

State of Arizona
Senate
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2020

SB 1293

Introduced by
Senators Livingston: Fann

AN ACT

AMENDING SECTIONS 6-101, 6-110, 6-112, 6-113, 6-638, 6-852, 6-1403, 9-951, 9-952, 11-952.01, 11-981, 12-581, 12-593, 13-3885, 15-387 AND 20-101, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-101.01; AMENDING SECTIONS 20-102, 20-108.01, 20-141, 20-142, 20-144, 20-147, 20-157.01, 20-158, 20-167, 20-169, 20-183, 20-224, 20-224.03, 20-224.06, 20-224.07, 20-237, 20-261.03, 20-265, 20-285, 20-289, 20-336.03, 20-336.04, 20-340.01, 20-340.04, 20-367 AND 20-398, ARIZONA REVISED STATUTES; REPEALING SECTION 20-400.08, ARIZONA REVISED STATUTES; AMENDING SECTIONS 20-400.10, 20-401.03, 20-401.04, 20-401.05, 20-403, 20-410, 20-422, 20-423, 20-466, 20-481.08, 20-481.25, 20-489.01, 20-612, 20-613, 20-624, 20-625, 20-662, 20-663, 20-671, 20-678, 20-683, 20-684, 20-706, 20-713, 20-714, 20-718, 20-724, 20-727, 20-729, 20-730, 20-731, 20-733, 20-735, 20-776, 20-822, 20-824, 20-835, 20-873, 20-884, 20-885, 20-893, 20-1008, 20-1051, 20-1057, 20-1098.17, 20-1098.23, 20-1379, 20-1556, 20-1603, 20-1634, 20-1652, 20-1673, 20-1691, 20-1691.04, 20-1691.06, 20-1691.08, 20-1691.11, 20-1691.12, 20-1741, 20-1742, 20-1801, 20-1808, 20-1812 AND 20-2202, ARIZONA REVISED STATUTES; REPEALING SECTION 20-2305, ARIZONA REVISED STATUTES; AMENDING SECTIONS 20-2306, 20-2310, 20-2318, 20-2402, 20-2501, 20-2533, 20-2541, 20-2802 AND 20-2901, ARIZONA REVISED STATUTES; REPEALING SECTION 20-2905, ARIZONA REVISED STATUTES; AMENDING SECTIONS 20-3251, 20-3302, 20-3459, 23-722.04, 23-901, 23-904, 23-930, 23-950, 23-961, 23-1091, 25-529, 28-667, 28-2166, 28-4007, 28-4008, 28-4038, 28-4133, 28-6923, 28-7369, 28-7704, 29-609, 29-3108, 32-1134, 33-1003, 33-1004,

33-1062, 33-1076, 34-201, 34-222, 34-608, 34-610, 35-457, 35-762, 36-2905, 36-2906.01, 36-2944.01 AND 36-2999.51, ARIZONA REVISED STATUTES; AMENDING SECTION 38-871, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2019, CHAPTER 252, SECTION 48; AMENDING SECTIONS 41-621, 41-621.01, 41-1009, 41-1525, 41-2574, 41-3451, 42-1102, 43-1183, 43-1504, 44-288, 44-1273, 44-3152, 44-6951, 48-586, 48-924, 48-2054 AND 48-2842, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 6-101, Arizona Revised Statutes, is amended to
3 read:

4 6-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Automated teller machine" means an automated device that is
7 established by a bank, savings and loan association or credit union and
8 that facilitates customer-bank communications activities, including taking
9 deposits and disbursing cash drawn against a customer's deposit account or
10 a customer's preapproved loan account, at a location separate from the
11 home office or a branch.

12 2. "Bank" means a corporation that holds a banking permit issued
13 pursuant to chapter 2 of this title.

14 3. "Banking office" means any place of business of the bank at
15 which deposits are received, checks are paid or money is loaned but does
16 not include the premises used for computer operations, proofing, record
17 keeping, accounting, storage, maintenance or other administrative or
18 service functions.

19 4. "Branch" means any banking office other than the principal
20 banking office.

21 5. "Department" means the department of insurance and financial
22 institutions.

23 6. "DEPUTY DIRECTOR" OR "SUPERINTENDENT" MEANS THE DEPUTY DIRECTOR
24 OF THE FINANCIAL INSTITUTIONS DIVISION OF THE DEPARTMENT.

25 ~~6.~~ 7. "Director" has the same meaning prescribed in section
26 20-102.

27 ~~7.~~ 8. "Division" means the financial institutions division within
28 the department.

29 ~~8.~~ 9. "Enterprise" means any person under the jurisdiction of the
30 department other than a financial institution.

31 ~~9.~~ 10. "Federal deposit insurance corporation" includes any
32 successor to the corporation or other agency or instrumentality of the
33 United States that undertakes to discharge the purposes of the
34 corporation.

35 ~~10.~~ 11. "Financial institution" means banks, trust companies,
36 savings and loan associations, credit unions, consumer lenders,
37 international banking facilities and financial institution holding
38 companies under the jurisdiction of the department.

39 ~~11.~~ 12. "Home state" means the state that has granted the bank its
40 charter, permit or license to operate.

41 ~~12.~~ 13. "Host state" means the state in which a financial
42 institution is doing business and not the state that has granted the bank
43 its charter, permit or license to operate.

1 ~~13.~~ 14. "In-state financial institution" means a state or federal
2 bank, savings bank, savings and loan association or holding company with
3 its home office located in this state.

4 ~~14.~~ 15. "International banking facility" means a facility that is
5 represented by a set of asset and liability accounts segregated on the
6 books and records of a commercial bank, the principal office of which is
7 located in this state, and that is incorporated and doing business under
8 the laws of the United States or of this state, a United States branch or
9 agency of a foreign bank, an edge corporation organized under section
10 25(a) of the federal reserve act (12 United States Code sections 611
11 through 631) or an agreement corporation having an agreement or
12 undertaking with the board of governors of the federal reserve system
13 under section 25 of the federal reserve act (12 United States Code
14 sections 601 through 604(a)) that includes only international banking
15 facility time deposits and international banking facility extensions of
16 credit as defined in 12 Code of Federal Regulations part 204.

17 ~~15.~~ 16. "National credit union administration" includes any
18 successor to the organization or other agency or instrumentality of the
19 United States that undertakes to discharge the purposes of the
20 organization.

21 ~~16.~~ 17. "Out-of-state bank" means a bank, savings bank or savings
22 and loan association that is approved by the superintendent pursuant to
23 section 6-322 and that has a charter, a permit or any other license to
24 operate that is issued by a state other than this state.

25 ~~17.~~ 18. "Out-of-state financial institution" means a state or
26 federal bank, savings bank, savings and loan association or holding
27 company with its home office in a state other than this state.

28 ~~18. "Superintendent" means the superintendent of the financial
29 institutions division of the department.~~

30 19. "Title" includes this title, title 32, chapters 9 and 36 and
31 title 44, chapter 2.1.

32 Sec. 2. Section 6-110, Arizona Revised Statutes, is amended to
33 read:

34 6-110. Financial institutions division; superintendent

35 The financial institutions division is established in the
36 department. The director shall appoint a ~~superintendent~~ DEPUTY DIRECTOR
37 OF THE FINANCIAL INSTITUTIONS DIVISION OF THE DEPARTMENT to assist the
38 director with the execution of the laws of this state relating to
39 financial institutions and enterprises. THE DEPUTY DIRECTOR SERVES AT THE
40 PLEASURE OF THE DIRECTOR AND REPORTS DIRECTLY TO THE DIRECTOR.

41 Sec. 3. Section 6-112, Arizona Revised Statutes, is amended to
42 read:

43 6-112. Assistant director; examiners; personnel

44 Subject to title 41, chapter 4, article 4, the director:

1 1. Shall appoint ~~a deputy superintendent~~ AN ASSISTANT DIRECTOR who
2 shall have the power and perform the duties of the ~~superintendent~~ DEPUTY
3 DIRECTOR OF THE FINANCIAL INSTITUTIONS DIVISION OF THE DEPARTMENT. The
4 ~~deputy superintendent~~ ASSISTANT DIRECTOR shall hold ~~such~~ THE appointment
5 at the will and pleasure of the director.

6 2. May appoint ~~such~~ OTHER assistants as the director deems
7 necessary whose powers are limited to the powers, duties or functions set
8 forth in the appointment.

9 3. Shall appoint ~~such~~ examiners and other personnel as necessary.

10 Sec. 4. Section 6-113, Arizona Revised Statutes, is amended to
11 read:

12 6-113. Acts prohibited; officers; employees

13 A. The director, the ~~superintendent~~ DEPUTY DIRECTOR, the ~~deputy~~
14 ~~superintendent~~ ASSISTANT DIRECTOR and any personnel of the department may
15 not do any of the following with respect to any financial institution or
16 enterprise under the jurisdiction of the department:

17 1. Be indebted, directly or indirectly, as borrower, accommodation
18 endorser, surety or guarantor, to any ~~such~~ financial institution or
19 enterprise unless the indebtedness was contracted before becoming employed
20 by the department and is fully disclosed to the department, except that an
21 employee of the department, other than the director, the ~~superintendent~~
22 DEPUTY DIRECTOR or the ~~deputy superintendent~~ ASSISTANT DIRECTOR, may
23 become so indebted if the indebtedness is both:

24 (a) Incurred on terms not more favorable than those available to
25 the general public.

26 (b) Fully disclosed to and approved by the director before funding,
27 including the following information:

28 (i) The date of the indebtedness.

29 (ii) The amount.

30 (iii) The interest rate.

31 (iv) Other obligors.

32 (v) Security.

33 (vi) The purpose for which the monies are to be used. The borrower
34 shall not participate in any examination of the lender conducted by the
35 department.

36 2. Be an officer, director or employee of any ~~such~~ financial
37 institution or enterprise.

38 3. Own or deal in, directly or indirectly, the shares or
39 obligations of any ~~such~~ financial institution or enterprise.

40 4. Be interested in, directly or indirectly, or receive from any
41 ~~such~~ financial institution or enterprise, or any officer, director or
42 employee of the financial institution or enterprise, any salary, fee,
43 compensation or other valuable thing by way of gift, credit, compensation
44 for services or otherwise.

1 5. Be interested in or engage in the negotiation of any loan to,
2 obligation of, or accommodation for another person to or with any ~~such~~
3 financial institution or enterprise.

4 B. Notwithstanding ~~the provisions of~~ subsection A of this section,
5 the director, the ~~superintendent~~ DEPUTY DIRECTOR, the ~~deputy~~
6 ~~superintendent~~ ASSISTANT DIRECTOR and any personnel of the department may:

7 1. Maintain demand, savings, time, share and trust accounts in any
8 financial institution.

