

State of Arizona  
Senate  
Fifty-third Legislature  
Second Regular Session  
2018

**CHAPTER 273**  
**SENATE BILL 1101**

AN ACT

AMENDING SECTIONS 20-1098.01 AND 20-1098.17, ARIZONA REVISED STATUTES;  
RELATING TO CAPTIVE INSURERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 20-1098.01, Arizona Revised Statutes, is amended  
3 to read:

4 20-1098.01. Licensing; authority

5 A. If allowed by its articles of incorporation, bylaws or other  
6 organizational document, an applicant may apply to the director for a  
7 license to transact captive insurance, except that:

8 1. A pure captive insurer shall not insure risks other than the  
9 risks of its affiliates and controlled unaffiliated business.

10 2. A group captive insurer, other than a risk retention group,  
11 shall not insure risks other than the risks of its group members, its  
12 affiliates and controlled unaffiliated business. A risk retention group  
13 shall insure only the risks of its group members.

14 3. An agency captive insurer shall not:

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

17 (b) Directly insure life or disability insurance risks WITHOUT THE  
18 APPROVAL OF THE DIRECTOR. THE INSURANCE RISKS THAT THE DIRECTOR MAY  
19 APPROVE ARE LIMITED TO EMPLOYER GROUP TERM LIFE INSURANCE, EMPLOYER GROUP  
20 DISABILITY INCOME INSURANCE AND REIMBURSEMENT OF EMPLOYER HEALTH PLAN  
21 DEDUCTIBLES. THE DIRECTOR MAY REQUIRE THE BUSINESS WRITTEN BY AN AGENCY  
22 CAPTIVE INSURER TO BE ANY OF THE FOLLOWING:

23 (i) FRONTED BY AN INSURER THAT HOLDS A CERTIFICATE OF AUTHORITY  
24 UNDER THE LAWS OF ANY STATE.

25 (ii) REINSURED BY A REINSURER AUTHORIZED, ACCREDITED OR APPROVED BY  
26 THE DIRECTOR.

27 (iii) SECURED BY A TRUST FUND IN THE UNITED STATES FOR THE BENEFIT  
28 OF POLICYHOLDERS AND CLAIMANTS OR FUNDED BY AN IRREVOCABLE LETTER OF  
29 CREDIT OR OTHER ARRANGEMENT THAT IS ACCEPTABLE TO THE DIRECTOR. THE  
30 DIRECTOR MAY REQUIRE THE AGENCY CAPTIVE INSURER TO INCREASE THE FUNDING OF  
31 ANY SECURITY ARRANGEMENT ESTABLISHED UNDER THIS ITEM. IF THE FORM OF  
32 SECURITY IS A LETTER OF CREDIT, THE LETTER OF CREDIT SHALL BE ISSUED OR  
33 CONFIRMED BY A BANK APPROVED BY THE DIRECTOR. A TRUST MAINTAINED PURSUANT  
34 TO THIS ITEM SHALL BE ESTABLISHED IN A FORM AND ON TERMS APPROVED BY THE  
35 DIRECTOR.

36 4. A protected cell captive insurer shall not insure any risks  
37 other than those prescribed in its participant contracts.

38 B. The following apply to the transaction of insurance by a captive  
39 insurer on a direct basis:

40 1. A captive insurer shall not directly insure any of the following  
41 types of insurance business:

42 (a) Hospital service corporations, medical service corporations,  
43 dental service corporations, optometric service corporations or hospital,  
44 medical, dental and optometric service corporations as defined in section  
45 20-822.

1 (b) Health care services organizations as defined in section  
2 20-1051.

3 (c) Prepaid dental plan organizations as defined in section  
4 20-1001.

5 (d) Prepaid legal insurance contracts as defined in section  
6 20-1097.

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

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

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

11 (h) Workers' compensation or employers' liability insurance  
12 policies except in connection with a self-insurance program as prescribed  
13 in this subsection.

