

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

CHAPTER 55
HOUSE BILL 2335

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Heading change

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

6 Sec. 2. Section 20-3301, Arizona Revised Statutes, is amended to read:
7 20-3301. Definitions: applicability

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

9 1. "Insurance compliance audit" means a voluntary, internal
10 evaluation, review, assessment, audit or investigation that follows adopted
11 written standards and criteria for the purpose of identifying or preventing
12 noncompliance with or promoting compliance with laws, regulations, orders or
13 industry or professional standards that is conducted by or on behalf of a
14 company licensed or regulated under this title and specified in subsection B
15 of this section, or that involves an activity regulated under this title. An
16 audit shall establish a start and end date.

17 2. "Insurance compliance ~~self-evaluative~~ audit document":

18 (a) Means documents prepared as a result of or in connection with an
19 insurance compliance audit and identified specifically as part of an
20 insurance compliance audit.

21 (b) Includes any of the following:

22 (i) An insurance compliance audit report prepared by an auditor, who
23 may be an employee of the company or an independent contractor, which may
24 include the scope of the audit, the information gained in the audit and
25 conclusions and recommendations, with exhibits and appendices.

26 (ii) Memoranda and documents analyzing portions or all of the
27 insurance compliance audit report and discussing potential implementation
28 issues.

29 (iii) An implementation plan that addresses correcting past
30 noncompliance, improving current compliance and preventing future
31 noncompliance.

32 (iv) Analytic data generated in the course of conducting the insurance
33 compliance audit.

34 (c) May include a written response to the findings of an insurance
35 compliance audit and field notes and records of observations, findings,
36 opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs,
37 exhibits, computer-generated or electronically recorded information, phone
38 records, maps, charts, graphs and surveys if this supporting information is
39 collected or developed for the primary purpose and in the course of an
40 insurance compliance audit.

41 B. This article applies to insurance compliance ~~self-evaluative~~ audit
42 documents prepared and insurance compliance audits conducted by or on behalf
43 of an insurer licensed or regulated under this title including any:

44 1. Stock, mutual, reciprocal or title insurer.

45 2. Fraternal benefit society.

46 3. Health care services organization.

1 4. Hospital service corporation, medical service corporation, dental
2 service corporation, optometric service corporation or hospital, medical,
3 dental and optometric service corporation.

4 5. Prepaid dental plan organization.

5 6. Mechanical reimbursement reinsurer.

6 7. Prepaid legal plan.

7 8. Lloyd's association.

8 9. Service company as defined in this title.

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

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

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

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

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

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

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

42 (c) IS not subject to title 39, chapter 1, article 2, not subject to
43 subpoena and not subject to discovery or admissible in a private
44 administrative proceeding ~~other than conducted by the director~~, or in a
45 private civil action, OTHER THAN IN AN ADMINISTRATIVE PROCEEDING CONDUCTED BY
46 THE DIRECTOR.

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

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

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

15 ~~7.~~ 6. In order to facilitate identification, audit documents produced
16 ~~for the~~ AS A RESULT OF AN INSURANCE COMPLIANCE audit shall be labeled
17 "compliance report: privileged document".

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

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

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

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

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

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

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

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

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

44 ~~11. A person who conducts or participates in the preparation of a~~
45 ~~compliance audit and who has actually observed physical events may testify~~
46 ~~regarding those events, but may not be compelled to testify or produce~~

1 ~~documents related to any privileged part of the audit or any item listed in~~
2 ~~section 20-3301, subsection A, paragraph 2.~~

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

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

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

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

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

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

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

24 ~~C. F. Except for the director's authority under sections 20-156,~~
25 ~~20-157, 20-157.01, 20-160 and 20-466, within thirty~~ WITHIN SIXTY days after
26 an insurer is served a written request by certified mail for disclosure of an
27 insurance compliance ~~self-evaluative~~ audit document, the insurer may file
28 with the appropriate court a petition requesting ~~an in camera~~ A hearing on
29 whether the insurance compliance ~~self-evaluative~~ audit document or portions
30 of the document are privileged under this section or subject to disclosure.
31 The court ~~has jurisdiction over a petition filed by a company under this~~
32 ~~subsection requesting an in camera hearing on~~ SHALL CONDUCT AN IN CAMERA
33 REVIEW OF THE INSURANCE COMPLIANCE AUDIT DOCUMENT AND SHALL DETERMINE whether
34 ALL OR A PORTION OF the insurance compliance ~~self-evaluative~~ audit document
35 ~~or portions of the document are~~ IS privileged or subject to disclosure. The
36 ~~company's~~ INSURER'S failure to file a petition ~~waives~~ FOR A HEARING DOES NOT
37 WAIVE the privilege ~~for this~~ IN CONNECTION WITH ANY OTHER request ~~only~~ FOR
38 DISCLOSURE OF THE INSURANCE COMPLIANCE AUDIT DOCUMENT. If ~~a company~~ AN
39 INSURER files a petition for an in camera hearing pursuant to this
40 subsection, the following apply:

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

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

1 ~~3.~~ 2. After CONDUCTING an in camera review, the court may require
2 disclosure of ~~material for which the privilege under subsection A of this~~
3 ~~section is asserted~~ ALL OR A PORTION OF THE INSURANCE COMPLIANCE AUDIT
4 DOCUMENT if the court determines, based on its in camera review, that any one
5 of the conditions set forth in subsection ~~B- E~~, paragraph 2 OF THIS SECTION
6 applies ~~to a civil or administrative proceeding~~. On making this
7 determination, the court may only compel the disclosure of those portions of
8 an insurance compliance ~~self-evaluative~~ audit document that are relevant to
9 issues in dispute in the underlying proceeding. Any compelled disclosure
10 will not be considered to be a public document or be deemed to be a waiver of
11 the privilege for any other civil or administrative proceeding. ~~A party~~ AN
12 INSURER unsuccessfully opposing disclosure may apply to the court for an
13 appropriate order protecting the document from further disclosure.

14 ~~4.~~ 3. At the time of filing ~~an objection to the disclosure~~ A REQUEST
15 FOR A HEARING, the ~~company~~ INSURER shall provide all of the following
16 information:

17 (a) The date of the insurance compliance ~~self-evaluative~~ audit
18 document.

19 (b) The identity of the entity conducting the INSURANCE COMPLIANCE
20 audit.

21 (c) The general nature of the activities covered by the insurance
22 compliance audit.

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

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

35 ~~E.~~ H. At any time, the parties TO A CIVIL OR ADMINISTRATIVE
36 PROCEEDING OTHER THAN A REGULATORY OR LEGAL ACTION BROUGHT AS A PART OF THE
37 DIRECTOR'S DUTIES may stipulate ~~in proceedings under subsection B of this~~
38 ~~section~~ to entry of an order directing that specific information contained in
39 an insurance compliance ~~self-evaluative~~ audit document is or is not subject
40 to the privilege provided under subsection A of this section. The
41 stipulation may be limited to the instant proceeding and, absent specific
42 language to the contrary, is not applicable to any other proceeding.

43 ~~F.~~ I. This section or the release of any ~~self-evaluative~~ INSURANCE
44 COMPLIANCE audit document under this section does not limit, waive or
45 abrogate the scope or nature of any statutory or common law privilege

1 including the work product doctrine, the attorney-client privilege or the
2 subsequent remedial measures exclusion.

3 J. THIS ARTICLE DOES NOT LIMIT THE DIRECTOR'S AUTHORITY UNDER SECTIONS
4 20-156, 20-157, 20-157.01, 20-160 AND 20-466.

APPROVED BY THE GOVERNOR MARCH 23, 2015.

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