9 2. Become a beneficiary of any trust or estate administered by any
10 fiduciary under the jurisdiction of the division.

11 3. Become indebted to and own and deal in shares and obligations of
12 national banks, federal savings and loan associations and federal credit
13 unions.

14 Sec. 5. Section 6-638, Arizona Revised Statutes, is amended to
15 read:

16 6-638. Other insurance

17 A. A licensee who is licensed to sell life insurance pursuant to
18 title 20 may sell and include in the principal amount of a consumer lender
19 loan the cost of the premium for life insurance that is not for credit if
20 all of the following apply:

21 1. The insurance policy or certificate is approved by the director
22 ~~of the department of insurance.~~

23 2. The purchase of the insurance is not a condition of the consumer
24 lender loan.

25 3. The consumer signs an application for the insurance that is
26 separate from the consumer lender loan application.

27 4. The licensee does not offer or discuss with the consumer the
28 option of life insurance until after the consumer lender loan application
29 is completed and the consumer lender loan is approved.

30 B. A licensee who is licensed to sell disability insurance pursuant
31 to title 20 may sell and include in the principal amount of the consumer
32 lender loan the cost of the premium for accidental death and dismemberment
33 insurance or disability income protection insurance, or both, if all of
34 the following apply:

35 1. The insurance policy or certificate is approved by the director
36 ~~of the department of insurance.~~

37 2. The purchase of the insurance is not a condition of the consumer
38 lender loan.

39 3. The consumer signs an application for the insurance that is
40 separate from the consumer lender loan application.

41 4. The licensee does not offer or discuss with the consumer the
42 option of accidental death and dismemberment insurance or disability
43 income protection insurance until after the consumer lender loan
44 application is completed and the consumer lender loan is approved.

1 C. Any insurance purchased by the consumer pursuant to this section
2 is optional and the licensee shall disclose in writing to the consumer
3 that the insurance is optional.

4 D. The consumer may cancel the insurance for any reason at any time
5 within thirty days after the date of purchase and the consumer shall
6 receive a full refund of the premium within five days ~~of~~ AFTER the date of
7 cancellation. If the consumer cancels the insurance after thirty days
8 from the date of purchase, the consumer shall receive a refund of the
9 unearned premium in accordance with the insurance policy. In the event
10 the consumer cancels the insurance, the licensee shall give the consumer
11 the amount of any refund of premium or shall credit the consumer's lender
12 loan at the option of the consumer. For the purposes of this subsection,
13 the date of cancellation is defined as the date the licensee receives the
14 receipt for the notice of cancellation for the insurance policy.

15 E. If the consumer decides to cancel the policy, the consumer shall
16 either:

17 1. Return the policy to the insurer or to the licensee at the
18 licensee's place of business.

19 2. Provide written notice of cancellation to the insurer or to the
20 licensee at the licensee's place of business.

21 F. The licensee shall give the consumer a written copy of the
22 provisions of this section.

23 Sec. 6. Section 6-852, Arizona Revised Statutes, is amended to
24 read:

25 6-852. Exemptions and allowed activities

26 A. For the purposes of this article, a person does not engage in
27 the trust business by:

28 1. Rendering services as an attorney-at-law in the performance of
29 ~~his~~ THE PERSON'S duties as such.

30 2. Acting as trustee under a deed of trust made only as security
31 for the payment of money or for the performance of another act.

32 3. Acting as a trustee in bankruptcy or as a receiver.

33 4. Holding trusts of real estate for the primary purpose of
34 subdivision, development or sale, or to facilitate any business
35 transaction with respect to such real estate, provided such person is not
36 regularly engaged in the business of acting as a trustee for such trusts.

37 5. Engaging in the business of a debt management company to the
38 extent of the activities for which it is licensed under chapter 6 of this
39 title.

40 6. Engaging in the business of an escrow agent to the extent of the
41 activities for which it is licensed under chapter 7 of this title.

42 7. Holding assets as trustee of trusts created for charitable
43 purposes.

44 8. Receiving rents and proceeds of sale as a licensed real estate
45 broker on behalf of a principal.

1 9. Engaging in securities transactions as a dealer or salesman
2 registered under title 44, chapter 12.

3 10. Acting as a guardian, conservator, special conservator, trustee
4 or personal representative pursuant to a court order under title 14 or 36.

5 B. Insurance companies licensed to write life insurance policies
6 and annuity or endowment contracts in ~~the~~ THIS state ~~of Arizona~~ and
7 subject to regulation and control of the director ~~of insurance~~ are
8 excluded from the provisions of this chapter, except the provisions of
9 section 6-860.

10 C. A bank, savings and loan association or credit union not
11 exercising trust powers may act as a trustee or custodian of individual
12 retirement accounts established pursuant to the employees retirement
13 income security act of 1974 or self-employed retirement plans established
14 pursuant to the self-employed individuals tax retirement act of 1962
15 without the prior written consent of the ~~superintendent~~ DEPUTY DIRECTOR if
16 both:

17 1. The duties of the bank, savings and loan association or credit
18 union as trustee or custodian are essentially custodial or ministerial in
19 nature.

20 2. The bank, savings and loan association or credit union is
21 required to invest the funds from such plans only in its own time or
22 savings deposits or shares.

23 Sec. 7. Section 6-1403, Arizona Revised Statutes, is amended to
24 read:

25 6-1403. Exemptions

26 A. The licensing requirements of this article do not apply to:

27 1. Any savings and loan association, bank, savings bank, trust
28 company, consumer lender or credit union authorized to do business in this
29 state.

30 2. Any agent or broker WHO IS licensed by the department ~~of~~
31 ~~insurance~~ AND who allows an insured to pay premiums on policies written by
32 the agent or broker in installments if the agent or broker receives no
33 interest or other fee, except that an agent or broker may collect a
34 service charge of not more than five ~~per cent~~ PERCENT of the total premium
35 amount and a delinquency charge as provided in section 6-1413.

36 3. Any person who purchases or otherwise acquires premium finance
37 agreements from a licensee if the licensee retains the right to service
38 the agreements and to collect payments due under the agreements and
39 remains responsible for the premium finance agreement being handled in
40 compliance with this article.

41 4. Any insurer authorized to transact insurance in this state in
42 connection with the issuance of premium finance agreements relating to
43 commercial insurance policies issued by the insurer.

1 B. The exemption from licensing as provided in subsection A of this
2 section does not authorize the financing of insurance premiums without
3 compliance with the other requirements of this article.

4 Sec. 8. Section 9-951, Arizona Revised Statutes, is amended to
5 read:

6 9-951. Disposition of fire insurance premium tax proceeds;
7 composition of fund

8 A. The proceeds of the annual tax provided by law on the gross
9 amount of all premiums received on policies and contracts of fire
10 insurance covering property within this state, after deducting
11 cancellations, return premiums, dividends and the amount received as
12 reinsurance on business in this state, are appropriated and set aside for
13 distribution to cities and towns and legally organized fire districts that
14 procure the services of private fire companies and for the payment of
15 benefits pursuant to this article, article 4 of this chapter or title 38,
16 chapter 5, article 4.

17 B. Not later than April 30 **OF EACH YEAR**, the office of the state
18 fire marshal shall certify to the state treasurer the incorporated cities
19 and towns that have organized fire departments, the incorporated cities
20 and towns and legally organized fire districts that procure the services
21 of a private fire company and the areas served by legally organized fire
22 districts, and the department of insurance **AND FINANCIAL INSTITUTIONS**
23 shall certify to the state treasurer the respective amounts of tax on fire
24 premiums paid in the previous year for properties located in this state.
25 Not later than June 15 **OF EACH YEAR**, the department of revenue shall
26 certify to the state treasurer the full cash value of the real property
27 and improvements for the previous year in each incorporated city and town
28 and legally organized fire district that procures the services of a
29 private fire company and in each area served by a fire department or a
30 legally organized fire district. The total amount of the tax proceeds
31 shall then be prorated among the several incorporated cities and towns and
32 legally organized fire districts in proportion to the full cash value of
33 the real property and improvements in each incorporated city and town and
34 legally organized fire district that procures the services of a private
35 fire company and in each area served by a department or a legally
36 organized fire district to the total full cash value of all incorporated
37 cities and towns and legally organized fire districts that procure the
38 services of a private fire company and incorporated cities and towns that
39 have a fire department and legally organized fire districts in this state.

40 C. Each incorporated city or town that has an organized fire
41 department and each legally organized volunteer fire district shall deduct
42 five percent from the salaries or compensation of its firefighters and add
43 a like amount from its general revenues. The employer or the employee may
44 add a contribution greater than that specified in this subsection to the
45 fire fighters' relief and pension fund. The total of the two amounts

1 shall be paid each month into the fire fighters' relief and pension fund.
2 The treasurer of each board shall keep a record of the salary deductions.
3 If a firefighter dies under circumstances that do not entitle the
4 firefighter's dependents to a benefit from the fire fighters' relief and
5 pension fund, or if the firefighter becomes separated from the service
6 voluntarily or involuntarily without having become eligible for retirement
7 benefits under the fire fighters' relief and pension fund, all deductions
8 previously made from the firefighter's salary under this article, plus
9 interest as determined by the board, are payable to the firefighter's
10 beneficiary in the event of the firefighter's death, or otherwise to the
11 firefighter.

12 D. Payroll deductions made under subsection C of this section, plus
13 any additional sums the board of trustees may add, shall be set aside in a
14 permanent reserve fund, the income of which but no part of the
15 principal, shall be used to pay retirement benefits or relief, but in
16 order to pay the refunds provided for in subsection C of this section,
17 that portion of the principal that accrues from salary deductions may be
18 drawn on when necessary.

19 E. For the purposes of this section and section 9-952, full cash
20 value of real property and improvements for the previous year with respect
21 to each incorporated city and town that procures the services of a private
22 fire company are limited to thirty percent of the amount certified by the
23 department of revenue and the percentage shall be utilized in computing
24 the entitlement of an incorporated city or town that procures the services
25 of a private fire company.

26 Sec. 9. Section 9-952, Arizona Revised Statutes, is amended to
27 read:

28 9-952. Disposition of fire insurance premium tax

29 Not later than July 31 of each year, the state treasurer, using the
30 information provided by the cities and towns and legally organized fire
31 districts, the office of the state fire marshal, the department of
32 insurance AND FINANCIAL INSTITUTIONS and the department of revenue as
33 provided in section 9-951, subsection B, shall distribute the fire
34 insurance premium tax to the respective incorporated cities and towns and
35 legally organized fire districts in proportion to the full cash value of
36 the real property and improvements in each incorporated city and town and
37 legally organized fire district that procures the services of a private
38 fire company and in each area served by a fire department or legally
39 organized fire district. The warrant issued by the state treasurer to
40 incorporated cities and towns and legally organized fire districts having
41 organized fire departments and to legally organized fire districts shall
42 be identified as "fire fighters' relief and pension fund". The warrant
43 issued by the state treasurer to an incorporated city or town or legally
44 organized fire district procuring the services of a private fire company
45 that has a pension plan covering firefighting personnel shall be

1 identified for deposit in the municipality's general fund or, in the case
2 of a fire district, in the fire fighters' relief and pension fund.