14 2. A pure captive insurer shall not provide direct coverage of  
15 workers' compensation or employers' liability in this state unless the  
16 coverage is provided under a self-insurance program that is approved by  
17 the industrial commission of Arizona pursuant to section 23-961. A  
18 captive insurance program that is authorized by section 23-961 is subject  
19 to and shall comply with all requirements of title 23, chapter 6 that are  
20 applicable to self-insurance.

21 3. A pure captive insurer shall not provide direct coverage of  
22 workers' compensation or employers' liability insurance in another state  
23 unless the coverage is provided under a self-insurance program that is  
24 qualified as a self-insurance program under the applicable state or  
25 federal law, as determined by the agency or other entity that has  
26 jurisdiction over the self-insurance program.

27 4. AN AGENCY CAPTIVE INSURER DIRECTLY INSURING LIFE OR DISABILITY  
28 INCOME INSURANCE RISK AS SPECIFIED IN SUBSECTION A, PARAGRAPH 3 OF THIS  
29 SECTION:

30 (a) SHALL MARK EACH POLICY AND CERTIFICATE WITH A CONSPICUOUSLY  
31 STAMPED OR WRITTEN NOTICE IN BOLD-FACED TYPE THAT STATES THE FOLLOWING:

32 THIS POLICY IS ISSUED BY AN INSURER THAT IS NOT A MEMBER  
33 OF AN ARIZONA INSURANCE GUARANTY FUND. IF THE INSURER THAT  
34 ISSUED THIS POLICY BECOMES INSOLVENT, INSUREDS OR CLAIMANTS  
35 WILL NOT BE ELIGIBLE FOR INSURANCE GUARANTY FUND PROTECTION  
36 PURSUANT TO TITLE 20, ARIZONA REVISED STATUTES.

37 (b) MAY INSURE ONLY LIFE AND DISABILITY INCOME INSURANCE RISKS AS  
38 SPECIFIED IN SUBSECTION A, PARAGRAPH 3 OF THIS SECTION FOR EMPLOYERS THAT  
39 MAINTAIN THEIR PRINCIPAL PLACE OF BUSINESS WITHIN THIS STATE.

40 (c) MAY NOT BE OWNED OR CONTROLLED BY AN INSURER THAT IS GRANTED  
41 AUTHORITY BY THE DIRECTOR TO TRANSACT INSURANCE IN THIS STATE.

42 (d) SHALL HAVE ITS FINANCIAL STATEMENTS AUDITED BY AN INDEPENDENT  
43 CERTIFIED PUBLIC ACCOUNTANT PURSUANT TO SECTION 20-1098.07, SUBSECTION B.

1 (e) MAY NOT DIRECTLY INSURE LIFE OR DISABILITY INCOME INSURANCE  
2 RISKS AS SPECIFIED IN SUBSECTION A, PARAGRAPH 3 OF THIS SECTION IN THIS  
3 STATE UNLESS ALL OF THE FOLLOWING APPLY:

4 (i) AN INSURANCE PRODUCER OR MANAGING GENERAL AGENT THAT OWNS THE  
5 AGENCY CAPTIVE INSURER REMAINS IN REGULATORY GOOD STANDING IN ALL STATES  
6 IN WHICH IT IS LICENSED.

7 (ii) THE AGENCY CAPTIVE INSURER INSURES ONLY THE RISKS OF EMPLOYER  
8 GROUP TERM LIFE INSURANCE, EMPLOYER GROUP DISABILITY INCOME INSURANCE AND  
9 REIMBURSEMENT OF EMPLOYER HEALTH PLAN DEDUCTIBLES THAT ARE PLACED BY OR  
10 THROUGH AN INSURANCE PRODUCER OR MANAGING GENERAL AGENT THAT OWNS THE  
11 AGENCY CAPTIVE INSURER AND, IF REQUIRED BY THE DIRECTOR, PROVIDES THE  
12 DIRECTOR THE FORM OF SUCH POLICIES.

