iii) Procedures for corporate governance and oversight of the actuarial function and a process for appropriate waiver or modification of the procedures.

(d) For policies not subject to a principle-based valuation under subsection S of this section the minimum valuation standard shall either:

(i) Be consistent with the minimum standard of valuation before the operative date of the valuation manual.

(ii) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

(e) Other requirements, including those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules and internal controls.

(f) The data and form of the data required under subsection T of this section, with whom the data must be submitted, and other requirements including data analyses and reporting of analyses.

5. In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the director, in compliance with this section, the company, with respect to the requirements, shall comply with minimum valuation standards prescribed by the director by rule.

6. The director may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement of this section. The director may rely on the opinion, regarding provisions contained in this section, of a qualified actuary engaged by the director of another state, district or territory of the United States. For the purposes of this paragraph, engage includes employment and contracting.

7. The director may require a company to change any assumption or method that in the opinion of the director is necessary in order to comply with the requirements of the valuation manual or this section, and the company shall adjust the reserves as required by the director. The director may take other disciplinary action as allowed pursuant to section 20-152.

S. A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

1. Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts, and for policies or contracts with significant tail risk, that reflects conditions appropriately adverse to quantify the tail risk.

2. Incorporate assumptions, risk analysis methods and financial models and management techniques that are consistent with, but not necessarily

identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

3. Incorporate assumptions that are derived in one of the following manners:

(a) The assumption is prescribed in the valuation manual.

(b) For assumptions that are not prescribed, the assumptions shall either:

(i) Be established utilizing the company's available experience to the extent it is relevant and statistically credible.

(ii) To the extent that company data is not available, relevant or statistically credible, be established utilizing other relevant, statistically credible experience.

4. Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

T. A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

1. Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.

2. Provide to the director and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. The controls shall be designed to ~~assure~~ ENSURE that all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year.

3. Develop, and file with the director on request, a principle-based valuation report that complies with standards prescribed in the valuation manual. A principle-based valuation may include a prescribed formulaic reserve component.

U. A company shall submit mortality, morbidity, policyholder behavior or expense experience and other data as prescribed in the valuation manual.

V. The following apply to confidentiality:

1. For the purposes of this subsection, "confidential information" means:

(a) A memorandum in support of an opinion submitted under subsection F of this section and any other documents, materials and other information, including all working papers, and copies thereof, created, produced or obtained by or disclosed to the director or any other person in connection with the memorandum.

(b) All documents, materials and other information, including all working papers, and copies thereof, created, produced or obtained by or disclosed to the director or any other person in the course of an examination made under subsection R of this section. If an examination report or other material prepared in connection with an examination made under section 20-156 is not held as private and confidential information under section 20-156, an examination report or other material prepared in connection with an examination made under subsection R, paragraph 6 of this section is not confidential information to the same extent as if the examination report or other material had been prepared under section 20-156.

(c) Any reports, documents, materials and other information developed by a company in support of or in connection with an annual certification by the company under subsection T, paragraph 2 of this section evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials and other information, including all working papers, and copies thereof, created, produced or obtained by or disclosed to the director or any other person in connection with the reports, documents, materials and other information.

(d) Any principle-based valuation report developed under subsection T, paragraph 3 of this section and any other documents, materials and other information, including all working papers, and copies thereof, created, produced or obtained by or disclosed to the director or any other person in connection with the report.

(e) Any documents, materials, data and other information submitted by a company under subsection U of this section (collectively, "experience data") and any other documents, materials, data and other information, including all working papers, and copies thereof, created or produced in connection with the experience data, in each case that include any potentially company-identifying or personally identifiable information that is provided to or obtained by the director (together with any "experience data", the "experience materials") and any other documents, materials, data and other information, including all working papers, and copies thereof, created, produced or obtained by or disclosed to the director or any other person in connection with the experience materials.

2. The following apply to the privilege for and confidentiality of confidential information:

(a) Except as provided in this subsection, a company's confidential information is confidential by law and privileged, and is not subject to public records requests or subpoenas and shall not be subject to discovery or admissible in evidence in any private civil action. The director is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the director's official duties.

(b) Neither the director nor any person who received confidential information while acting under the authority of the director shall be allowed

or required to testify in any private civil action concerning any confidential information.

(c) In order to assist in the performance of the director's duties, the director may share confidential information:

(i) With other state, federal and international regulatory agencies and with the national association of insurance commissioners and its affiliates and subsidiaries.

(ii) In the case of confidential information specified in paragraph 1, subdivisions (a) and (d) of this subsection only, with the actuarial board for counseling and discipline or its successor on request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal and international law enforcement officials.

(iii) In the case of items (i) and (ii) of this subdivision, if the recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of the documents, materials, data and other information in the same manner and to the same extent as required for the director.

(d) The director may receive documents, materials, data and other information, including otherwise confidential and privileged documents, materials, data or information, from the national association of insurance commissioners and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the actuarial board for counseling and discipline or its successor and shall maintain as confidential or privileged any document, material, data or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(e) The director may enter into agreements governing sharing and use of information consistent with this paragraph.

(f) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized in subdivision (c) of this paragraph.

(g) Privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this paragraph shall be available and enforced in any proceeding in and in any court of this state.

3. Notwithstanding paragraph 2 of this subsection, any confidential information specified in paragraph 1, subdivisions (a) and (d) of this subsection:

(a) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under subsection F, paragraph 1 of this section or principle-based valuation report developed under subsection T,

paragraph 3 of this section by reason of an action required by this section or by rules adopted under this section.

(b) May otherwise be released by the director with the written consent of the company.

(c) Once any portion of a memorandum in support of an opinion submitted under subsection F, paragraph 1 of this section or a principle-based valuation report developed under subsection T, paragraph 3 of this section is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the memorandum or report are no longer confidential.

4. For the purposes of this subsection, "regulatory agency", "law enforcement agency" and "national association of insurance commissioners" include the employees, agents, consultants and contractors of those entities.

W. The following apply to single state exemption:

1. The director may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this state from the requirements of subsection R of this section if:

(a) The director has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing.

(b) The company computes reserves using assumptions and methods used before the operative date of the valuation manual in addition to any requirements established by the director and adopted by rule.

2. For any company granted an exemption under this section, subsections D, E, F, G, H, I, J, K, L, M, N, O, P and Q of this section apply. For any company applying this exemption, any reference to subsection R found in subsections D, E, F, G, H, I, J, K, L, M, N, O, P and Q of this section does not apply.

Sec. 20. Department of insurance; rulemaking exemption

For the purposes of implementing this act, the department of insurance is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for two years after the effective date of this act.