3 Sec. 10. Section 11-952.01, Arizona Revised Statutes, is amended to
4 read:

5 11-952.01. Public agency pooling of property, fidelity,
6 liability, workers' compensation, life, health,
7 accident and disability coverage; exemptions;
8 board of trustees; contract; termination; audit;
9 insolvency; definition

10 A. In addition to other authority granted pursuant to this title,
11 two or more public agencies may enter into contracts or agreements
12 pursuant to this article for the joint purchasing of insurance, including
13 prepaid legal insurance or reinsurance, or to pool retention of their
14 risks for property, fidelity and liability losses and to provide for the
15 payment of such property loss, fidelity loss, prepaid legal insurance or
16 claim of liability made against any member of the pool, including any
17 elected or appointed official, officer or employee covered by the pool, on
18 a cooperative or contract basis with one another or may jointly form a
19 nonprofit corporation or enter into a trust agreement to carry out this
20 section in their behalf directly or by contract with a private party.

21 B. In addition to other authority granted pursuant to this title,
22 two or more public agencies may enter into contracts or agreements
23 pursuant to this article to establish a workers' compensation pool to
24 provide for the payment of workers' compensation claims pursuant to title
25 23, chapter 6 on a cooperative or contract basis with one another or may
26 jointly form a nonprofit corporation or enter into a trust agreement to
27 carry out this section in their behalf directly or by contract with a
28 private party. A workers' compensation pool established pursuant to this
29 subsection may provide coverage for workers' compensation, employers'
30 liability and occupational disease claims. A workers' compensation pool
31 is subject to approval as a self-insurer by the industrial commission **OF**
32 **ARIZONA** pursuant to section 23-961, subsection A, paragraph 2 and is
33 subject to title 23, chapter 6 and rules adopted pursuant to that chapter
34 in addition to the requirements of this section. The industrial
35 commission **OF ARIZONA**, by rule, resolution or order, may adopt
36 requirements for the administration of a workers' compensation pool under
37 this subsection, including separation or commingling of funds, accounting,
38 auditing, reporting, actuarial standards and procedures.

39 C. In addition to other authority granted pursuant to this title,
40 two or more public agencies may enter into contracts or agreements for the
41 joint purchase of life insurance, disability insurance, accident insurance
42 or health benefits plan insurance or may pool retention of their risks of
43 loss for life, disability, health or accident claims made against any
44 public agency member of the pool or to jointly provide the health and
45 medical services authorized in section 36-2907. Public agencies may

1 establish pools for the purposes of this subsection by any of the
2 following methods:

- 3 1. On a cooperative or contract basis.
- 4 2. By the formation of a nonprofit corporation.
- 5 3. By contracts or intergovernmental agreements with the Arizona
6 health care cost containment system administration.
- 7 4. By the execution of a trust agreement directly by the agencies
8 or by contracting with a third party.

9 D. In addition to other authority granted pursuant to this title,
10 two or more public agencies may enter into contracts or agreements
11 pursuant to this article for the joint purchasing of insurance for
12 property, liability or workers' compensation losses or to pool retention
13 of their risks for property and liability loss to cover the public agency,
14 its elected officials and employees and the contractor and subcontractor
15 of every tier engaged in the performance of a construction project for the
16 public agency. Public agencies may establish pools for the ~~purpose~~
17 **PURPOSES** of this subsection by any of the following methods:

- 18 1. On a cooperative or contract basis.
- 19 2. By the formation of a nonprofit corporation.
- 20 3. By the execution of a trust agreement directly by the agencies
21 or by contracting with a third party.

22 E. Section 10-11301 does not apply to nonprofit corporations formed
23 pursuant to this section.

24 F. Title 41, chapter 23 does not apply to the procurement of
25 insurance or reinsurance, or to the procurement of the services provided
26 for in subsection K, paragraph 8 of this section, by any pool established
27 pursuant to this section.

28 G. Title 43 does not apply to any pool established pursuant to this
29 section. Any pool established pursuant to this section is exempt from
30 taxation under title 43.

31 H. Each pool shall be operated by a board of trustees consisting of
32 at least three persons who are elected officials or employees of public
33 entities within this state. The board of trustees shall notify the
34 director of the department of insurance **AND FINANCIAL INSTITUTIONS** of the
35 existence of the pool and shall file with the director and with the
36 attorney general a copy of the intergovernmental agreement or contract.
37 The board of trustees of each group shall do all of the following:

- 38 1. Establish terms and conditions of coverage within the pool,
39 including exclusions of coverage.
- 40 2. Ensure that all claims are paid promptly.
- 41 3. Take all necessary precautions to safeguard the assets of the
42 group.
- 43 4. Maintain minutes of its meetings.
- 44 5. Designate an administrator to carry out the policies established
45 by the board of trustees and to provide day-to-day management of the group

1 and delineate in the written minutes of its meetings the areas of
2 authority it delegates to the administrator.

3 6. If the pool is a workers' compensation pool, file a copy of the
4 agreement with the director of the industrial commission OF ARIZONA.

5 I. If the pool includes private, nonprofit educational
6 institutions, each private, nonprofit educational institution shall post a
7 bond, cash deposit or other comparable financial security in an amount
8 that is equal to at least one and one-half times the amount of the
9 private, nonprofit educational institution's annual premium to ensure
10 payment of the school's or institution's legal liabilities and other
11 obligations if the pool is determined to be insolvent or is otherwise
12 found to be unable to discharge the pool's legal liabilities and other
13 obligations pursuant to subsection N of this section.

14 J. The board of trustees shall not:

15 1. Extend credit to individual members for payment of a premium,
16 except pursuant to payment plans established by the board.

17 2. Borrow any monies from the group or in the name of the group
18 except in the ordinary course of business.

19 K. In addition to the requirements of section 11-952, a contract or
20 agreement made pursuant to this section shall contain the following:

21 1. A provision for a system or program of loss control.

22 2. A provision for termination of membership, including either:

23 (a) Cancellation of individual members of the pool by the pool.

24 (b) Election by an individual member of the pool to terminate its
25 participation.

26 3. A provision requiring the pool to pay all claims for which each
27 member incurs liability during each member's period of membership.

28 4. A provision stating that each member is not relieved of its
29 liability incurred during the member's period of membership except through
30 the payment of losses by the pool or by the member.

31 5. A provision for the maintenance of claim reserves equal to known
32 incurred losses and an estimate of incurred but not reported claims.

33 6. A provision for a final accounting and settlement of the
34 obligations of or refunds to a terminating member to occur when all
35 incurred claims are concluded, settled or paid.

36 7. A provision that the pool may establish offices where necessary
37 in this state and employ necessary staff to carry out the purposes of the
38 pool.

39 8. A provision that the pool may retain legal counsel, actuaries,
40 auditors, engineers, private consultants and advisors.

41 9. A provision that the pool may make and alter bylaws and rules
42 pertaining to the exercise of its purpose and powers.

43 10. A provision that the pool may purchase, lease or rent real and
44 personal property it deems necessary.

1 11. A provision that the pool may enter into financial services
2 agreements with banks and other financial institutions, that it may issue
3 checks in its own name and that it may invest its monies in equity
4 securities, mutual funds and investment funds registered with the United
5 States securities and exchange commission, debt obligations and any
6 eligible investment ~~permitted~~ ALLOWED by section 35-323.

7 L. A pool or a terminating member shall provide at least ninety
8 days' written notice of the termination or cancellation. A workers'
9 compensation pool shall notify the industrial commission OF ARIZONA of the
10 termination or cancellation of a member thirty days before the termination
11 or cancellation of the member.

12 M. The pool shall be audited annually at the expense of the pool by
13 a certified public accountant, with a copy of the report submitted to the
14 governing body or chief executive officer of each member of the pool and
15 to the director of the department of insurance AND FINANCIAL INSTITUTIONS.
16 The board of trustees of the pool shall obtain an appropriate actuarial
17 evaluation of the claim reserves of the pool, including an estimate of the
18 incurred but not reported claims. The department of insurance AND
19 FINANCIAL INSTITUTIONS shall examine each public agency pool once every
20 five years. The director of the department of insurance AND FINANCIAL
21 INSTITUTIONS may examine a public agency pool sooner than five years from
22 the preceding examination if the director has reason to believe that the
23 pool is insolvent. The costs of any examination shall be paid by the pool
24 subject to the examination.

25 N. If, as a result of the annual audit or an examination by the
26 director of the department of insurance AND FINANCIAL INSTITUTIONS, it
27 appears that the assets of the pool are insufficient to enable the pool to
28 discharge its legal liabilities and other obligations, the director of the
29 department of insurance AND FINANCIAL INSTITUTIONS shall notify the
30 administrator and the board of trustees of the pool of the deficiency and
31 the director's list of recommendations to abate the deficiency, including
32 a recommendation not to add any new members until the deficiency is
33 abated. If the pool fails to comply with the recommendations within sixty
34 days after the date of the notice, the director shall notify the chief
35 executive officer or the governing bodies, if any, of the members of the
36 pool, the governor, the president of the senate and the speaker of the
37 house of representatives that the pool has failed to comply with the
38 recommendations of the director.

39 O. If a pool is determined to be insolvent or is otherwise found to
40 be unable to discharge its legal liabilities and other obligations, each
41 agreement or contract shall provide that the members of the pool shall be
42 assessed on a pro rata basis as calculated by the amount of each member's
43 annual contribution in order to satisfy the amount of deficiency. The
44 assessment shall not exceed the amount of each member's annual
45 contribution to the pool.

1 P. A pool established pursuant to this section may make available
2 programs providing for insurance coverages described in subsections A, B
3 and C of this section to those charter schools governed by section 15-183,
4 subsection M and, except for a workers' compensation pool, to private,
5 nonprofit educational institutions.

6 Q. In addition to the authority set forth in this title, a pool
7 established pursuant to this section may invest public monies on behalf of
8 pool members, but any such investments shall be limited to those ~~permitted~~
9 **ALLOWED** by section 35-323, except as provided in section 15-1225,
10 subsection G. A pool established pursuant to this section may not invest
11 monies that are required by law to be deposited with a county treasurer.

12 R. A pool established pursuant to this section, by the adoption of
13 a resolution of continuing effect, may authorize and request the state
14 treasurer to invest funds for the pool pursuant to section 35-326.