13 (iii) THE AGENCY CAPTIVE INSURER DISCLOSES TO THE ORIGINAL  
14 POLICYHOLDER OR POLICYHOLDERS, IN A FORM OR MANNER APPROVED BY THE  
15 DIRECTOR, ALL LIMITATIONS, RIGHTS AND OBLIGATIONS HELD BY THE AGENCY  
16 CAPTIVE INSURER AS A RESULT OF ITS AFFILIATION WITH AN INSURANCE PRODUCER  
17 OR MANAGING GENERAL AGENT.

18 ~~4.~~ 5. This subsection does not prohibit a captive insurer from  
19 directly insuring deductible reimbursement risk.

20 ~~5.~~ 6. This subsection does not prohibit a captive insurer from  
21 directly insuring employment practices liability risk.

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

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

26 E. A captive insurer shall:

27 1. Hold at least one meeting of its board of directors or, for  
28 reciprocal insurers, its subscribers' advisory committee each year in this  
29 state.

30 2. Maintain its principal place of business in this state.

31 3. Appoint a resident statutory agent to accept service of process  
32 and to otherwise act on its behalf in this state and shall file the  
33 appointment with the director. In the case of a captive insurer formed as  
34 a corporation or reciprocal insurer, if the statutory agent cannot with  
35 reasonable diligence be found at the registered office of the captive  
36 insurer, the director is an agent of the captive insurer on whom any  
37 process, notice or demand may be served.

38 F. Before receiving a license, an applicant for a captive insurer  
39 license shall file with the director the following:

40 1. If formed as a corporation, a certified copy of its articles of  
41 incorporation, articles of organization or other organizational document,  
42 a copy of its duly adopted bylaws or other governance rules, a statement  
43 under oath of its president and secretary showing its financial condition  
44 and any other statement or document required by the director.

1           2. If formed as a reciprocal insurer, a copy of the power of  
2 attorney of its attorney-in-fact, a copy of its subscribers' agreement, a  
3 copy of its duly adopted bylaws or other governance rules, a statement  
4 under oath of its attorney-in-fact showing its financial condition and any  
5 other statement or document required by the director.

6           G. In addition to the information required by subsection F of this  
7 section, each applicant for a captive insurer license shall file with the  
8 director evidence of all of the following:

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

11           2. The adequacy of the expertise, experience and character of the  
12 directors and officers of the captive insurer.

13           3. The overall soundness of its plan of operation.

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

15           5. The engagement of a competent manager that does business at a  
16 location in this state.

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

20           7. The ability of the captive insurer's owners or members to pay  
21 claims to third parties if the captive insurer is unable to pay those  
22 claims.

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

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

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

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

37           3. Its form for all participant contracts.

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

40           I. Before the issuance of a license, an applicant shall promptly  
41 notify the director of any material change in the information filed  
42 pursuant to this section.

43           J. An applicant for a captive insurer license shall pay to the  
44 director a nonrefundable fee for the issuance of a captive insurance  
45 license pursuant to section 20-167. The captive insurer shall pay the

1 license renewal fee pursuant to section 20-167 when the captive insurer  
2 files the annual report prescribed in section 20-1098.07.

3 K. If the director is satisfied that the documents and statements  
4 that the applicant has filed comply with this article, the director may  
5 grant the applicant a captive insurer license that authorizes the captive  
6 insurer to transact captive insurance business in this state.

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

10 Sec. 2. Section 20-1098.17, Arizona Revised Statutes, is amended to  
11 read:

12 20-1098.17. Effect of fees payment; premium tax

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

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

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

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

23 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, AN AGENCY CAPTIVE  
24 INSURER THAT INSURES RISKS ON POLICIES AS SPECIFIED IN SECTION 20-1098.01,  
25 SUBSECTION A, PARAGRAPH 3, SUBDIVISION (b) SHALL PAY THE PREMIUM TAX  
26 PRESCRIBED IN SECTION 20-224 FOR SUCH POLICIES THAT IS IN EXCESS OF ANY  
27 FEES PAID PURSUANT TO SECTION 20-167.

APPROVED BY THE GOVERNOR MAY 1, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2018.