15 S. A pool established pursuant to this section may offer services
16 on behalf of pool participants that participate in the unemployment
17 insurance program administered by the department of economic security,
18 including the option to make payments in lieu of contributions as
19 ~~permitted~~ **ALLOWED** by sections 23-750 and 23-751. The pool is deemed an
20 agent of the pool participants as employers for the purposes of title 23,
21 chapter 4.

22 T. For the purposes of this section, "health benefits plan" means a
23 hospital or medical service corporation policy or certificate, a health
24 care services corporation contract, a multiple employer welfare
25 arrangement or any other arrangement under which health and medical
26 benefits and services are provided to two or more persons.

27 Sec. 11. Section 11-981, Arizona Revised Statutes, is amended to
28 read:

29 11-981. Payment of benefits, losses and claims; establishment
30 of trust funds

31 A. In addition to authority granted pursuant to other provisions of
32 law or city charter, any city, town, county, any special health care
33 district organized pursuant to title 48, chapter 31 or other political
34 subdivision that is located in a county with a population of more than one
35 million persons and whose governing body is composed of members of a
36 county board of supervisors may procure insurance from any insurer
37 authorized by the director of the department of insurance **AND FINANCIAL**
38 **INSTITUTIONS** or may establish a self-insurance program for the management
39 and administration of a system for direct payment of benefits, losses or
40 claims or any combination of insurance and direct payments, and including
41 risk management consultation, to provide:

42 1. Health, accident, life or disability benefits for employees and
43 officers of the city, town, county, any special health care district
44 organized pursuant to title 48, chapter 31 or other political subdivision
45 that is located in a county with a population of more than one million

1 persons and whose governing body is composed of members of a county board
2 of supervisors and their dependents.

3 2. Payment of any property loss sustained or lawful claim of
4 liability or fortuitous loss made against the city, town, county, any
5 special health care district organized pursuant to title 48, chapter 31 or
6 other political subdivision that is located in a county with a population
7 of more than one million persons and whose governing body is composed of
8 members of a county board of supervisors or its elected or appointed
9 officials, employees or officers if such elected or appointed officials,
10 employees or officers are acting within the scope of employment or
11 authority.

12 B. If any city, town, county, any special health care district
13 organized pursuant to title 48, chapter 31 or other political subdivision
14 that is located in a county with a population of more than one million
15 persons and whose governing body is composed of members of a county board
16 of supervisors establishes a self-insurance program for the management and
17 administration of a system for direct payment of benefits, losses or
18 claims pursuant to subsection A, the governing body of such city, town,
19 county, any special health care district organized pursuant to title 48,
20 chapter 31 or other political subdivision that is located in a county with
21 a population of more than one million persons and whose governing body is
22 composed of members of a county board of supervisors shall place all funds
23 into a trust fund for the purposes of this section in amounts as
24 determined appropriate by the governing body of the city, town, county,
25 any special health care district organized pursuant to title 48, chapter
26 31 or other political subdivision that is located in a county with a
27 population of more than one million persons and whose governing body is
28 composed of members of a county board of supervisors, except that any
29 city, town, county, any special health care district organized pursuant to
30 title 48, chapter 31 or other political subdivision that is located in a
31 county with a population of more than one million persons and whose
32 governing body is composed of members of a county board of supervisors
33 establishing such a trust fund shall:

34 1. Designate a risk management consultant or insurance
35 administrator licensed pursuant to title 20, chapter 2, article 3 or 9,
36 and such license shall be verified by the governing body of the city,
37 town, county, any special health care district organized pursuant to title
38 48, chapter 31 or other political subdivision that is located in a county
39 with a population of more than one million persons and whose governing
40 body is composed of members of a county board of supervisors.

41 2. The trust shall be administered by at least five joint trustees,
42 of whom ~~two~~ NOT more than one may be a member of the governing body of the
43 city, town, county, any special health care district organized pursuant to
44 title 48, chapter 31 or other political subdivision that is located in a
45 county with a population of more than one million persons and whose

1 governing body is composed of members of a county board of supervisors and
2 ~~to~~ NOT more than one may be an employee of the city, town, county, any
3 special health care district organized pursuant to title 48, chapter 31 or
4 other political subdivision that is located in a county with a population
5 of more than one million persons and whose governing body is composed of
6 members of a county board of supervisors.

7 3. The trustees of the trust must be bonded, a stop-loss provision
8 must be incorporated in the trust agreement and an annual audit must be
9 performed by an external auditor and a copy of the report kept on file in
10 the offices of the governing body of the city, town, county, any special
11 health care district organized pursuant to title 48, chapter 31 or other
12 political subdivision that is located in a county with a population of
13 more than one million persons and whose governing body is composed of
14 members of a county board of supervisors for a period of not less than
15 five years.

16 4. Not make any expenditure from the trust fund for any purpose not
17 specified in this article.

18 C. Expenditures during the fiscal year from the trust fund and
19 monies in the trust fund at the close of the fiscal year shall not be
20 subject to the provisions of title 42, chapter 17, article 3.

21 D. In the event that such a trust fund is no longer used by the
22 city, town, county, any special health care district organized pursuant to
23 title 48, chapter 31 or other political subdivision that is located in a
24 county with a population of more than one million persons and whose
25 governing body is composed of members of a county board of supervisors for
26 the purposes herein set forth, it shall revert during that fiscal year to
27 the general fund of such city, town, county, any special health care
28 district organized pursuant to title 48, chapter 31 or other political
29 subdivision that is located in a county with a population of more than one
30 million persons and whose governing body is composed of members of a
31 county board of supervisors.

32 E. The authority granted to a city, town, county, any special
33 health care district organized pursuant to title 48, chapter 31 or other
34 political subdivision that is located in a county with a population of
35 more than one million persons and whose governing body is composed of
36 members of a county board of supervisors by this section is not subject to
37 title 20, except that any health, life, accident or disability benefit
38 plan shall conform to the benefits required by title 20.

39 F. This section ~~shall not be construed to~~ DOES NOT authorize any
40 city, town, county, any special health care district organized pursuant to
41 title 48, chapter 31 or other political subdivision that is located in a
42 county with a population of more than one million persons and whose
43 governing body is composed of members of a county board of supervisors to
44 procure insurance from any insurer not authorized by the director of the
45 department of insurance AND FINANCIAL INSTITUTIONS.

1 Sec. 12. Section 12-581, Arizona Revised Statutes, is amended to
2 read:

3 12-581. Definitions

4 In this article, unless the context otherwise requires:

5 1. "Bodily injury" means bodily harm, sickness, disease or
6 emotional or mental distress, including death resulting from any of these
7 conditions at any time, sustained by a person.

8 2. "Claimant" means a person suffering bodily injury, a person
9 claiming on behalf of or as a result of bodily injury to another person,
10 the representative of the estate of a deceased person or a beneficiary of
11 a wrongful death action.

12 3. "Costs of health care" means medical, custodial, rehabilitative
13 and related expenses.

14 4. "Economic loss" means pecuniary harm for which damages are
15 recoverable.

16 5. "Future damages" means economic loss and noneconomic loss
17 arising from bodily injury ~~which~~ THAT accrues after trial of a claim under
18 this article.

19 6. "Noneconomic loss" means nonpecuniary harm for which damages are
20 recoverable but does not include punitive or exemplary damages.

21 7. "Past damages" means economic loss and noneconomic loss arising
22 from bodily injury ~~which~~ THAT have accrued before a claim is tried under
23 this article, including punitive or exemplary damages.

24 8. "Qualified insurer" means an insurer, self-insurer, plan or
25 arrangement approved by the director of the department of insurance **AND**
26 **FINANCIAL INSTITUTIONS**.

27 Sec. 13. Section 12-593, Arizona Revised Statutes, is amended to
28 read:

29 12-593. Duties of the director of the department of insurance
30 and financial institutions and insurance companies

31 A. The director of the department of insurance **AND FINANCIAL**
32 **INSTITUTIONS** shall adopt rules:

33 1. For determining which insurers and assignees are financially
34 qualified to provide and maintain the funding required under this article
35 and to be designated as qualified insurers.

36 2. To require insurers to provide and maintain funding under
37 section 12-587 if required by court order.

38 3. For publishing and revising a list of persons who have been
39 designated by the director as qualified insurers.

40 B. The director shall annually review and evaluate the
41 effectiveness of the system of periodic payments. If pursuant to such
42 review and evaluation, the director determines that the system of periodic
43 payments is effectively reducing the cost of medical malpractice tort
44 claims for bodily injury, the director shall order appropriate actuarially
45 justified rate adjustments based on ~~such~~ **THOSE** findings.

1 C. In order to qualify under this section, an insurance company
2 shall:

3 1. Have at least an "A+" (superior) rating and a financial size
4 category of VIII in the current edition of Best insurance reports as
5 published by A. M. Best company.

6 2. Have no more than one ratio falling outside the usual range
7 according to the current ratio published by the national association of
8 insurance commissioners insurance regulatory information system.

9 3. Be licensed to do business in a state that has an applicable
10 insurance guaranty fund of at least ~~one hundred thousand dollars~~ \$100,000.

11 4. Meet any other standards that the director deems necessary to
12 assure that funding will be provided and maintained. A qualified insurer
13 may be a subsidiary of a parent insurance company if the parent insurance
14 company qualifies as a qualified insurer and guarantees the obligation of
15 the subsidiary.

16 Sec. 14. Section 13-3885, Arizona Revised Statutes, is amended to
17 read:

18 13-3885. Arrest of principal by surety; prohibited conduct;
19 violation; classification; definitions

20 A. For the purpose of surrendering the defendant, a surety on the
21 bail bond of a defendant may arrest the defendant before the forfeiture of
22 the undertaking or, by written authority attached to a certified copy of
23 the undertaking, may empower a bail recovery agent or a bail bond agent ~~as~~
24 ~~defined in section 20-340~~ to arrest the defendant.

25 B. A bail recovery agent or a bail bond agent shall not do any of
26 the following:

27 1. Enter an occupied residential structure without the consent of
28 the occupants who are present at the time of the entry.

29 2. Conduct a bail recovery arrest or apprehension without written
30 authorization from a bail bond agent licensed in ~~Arizona~~ THIS STATE.

31 3. Wear, carry or display any uniform, badge, shield or other
32 insignia or emblem that implies that the bail recovery agent is an
33 employee, officer or agent of this state, a political subdivision of this
34 state or the federal government. A bail recovery agent may display
35 identification that indicates the agent's status as a bail recovery agent
36 only.

37 4. Authorize or allow any ~~third-party~~ THIRD-PARTY bail recovery
38 agent to undertake an apprehension or arrest if the bail recovery agent
39 has been convicted in any jurisdiction of theft or of any felony or any
40 crime involving carrying or the illegal use or possession of a deadly
41 weapon or dangerous instrument.

42 C. The surety or bail bond agent employing, hiring as an
43 independent contractor or otherwise ~~utilizing~~ USING a bail recovery agent
44 shall advise the department of insurance AND FINANCIAL INSTITUTIONS in
45 writing that the bail recovery agent is providing the services to the

1 surety or bail bond agent on a given case or cases. The written notice to
2 the department ~~of insurance~~ must be given within twenty-four hours after
3 the retention and shall include the name, date of birth, home and business
4 addresses and telephone number of the bail recovery agent. The bail
5 recovery agent identified in the written notice shall certify on the
6 written notice, under penalty of perjury, that the bail recovery agent has
7 never been convicted in any jurisdiction of theft or of any felony or any
8 crime involving carrying or the illegal use or possession of a deadly
9 weapon or dangerous instrument and that the bail recovery agent has
10 complied with section 20-340.04.

11 D. Bail bond agents shall provide an annual report to the
12 department ~~of insurance~~ listing all bail recovery agents employed, hired
13 as independent contractors or otherwise ~~utilized~~ USED by the bail bond
14 agent during the year. This report shall certify that all employees of
15 the bail bond agent have met the requirements prescribed in section
16 20-340.03 and that all bail recovery agents have complied with section
17 20-340.04. The report shall include the name, home and business
18 addresses, date of birth, telephone number, ~~;~~ and a two-inch wide by
19 three-inch high photograph of the face of each person identified in the
20 report.

21 E. To satisfy the requirements of this section, a bail bond agent
22 who is licensed in another state but WHO is not licensed in this state
23 shall contract with a bail bond agent WHO IS licensed in this state to
24 retain the services of a bail recovery agent in this state.

25 F. ~~Any~~ A person who violates subsection B or E of this section is
26 guilty of a class 5 felony. ~~Any~~ A person who violates subsection C or D
27 of this section is subject to the provisions of section 20-295.

28 G. For the purposes of this section:

29 1. "Bail bond agent" has the same meaning prescribed in section
30 ~~20-282.01~~ 20-340.

31 2. "Bail recovery agent" means any person who has never been
32 convicted in any jurisdiction of theft or of a felony or any crime
33 involving carrying or the illegal use or possession of a deadly weapon or
34 dangerous instrument and who is employed or hired as an independent
35 contractor or otherwise ~~utilized~~ USED by a bail bond agent to assist the
36 bail bond agent in presenting a defendant in court when required, in
37 apprehending a defendant and surrendering the defendant to a court or in
38 keeping a defendant under necessary surveillance. Bail recovery agent
39 does not include an attorney or law enforcement officer who acts in an
40 official capacity and who assists a bail bond agent in the bail bond
41 agent's business.

42 3. "Occupied residential structure" means an edifice of a type that
43 is generally used to house human beings.

1 Sec. 15. Section 15-387, Arizona Revised Statutes, is amended to
2 read:

3 15-387. Procurement of insurance; eligibility of governing
4 board members, former board members and surviving
5 spouse and dependents; deposit of monies

6 A. Notwithstanding section 15-323, the governing board may procure
7 insurance from any insurer authorized by the director of the department of
8 insurance AND FINANCIAL INSTITUTIONS or may establish a self-insurance
9 program as provided in section 15-382 for the management and
10 administration of a system for direct payment of benefits, losses or
11 claims or any combination of insurance and direct payments, including risk
12 management consultation, to provide:

13 1. Health, accident, life or disability benefits for employees of
14 the school district and their dependents and for members of the governing
15 board and their dependents as provided in subsection B of this section.

16 2. Payment of any property or fidelity loss sustained, legal
17 expenses incurred or lawful claim of liability or fortuitous loss made
18 against the school district or its employees, including leased employees,
19 or officers if the employees, leased employees or officers are acting in
20 the scope of their employment or authority.

21 3. Coverage for all construction projects for purposes of general
22 liability, property damage and workers' compensation.

23 B. A governing board member is eligible to participate in an
24 insurance plan provided as an employee benefit pursuant to subsection A,
25 paragraph 1 of this section if the member pays the full premium and the
26 participation of the member does not result in an expenditure of school
27 district monies.

28 C. If the governing board allows its members to participate in the
29 insurance plan, a governing board may also adopt a policy allowing
30 participation in an insurance plan provided as an employee benefit
31 pursuant to subsection A, paragraph 1 of this section for former board
32 members and for surviving spouses and dependents of board members or
33 former board members as follows:

34 1. The board may allow a former board member to continue to
35 participate if the former board member served at least four consecutive
36 years on the board, was covered under the insurance plan while serving on
37 the board and pays the full premium and the participation does not result
38 in an expenditure of school district monies.

39 2. The board may allow the surviving spouse and dependent of the
40 board member or former board member to continue to participate in the
41 insurance plan if the surviving spouse or dependent pays the full premium
42 and the participation of the surviving spouse and dependent does not
43 result in an expenditure of school district monies and if ONE OF THE
44 FOLLOWING APPLIES:

1 (a) The deceased board member or former board member met the
2 qualifications for eligibility pursuant to paragraph 1 of this subsection.

3 (b) The deceased board member or former board member would have met
4 the qualifications for eligibility pursuant to paragraph 1 of this
5 subsection if the deceased board member or former board member had not
6 died in office.

7 D. Monies that are provided by employees, board members, former
8 board members and surviving spouses and dependents of board members or
9 former board members and that are received pursuant to this section shall
10 be deposited in an account as provided in section 15-1223.

11 Sec. 16. Section 20-101, Arizona Revised Statutes, is amended to
12 read:

13 20-101. Department of insurance and financial institutions;
14 definition

15 A. ~~There shall be a~~ THE department of insurance ~~which~~ AND FINANCIAL
16 INSTITUTIONS IS ESTABLISHED AND shall be administered by the director of
17 THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS.

18 B. THE DEPARTMENT SHALL BE KNOWN AS "DIFI".

19 ~~B.~~ C. In this title, unless the context otherwise requires,
20 "commission" OR "DEPARTMENT" means the department of insurance AND
21 FINANCIAL INSTITUTIONS.

22 Sec. 17. Title 20, chapter 1, article 1, Arizona Revised Statutes,
23 is amended by adding section 20-101.01, to read:

24 20-101.01. Deputy director

25 THE DIRECTOR SHALL APPOINT A DEPUTY DIRECTOR OF THE INSURANCE
26 DIVISION OF THE DEPARTMENT TO ASSIST THE DIRECTOR WITH THE EXECUTION OF
27 THE LAWS OF THIS STATE RELATING TO INSURANCE. THE DEPUTY DIRECTOR SERVES
28 AT THE PLEASURE OF THE DIRECTOR AND REPORTS DIRECTLY TO THE DIRECTOR.

29 Sec. 18. Section 20-102, Arizona Revised Statutes, is amended to
30 read:

31 20-102. Definition of director

32 ~~When used with reference to the administration of~~ IN this title,
33 title 6, title 32, chapters 9 and 36, title 41, chapter 31 and title 44,
34 chapter 2.1, UNLESS THE CONTEXT OTHERWISE REQUIRES: ~~;~~

35 1. "Director" or "administrator" means the director of THE
36 DEPARTMENT OF insurance and financial institutions ~~of the state~~.

37 2. When used with reference to a member of the governing body of an
38 insurer, director includes trustee.

39 Sec. 19. Section 20-108.01, Arizona Revised Statutes, is amended to
40 read:

41 20-108.01. Extended warranty insurers; deposit with state
42 treasurer; powers and duties; definition

43 A. Every extended warranty insurer shall deposit with the state
44 treasurer and maintain on deposit for the benefit and protection of any
45 person purchasing such extended warranty or guaranty in the event of

1 insolvency of the extended warranty insurer under its contract with any
2 such person either of the following:

3 1. A bond in the amount of ~~twenty-five thousand dollars~~ \$25,000
4 issued by an insurance company holding a current certificate of authority
5 issued by the ~~Arizona~~ director ~~of insurance~~.

6 2. Eligible securities as defined in section 20-583 having the
7 lesser of par or market value of not less than ~~twenty-five thousand~~
8 ~~dollars~~ \$25,000.

9 B. The director ~~of insurance~~ shall adopt ~~and promulgate~~ rules and
10 regulations to enforce ~~the provisions of~~ this section.

11 C. For THE purposes of this section, "extended warranty insurer"
12 means HAS the same ~~as defined~~ MEANING PRESCRIBED in section 20-108.

13 Sec. 20. Section 20-141, Arizona Revised Statutes, is amended to
14 read:

15 20-141. Director of the department of insurance and financial
16 institutions; appointment; qualifications;
17 compensation

18 A. ~~There~~ THE GOVERNOR shall ~~be~~ APPOINT a director of THE DEPARTMENT
19 OF insurance ~~who shall be appointed by the governor~~ AND FINANCIAL
20 INSTITUTIONS pursuant to section 38-211.

21 B. The director shall:

22 1. Serve at the pleasure of the governor.

23 ~~C. 2. The director shall~~ Be a person WITH BUSINESS EXPERIENCE,
24 INCLUDING BEING well versed in insurance AND FINANCIAL INSTITUTION
25 matters.

26 ~~D. 3. The director shall~~ Receive compensation as determined
27 pursuant to section 38-611.

28 Sec. 21. Section 20-142, Arizona Revised Statutes, is amended to
29 read:

30 20-142. Powers and duties of director; payment of examination
31 and investigation costs; home health services

32 A. The director shall enforce ~~the provisions of~~ this title.

33 B. The director shall have powers and authority expressly conferred
34 by or reasonably implied from the provisions of this title.

35 C. The director may conduct examinations and investigations of
36 insurance matters, including examinations and investigations of adjusters,
37 ~~agents~~ PRODUCERS and brokers and any other persons who are regulated under
38 this title, in addition to examinations and investigations expressly
39 authorized, as the director deems proper in determining whether a person
40 has violated any provision of this title or for the purpose of securing
41 information useful in the lawful administration of any provision of this
42 title. The examined party shall pay the ~~cost~~ COSTS of examinations that
43 are ALLOWED PURSUANT TO SUBSECTION D OF THIS SECTION AND THAT ARE
44 conducted pursuant to this subsection except for examinations of
45 adjusters, ~~agents~~ PRODUCERS and brokers. ~~The~~ AN examined party ADJUSTER,

1 PRODUCER OR BROKER shall pay the ~~cost of examining adjusters, agents and~~
2 ~~brokers~~ COSTS ALLOWED PURSUANT TO SUBSECTION D OF THIS SECTION only if the
3 ~~party has~~ ADJUSTER, PRODUCER OR BROKER IS FOUND TO HAVE violated any
4 provision of this title. ~~The~~ THIS state shall pay the cost of ~~an~~ ANY
5 RELATED investigation.

6 D. THE DEPARTMENT SHALL PREPARE DETAILED BILLING STATEMENTS THAT
7 PROVIDE REASONABLE SPECIFICITY OF THE TIME AND EXPENSES BILLED IN
8 CONNECTION WITH AN EXAMINATION AND THAT CITE THE STATUTE OR RULE THAT
9 AUTHORIZES THE FEES BEING CHARGED. NOTWITHSTANDING ANY OTHER LAW, A
10 PERSON THAT IS BEING EXAMINED PURSUANT TO ANY SECTION OF THIS TITLE IS
11 RESPONSIBLE FOR ONLY THE DIRECT COSTS OF AN EXAMINATION THAT ARE SUPPORTED
12 BY A BILLING STATEMENT THAT COMPLIES WITH THIS SUBSECTION.

13 ~~D.~~ E. The director shall establish guidelines for insurers on home
14 health services that shall be used by the director pursuant to sections
15 20-826, 20-1342, 20-1402 and 20-1404. The director may use home health
16 services as defined in section 36-151. Guidelines shall include ~~but not~~
17 ~~be limited to~~ THE FOLLOWING:

18 1. Home health services that are prescribed by a physician or a
19 registered nurse practitioner.

20 2. Home health services that are determined to cost less if
21 provided in the home than the average length of in-hospital service for
22 the same service.

23 3. Skilled professional care in the home that is comparable to
24 skilled professional care provided in-hospital and that is reviewed and
25 approved at ~~thirty day~~ THIRTY-DAY intervals by a physician.

26 ~~E.~~ F. Pursuant to section 41-1750, subsection G, the director may
27 receive criminal history record information in connection with the
28 issuance, renewal, suspension or revocation of a license or certificate of
29 authority or the consideration of a merger or acquisition. The director
30 may require a person to submit a full set of fingerprints to the
31 department. The department of insurance AND FINANCIAL INSTITUTIONS shall
32 submit the fingerprints to the department of public safety for the purpose
33 of obtaining a state and federal criminal records check pursuant to
34 section 41-1750 and Public Law 92-544. The department of public safety
35 may exchange this fingerprint data with the federal bureau of
36 investigation.

37 Sec. 22. Section 20-144, Arizona Revised Statutes, is amended to
38 read:

39 20-144. Seal of office

40 A. The director shall have a seal of office consisting of the
41 shield as used in the great seal of the state of Arizona encircled by the
42 words "director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS,
43 state of Arizona."

44 B. Every certificate or license issued by the director shall bear
45 ~~his~~ THE DIRECTOR'S seal.

1 Sec. 23. Section 20-147, Arizona Revised Statutes, is amended to
2 read:

3 20-147. Assistant director; chief examiner; appointment;
4 qualifications

5 A. The director shall appoint an assistant director ~~of insurance~~
6 and a chief examiner.

7 B. The assistant director ~~of insurance~~ shall be experienced in the
8 fields of life and disability and property and casualty insurance and the
9 chief examiner shall have had at least five ~~years~~ YEARS' experience as a
10 full-time examiner for a state insurance department or departments, or as
11 a full-time staff member of a public accounting or actuarial firm
12 regularly employed to conduct examinations for a state insurance
13 department.

14 Sec. 24. Section 20-157.01, Arizona Revised Statutes, is amended to
15 read:

16 20-157.01. Insurer claim files; access by director;
17 definition

18 A. Pursuant to the director's authority under sections 20-156,
19 20-157, 20-160 and 20-466, an insurer shall comply with a request to
20 produce any documents, reports or other materials, whether maintained in
21 written or electronic format, from an insurer's claim file.

22 B. Any documents, reports or other materials that are provided to
23 the director pursuant to this section are confidential and are not subject
24 to disclosure, including discovery or subpoena, unless the subpoena is
25 issued by the attorney general or a county attorney or by a court at the
26 request of the attorney general, a county attorney or any other law
27 enforcement agency. The director may ~~only~~ disclose the information ONLY
28 to a state or federal agency or officer pursuant to a lawful request,
29 subpoena or formal discovery procedure. If the requesting party cannot
30 warrant confidentiality pursuant to section 20-158, subsection I, the
31 information that is provided pursuant to discovery, subpoena or lawful
32 request as provided for in this subsection remains confidential. The
33 director shall make reasonable efforts to notify an insurer of any request
34 for a subpoena for documents, reports or other materials in an insurer
35 claim file or record that are produced by the insurer pursuant to this
36 section so that the insurer may assert, in a court of competent
37 jurisdiction, any applicable privileges.

38 C. The director may use the documents, reports or other materials
39 in the furtherance of any regulatory action brought by the director or in
40 actions brought against the director.

41 D. NOTWITHSTANDING ANY OTHER LAW, THE DIRECTOR SHALL PROVIDE AN
42 INSURER WITH A COPY OF ANY DOCUMENT THE DIRECTOR RECEIVES PURSUANT TO THIS
43 SECTION THAT THE DIRECTOR BELIEVES SUPPORTS A VIOLATION OF THIS TITLE OR
44 THAT JUSTIFIES ANY REGULATORY OR OTHER ACTION AGAINST THE INSURER. A

1 DISCLOSURE PURSUANT TO THIS SUBSECTION IS NOT A WAIVER OF ANY APPLICABLE
2 PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DISCLOSED DOCUMENT.

3 ~~D.~~ E. For the purposes of this section, "insurer claim file"
4 includes medical records, repair estimates, adjuster notes, insurance
5 policy provisions, recordings or transcripts of witness interviews and any
6 other records regarding coverage, settlement, payment or denial of a claim
7 asserted under an insurance policy.

8 Sec. 25. Section 20-158, Arizona Revised Statutes, is amended to
9 read:

10 20-158. Report of examinations by director: information
11 sharing

12 A. The director shall make a full written report of each
13 examination. The director or the examiner in charge of the examination
14 shall certify the report.

15 B. The director shall provide a copy of the report to the person
16 examined not less than ten days before filing the report. If the person
17 makes a request in writing within the ~~ten-day~~ TEN-DAY period, the director
18 shall consider any objections the person may have to the proposed report
19 and shall not file the report until after making any amendments the
20 director deems proper.

21 C. The report, when filed, is admissible in evidence in any action
22 or proceeding brought by the director against the person examined, or its
23 officers or agents. The director or the director's examiners may at any
24 time testify and offer other proper evidence as to information secured
25 during the course of an examination, whether or not a written report of
26 the examination has at that time been either made, served or filed in the
27 director's office.

28 D. The director may withhold from public inspection any examination
29 or investigation report for as long as the director deems prudent.

30 E. The director may disclose the nonpublic content of a report of
31 examination, a preliminary report or any other matter relating to a report
32 to the insurance department of any other state or jurisdiction, to law
33 enforcement officials of this or any other state or jurisdiction or to an
34 agency of the federal government if the agency or official receiving the
35 report or information agrees in writing to hold the information
36 confidential.

37 F. Except as provided in THIS SUBSECTION AND subsections E and I of
38 this section, documents, materials or other information, including all
39 working papers and copies thereof, created, produced or obtained by or
40 disclosed to the director or the director's deputies, assistants or
41 examiners in the course of an examination or in the course of analysis of
42 the financial condition or market conduct of an insurer are confidential
43 and privileged, are not subject to title 39, chapter 1, article 2, are not
44 subject to subpoena and are not subject to discovery or admissible in
45 evidence in a private civil action. The director may use the documents,

1 materials or other information in the furtherance of any regulatory or
2 legal action brought as part of the director's official duties. THE
3 DIRECTOR SHALL PROVIDE AN INSURER BEING EXAMINED WITH COPIES OF ALL
4 DOCUMENTS, MATERIALS AND OTHER INFORMATION THAT THE DIRECTOR INTENDS TO
5 RELY ON AS EVIDENCE OF AN ALLEGED VIOLATION OF THIS TITLE OR THAT
6 JUSTIFIES ANY REGULATORY OR OTHER ACTION AGAINST THE INSURER TO ALLOW THE
7 INSURER TO REVIEW THE ALLEGED FINDINGS AND MAKE ANY OBJECTIONS PURSUANT TO
8 SUBSECTION B OF THIS SECTION. A DISCLOSURE PURSUANT TO THIS SUBSECTION IS
9 NOT A WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN
10 THE DISCLOSED DOCUMENTS, MATERIALS OR OTHER INFORMATION.

11 G. Documents, materials or other information, including all working
12 papers and copies thereof, in the possession or control of the national
13 association of insurance commissioners or its affiliates are confidential
14 and privileged, are not subject to title 39, chapter 1, article 2, are not
15 subject to subpoena and are not subject to discovery or admissible in
16 evidence in any private civil action if the documents, materials or
17 information are either:

18 1. Created, produced or obtained by or disclosed to the national
19 association of insurance commissioners or its affiliates in the course of
20 assisting the director in the examination or analysis of the financial
21 condition or market conduct of an insurer under this title.

22 2. Disclosed to the national association of insurance commissioners
23 or its affiliates by the director under subsection E or I of this section.

24 H. The director, the director's deputies, assistants or examiners
25 and representatives of the national association of insurance commissioners
26 or its affiliates are prohibited from testifying in any private civil
27 action concerning documents, materials or other information that are
28 confidential and privileged pursuant to subsection F or G of this section.

29 I. The director may:

30 1. Share nonpublic documents, materials or other information with
31 other state, federal and international regulatory agencies, with the
32 national association of insurance commissioners and its affiliates and
33 subsidiaries and with state, federal and international law enforcement
34 authorities if the recipient agrees and warrants that it has the authority
35 to maintain the confidentiality and privileged status of the documents,
36 materials or other information.

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

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

4 J. A disclosure to or by the director pursuant to this section or
 5 as a result of sharing information pursuant to subsection I of this
 6 section is not a waiver of any applicable privilege or claim of
 7 confidentiality in the documents, materials or other information disclosed
 8 or shared.

9 Sec. 26. Section 20-167, Arizona Revised Statutes, is amended to
 10 read:

11 20-167. Fees; definition

12 A. The director shall collect in advance the following fees, ~~as~~
 13 ~~adjusted pursuant to subsection E of this section~~, which are nonrefundable
 14 on payment:

	Not Less Than:	Not More Than:
15		
16 1. For filing charter documents:		
17 (a) Original charter documents,		
18 articles of incorporation,		
19 bylaws, or record of		
20 organization of insurers,		
21 or certified copies thereof,		
22 required to be filed with		
23 the director and not also		
24 subject to filing in the		
25 office of the corporation		
26 commission	\$ 40.00	\$ 115.00
27 (b) Amended charter documents	15.00	45.00
28 (c) No charge or fee shall be		
29 required for filing with		
30 the director any of such		
31 documents also required		
32 by law to be filed in the		
33 office of the corporation		
34 commission		
35 2. Certificate of authority:		
36 (a) Issuance:		
37 Fraternal benefit societies	\$ 15.00	\$ 45.00
38 Medical or hospital service		
39 corporations, health care		
40 services organizations or		
41 prepaid dental plan		
42 organizations	40.00	115.00
43 Mechanical		
44 reimbursement reinsurers	150.00	450.00
45 All other insurers	100.00	295.00

1	(b) Renewal:		
2	Fraternal benefit societies	15.00	45.00
3	Medical or hospital service		
4	corporations, health care		
5	services organizations or		
6	prepaid dental plan		
7	organizations	40.00	115.00
8	Domestic stock life insurers,		
9	domestic stock disability		
10	insurers or domestic stock		
11	life and disability insurers	750.00	2,250.00
12	Domestic life reinsurers,		
13	domestic disability		
14	reinsurers or domestic		
15	life and disability		
16	reinsurers	2,250.00	5,500.00
17	Mechanical reimbursement		
18	reinsurers	2,250.00	5,500.00
19	All other insurers	70.00	205.00
20	3. Certificate of registration as an		
21	administrator or application for		
22	renewal under section 20-485.12	\$ 100.00	\$ 295.00
23	4. Authority to solicit applications		
24	for and issue policies by means		
25	of mechanical vending machines	\$ 30.00	\$ 90.00
26	5. Service company permit	\$ 150.00	\$ 450.00
27	6. Application for motor vehicle		
28	service contract program approval	\$ 150.00	\$ 450.00
29	7. Life care contract application		
30	or annual report	\$ 225.00	\$ 675.00
31	8. Filing annual statement	\$ 150.00	\$ 450.00
32	9. Annual statement filing for		
33	exempt insurer transacting life		
34	insurance, disability insurance		
35	or annuity business pursuant to		
36	section 20-401.05	\$ 65.00	\$ 100.00
37	10. Licenses and examinations:		
38	(a) Licenses:		
39	Surplus lines broker's license,		
40	quadrennially	\$ 600.00	\$1,000.00
41	All other licenses,		
42	quadrennially	60.00	180.00

1	(b) Examinations for license:		
2	Examination on laws and one kind		
3	of insurance	8.00	25.00
4	Examination on laws and two or		
5	more kinds of insurance	15.00	45.00
6	11. Miscellaneous:		
7	Fee accompanying service of		
8	process on director	\$ 8.00	\$ 25.00
9	Certificate of director,		
10	under seal	1.50	5.00
11	Copy of document filed in		
12	director's office, per page	0.50	0.75

13 B. Except as provided in section 20-1098.18, the director shall
 14 deposit, pursuant to sections 35-146 and 35-147, all fees collected
 15 pursuant to this section in the state general fund. A refund is not
 16 allowed for any unused portion of a fee, and the director shall not
 17 prorate fees.

18 C. The license fees prescribed by this section shall be payment in
 19 full of all demands for all state, county, district and municipal license
 20 fees, license taxes, business privilege taxes and business privilege fees
 21 and charges of every kind.

22 D. The director may contract for the examination for the licensing
 23 of adjusters, insurance producers, bail bond agents, risk management
 24 consultants and surplus lines brokers. If the director does so, the fee
 25 for examinations for licenses pursuant to this section is payable directly
 26 to the contractor by the applicant for examination. The director may
 27 agree to a reasonable examination fee to be charged by the contractor.
 28 The fee may exceed the amounts prescribed in this section.

~~29 E. Each December 1, if the revenue collected from fees during the
 30 prior fiscal year is less than ninety-five percent or more than one
 31 hundred ten percent of the appropriated budget for the current fiscal
 32 year, the director shall revise all fees within the limits prescribed by
 33 subsection A of this section on a uniform percentage basis among all fee
 34 categories. The director shall revise the fees in such a manner that the
 35 revenue derived from the fees during the subsequent fiscal year equals at
 36 least ninety-five percent but not more than one hundred ten percent of the
 37 appropriated budget for the current fiscal year. The revised fee schedule
 38 is effective July 1 of the subsequent fiscal year. For the purposes of
 39 this subsection, appropriated budget does not include any appropriation
 40 for the operation of the captive insurance program established under
 41 chapter 4, article 14 of this title. Any fees collected from captive
 42 insurers pursuant to subsection G of this section shall not be counted for
 43 the purpose of meeting the requirement of this subsection to recover at
 44 least ninety-five but not more than one hundred ten percent of the
 45 department's appropriated budget.~~

1 ~~F.~~ E. The director may contract with a voluntary domestic
2 organization of surplus lines brokers to perform any transaction
3 prescribed in chapter 2, article 5 of this title, including the acceptance
4 or maintenance of the reports required by section 20-408. The director
5 may allow the contractor to charge a stamping fee. The surplus lines
6 broker shall pay the stamping fee established pursuant to this section
7 directly to the contractor.

8 ~~G.~~ F. Captive insurers shall pay certificate of authority issuance
9 and renewal fees as prescribed by the director.

10 ~~H.~~ G. For the purposes of ~~subsection F of~~ this section, "stamping
11 fee" means a reasonable filing fee charged by a contractor for any
12 transaction prescribed in chapter 2, article 5 of this title, including
13 the acceptance or maintenance of the reports required by section 20-408.

14 Sec. 27. Section 20-169, Arizona Revised Statutes, is amended to
15 read:

16 20-169. Supervision by director

17 ~~Any other provision of law to the contrary~~ Notwithstanding ANY OTHER
18 LAW, if ~~upon~~ ON examination pursuant to this article or at any other time
19 it appears to or is in the opinion of the director that any insurance
20 company is insolvent, or its condition is such as to render the
21 continuance of its business hazardous to the public or to holders of its
22 policies or certificates of insurance, or if ~~such~~ THE INSURANCE company
23 appears to have exceeded its powers or has failed to comply with the law,
24 or if ~~such~~ THE insurance company gives its consent, the director ~~shall~~
25 ~~upon his~~, ON THE DIRECTOR'S determination, SHALL DO ALL OF THE FOLLOWING:

26 1. Notify the insurance company of ~~his~~ THE DIRECTOR'S
27 determination. ~~;~~

28 2. Furnish to the insurance company a written list of the
29 director's requirements to abate ~~his~~ THE determination. ~~;~~ ~~and~~

30 3. If the director makes a further determination to supervise ~~he~~,
31 THE DIRECTOR shall notify the insurance company that it is under the
32 supervision of the department of insurance AND FINANCIAL INSTITUTIONS and
33 that the director is applying and effecting the provisions of this
34 article. ~~Such~~ THE insurance company shall comply with the lawful
35 requirements of the director and, if placed under supervision, shall under
36 supervision have sixty days from the date of notice within which to comply
37 with the requirements of the director, subject ~~however~~ to the provisions
38 of this article. ~~in~~ IF the ~~event of such~~ insurance ~~company's failure~~
39 COMPANY FAILS to comply within such time, the director ~~acting for himself~~,
40 or ~~through~~ a conservator appointed by the director for that purpose, shall
41 immediately, after due and proper notice and hearing, take charge as
42 conservator of the insurance company and all of the property and effects
43 ~~thereof~~ OF THE INSURANCE COMPANY.

1 Sec. 28. Section 20-183, Arizona Revised Statutes, is amended to
2 read:

3 20-183. Report procedures and deadlines

4 A person or a legislator advocating a legislative proposal pursuant
5 to section 20-181 shall submit a written report explaining the factors
6 prescribed in section 20-182 to the joint legislative audit committee
7 established by section 41-1279. The report must be submitted on or before
8 September 1 before the start of the legislative session for which the
9 legislation is proposed. The joint legislative audit committee shall
10 assign the written report to the appropriate legislative committee of
11 reference established pursuant to section 41-2954. The legislative
12 committee of reference shall hold at least one hearing and take public
13 testimony after receiving the report. The legislative committee of
14 reference shall study the written report and deliver a report of its
15 recommendations to the joint legislative audit committee, the speaker of
16 the house of representatives, the president of the senate, the governor
17 and the director of the department of insurance **AND FINANCIAL INSTITUTIONS**
18 on or before December 1 of the year in which the report is submitted.

19 Sec. 29. Section 20-224, Arizona Revised Statutes, is amended to
20 read:

21 20-224. Premium tax; reports

22 A. On or before March 1 of each year, each authorized domestic
23 insurer, each other insurer and each formerly authorized insurer referred
24 to in section 20-206, subsection B shall file with the director a report
25 in a form prescribed by the director showing total direct premium income
26 including policy membership and other fees and all other considerations
27 for insurance from all classes of business whether designated as a premium
28 or otherwise received by it during the preceding calendar year on account
29 of policies and contracts covering property, subjects or risks located,
30 resident or to be performed in this state, after deducting from such total
31 direct premium income applicable cancellations, returned premiums, the
32 amount of reduction in or refund of premiums allowed to industrial life
33 policyholders for payment of premiums direct to an office of the insurer
34 and all policy dividends, refunds, savings coupons and other similar
35 returns paid or credited to policyholders within this state and not
36 reapplied as premiums for new, additional or extended insurance. No
37 deduction shall be made of the cash surrender values of policies or
38 contracts. Considerations received on annuity contracts, as well as the
39 unabsorbed portion of any premium deposit, shall not be included in total
40 direct premium income, and neither shall be subject to tax. The report
41 shall separately indicate the total direct fire insurance premium income
42 received from property located in the incorporated cities and towns
43 certified by the office of the state fire marshal pursuant to section
44 9-951, subsection B, as procuring the services of a private fire company.

1 B. Coincident with the filing of the tax report, each insurer shall
2 pay to the director for deposit, pursuant to sections 35-146 and 35-147, a
3 tax on such net premiums at the following rates:

4 1. For fire insurance:

5 (a) On property located in a city or town certified by the office
6 of the state fire marshal pursuant to section 9-951, subsection B, as
7 procuring the services of a private fire company, .66 percent.

8 (b) On all other property, 2.2 percent.

9 2. For disability insurance, 2.0 percent.

10 3. For health care service plans, the rates prescribed under
11 sections 20-837, 20-1010 and 20-1060.

12 4. For other insurance:

13 (a) For premiums received in calendar year 2016, 1.95 percent.

14 (b) For premiums received in calendar year 2017, 1.90 percent.

15 (c) For premiums received in calendar year 2018, 1.85 percent.

16 (d) For premiums received in calendar year 2019, 1.80 percent.

17 (e) For premiums received in calendar year 2020, 1.75 percent.

18 (f) For premiums received in calendar year 2021 and for each
19 subsequent calendar year, 1.70 percent.

20 C. Any payments of tax pursuant to subsection F of this section
21 shall be deducted from the tax payable pursuant to subsection B of this
22 section. Each insurer shall reflect the cost savings attributable to the
23 lower tax in fire insurance premiums charged on property located in an
24 incorporated city or town certified by the office of the state fire
25 marshal pursuant to section 9-951, subsection B, as procuring the services
26 of a private fire company. No insurer shall be liable to the state or to
27 any other person, or shall be subject to regulatory action, relating to
28 the calculation or submittal of fire insurance premium taxes based in good
29 faith on the office of the state fire marshal's certification.

30 D. Eighty-five percent of the tax paid under this section by an
31 insurer on account of premiums received for fire insurance shall be
32 separately specified in the report and shall be apportioned in the manner
33 provided by sections 9-951, 9-952 and 9-972, except that all of the tax so
34 allocated to a fund of a municipality or fire district that has no
35 volunteer firefighters or pension obligations to volunteer firefighters
36 shall be appropriated to the account of the municipality or fire district
37 in the public safety personnel retirement system and all of the tax so
38 allocated to a fund of a municipality or fire district that has both
39 full-time paid firefighters and volunteer firefighters or pension
40 obligations to full-time paid firefighters or volunteer firefighters shall
41 be appropriated to the account of the municipality or fire district in the
42 public safety personnel retirement system where it shall be reallocated by
43 actuarial procedures proportionately to the municipality or fire district
44 for the account of the full-time paid firefighters and to the municipality
45 or fire district for the account of the volunteer firefighters. A

1 municipality or fire district shall provide to the public safety personnel
2 retirement system all information that the system deems necessary to
3 perform the reallocation prescribed by this section. A full accounting of
4 the reallocation shall be forwarded to the municipality or fire district
5 and its local boards.

6 E. This section ~~shall~~ DOES not apply to title insurance. ~~, and such~~
7 TITLE insurers shall be taxed as provided in section 20-1566.

8 F. Any insurer that paid or is required to pay a tax of ~~fifty~~
9 ~~thousand dollars~~ \$50,000 or more on net premiums received during the
10 preceding calendar year, pursuant to subsection B of this section and
11 sections 20-224.01, 20-837, 20-1010, 20-1060 and 20-1097.07, shall file on
12 or before the fifteenth day of each month from March through August a
13 report for that month, on a form prescribed by the director, accompanied
14 by a payment in an amount equal to fifteen percent of the amount paid or
15 required to be paid during the preceding calendar year pursuant to
16 subsection B of this section and sections 20-224.01, 20-837, 20-1010,
17 20-1060 and 20-1097.07. The payments are due and payable on or before the
18 fifteenth day of each month and shall be made to the director for deposit,
19 pursuant to sections 35-146 and 35-147.

20 G. Except for the tax paid on fire insurance premiums pursuant to
21 subsections B and D of this section, an insurer may claim a premium tax
22 credit if the insurer qualifies for a credit pursuant to section
23 20-224.03, 20-224.06 or 20-224.07.

24 H. On receipt of a properly documented claim, a refund shall be
25 provided to an insurer from available funds for the excess amount of any
26 fire insurance premium improperly paid by the insurer. The insurer shall
27 reflect the refund in the fire insurance premiums charged on the property
28 that was charged the excessive amount.

29 I. On or before September 30 of each year, the director of THE
30 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS shall report to the
31 directors of the joint legislative budget committee and the governor's
32 office of strategic planning and budgeting on the amount of insurance
33 premium tax credits established by sections 20-224.03, 20-224.05,
34 20-224.06 and 20-224.07 that were used during the previous fiscal year.

35 J. For the purposes of:

36 1. Subsection B of this section, fire insurance is one hundred
37 percent of fire lines, forty percent of commercial multiple peril
38 nonliability lines, thirty-five percent of homeowners' multiple peril
39 lines, twenty-five percent of farm owners' multiple peril lines and twenty
40 percent of allied lines.

41 2. Section 20-416, fire insurance is eighty-five percent of fire
42 and allied lines.

43 K. From and after December 31, 2017, the director may require that
44 reports and payments under this section be submitted electronically. If
45 the director requires electronic submission, the director shall include on

1 the department's official website a list of one or more acceptable
2 third-party services through which an insurer must submit reports and
3 payments.

4 Sec. 30. Section 20-224.03, Arizona Revised Statutes, is amended to
5 read:

6 20-224.03. Premium tax credit for new employment

7 A. For taxable years beginning from and after June 30, 2011, a
8 credit is allowed against the premium tax liability imposed pursuant to
9 section 20-224, 20-837, 20-1010, 20-1060 or 20-1097.07 for net increases
10 in full-time employees residing in this state and hired in qualified
11 employment positions in this state as computed and certified by the
12 Arizona commerce authority pursuant to section 41-1525. For the purposes
13 of this section and section 41-1525:

14 1. A tax credit is not allowed against the portion of the tax
15 payable to the fire fighters' relief and pension fund pursuant to section
16 20-224 or the portion of the tax payable to the public safety personnel
17 retirement system pursuant to section 20-224.01.

18 2. A reciprocal insurer and its attorney-in-fact are considered to
19 be the same entity for the purposes of calculating the tax credit under
20 this section.

21 B. Subject to subsection F of this section, the amount of the tax
22 credit is equal to:

23 1. ~~Three thousand dollars~~ \$3,000 for each full-time employee hired
24 in a qualified employment position in the first year or partial year of
25 employment. Employees hired in the last ninety days of the taxable year
26 are excluded for that taxable year and are considered to be new employees
27 in the following taxable year.

28 2. ~~Three thousand dollars~~ \$3,000 for each full-time employee in a
29 qualified employment position for the full taxable year in the second year
30 of continuous employment.

31 3. ~~Three thousand dollars~~ \$3,000 for each full-time employee in a
32 qualified employment position for the full taxable year in the third year
33 of continuous employment.

34 C. The capital investment and the new qualified employment
35 positions requirements of section 41-1525, subsection B must be
36 accomplished within twelve months after the start of the required capital
37 investment. A credit may not be claimed until both requirements are met.
38 A business that meets the requirements of section 41-1525, subsection B
39 for a location is eligible to claim first year credits for three years
40 beginning with the taxable year in which those requirements are completed.
41 Employees hired at the location before the beginning of the taxable year
42 but during the twelve-month period allowed in this subsection are
43 considered to be new employees for the taxable year in which all of those
44 requirements are completed. The employees that are considered to be new
45 employees for the taxable year under this subsection shall not be included

1 in the average number of full-time employees during the immediately
2 preceding taxable year until the taxable year in which all of the
3 requirements of section 41-1525, subsection B are completed. An employee
4 working at a temporary worksite in this state while the designated
5 location is under construction is considered to be working at the
6 designated location if all of the following occur:

7 1. The employee is hired after the start of the required investment
8 at the designated location.

9 2. The employee is hired to work at the designated location after
10 it is completed.

11 3. The payroll for the employees destined for the designated
12 location is segregated from other employees.

13 4. The employee is moved to the designated location within thirty
14 days after its completion.

15 D. To qualify for a credit under this section, the insurer and the
16 employment positions must meet the requirements prescribed by section
17 41-1525.

18 E. A credit is allowed for employment in the second and third year
19 only for qualified employment positions for which a credit was claimed and
20 allowed in the first year.

21 F. The net increase in the number of qualified employment positions
22 is the lesser of the total number of filled qualified employment positions
23 created at the designated location or locations during the taxable year or
24 the difference between the average number of full-time employees in this
25 state in the current taxable year and the average number of full-time
26 employees in this state during the immediately preceding taxable year.
27 The net increase in the number of qualified employment positions computed
28 under this subsection may not exceed the difference between the average
29 number of full-time employees in this state in the current taxable year
30 and the average number of full-time employees in this state during the
31 immediately preceding taxable year.

32 G. If the allowable tax credit exceeds the state premium tax
33 liability, the amount of the claim not used as an offset against the state
34 premium tax liability may be carried forward as a tax credit against
35 subsequent years' state premium tax liability for a period not exceeding
36 five taxable years.

37 H. If the business is sold or changes ownership through
38 reorganization, stock purchase or merger, the new taxpayer may claim first
39 year credits only for the qualified employment positions that it created
40 and filled with an eligible employee after the purchase or reorganization
41 was complete. If a person purchases a taxpayer that had qualified for
42 first or second year credits or if an insurance business changes ownership
43 through reorganization, stock purchase or merger, the new taxpayer may
44 claim the second or third year credits if it meets other eligibility
45 requirements of this section. Credits for which a taxpayer qualified

1 before the changes described in this subsection are terminated and lost at
2 the time the changes are implemented.

3 I. An insurer that claims a tax credit against state premium tax
4 liability is not required to pay any additional retaliatory tax imposed
5 pursuant to section 20-230 as a result of claiming that tax credit.

6 J. A failure to timely report and certify to the Arizona commerce
7 authority the information prescribed by section 41-1525, subsection E and
8 in the manner prescribed by section 41-1525, subsection F disqualifies the
9 insurer from the credit under this section. The department of insurance
10 AND FINANCIAL INSTITUTIONS shall require written evidence of the timely
11 report to the Arizona commerce authority.

12 K. A tax credit under this section is subject to recovery for a
13 violation described in section 41-1525, subsection H.

14 L. The department may adopt rules necessary for the administration
15 of this section.

16 M. For the purposes of subsection B, paragraphs 2 and 3 of this
17 section, if a full-time employee in the qualified employment position
18 leaves during the taxable year, the employee may be replaced with another
19 new full-time employee in the same employment position and the new
20 employee will be treated as being in the employee's second or third full
21 year of continuous employment for the purposes of the credit under this
22 section if BOTH OF THE FOLLOWING APPLY:

23 1. The total time the position was vacant from the date the
24 employment position was originally filled to the end of the current tax
25 year totals ninety days or less.

26 2. The new employee meets all of the same requirements as the
27 original employee was required to meet.

28 Sec. 31. Section 20-224.06, Arizona Revised Statutes, is amended to
29 read:

30 20-224.06. Premium tax credit for contributions to school
31 tuition organization; low-income scholarships

32 A. A credit is allowed against the premium tax liability incurred
33 by an insurer pursuant to section 20-224, 20-837, 20-1010, 20-1060 or
34 20-1097.07 for the amount of voluntary cash contributions made by the
35 insurer during the tax year to a school tuition organization.

36 B. The amount of the credit is the total amount of the insurer's
37 contributions for the tax year under subsection A of this section that is
38 preapproved by the department of revenue pursuant to section 43-1183,
39 subsection D.

40 C. The procedures, conditions, limitations, definitions and other
41 requirements prescribed by section 43-1183 and title 43, chapter 15 apply
42 to THE FOLLOWING:

- 43 1. Insurers that claim a credit under this section.
44 2. Claims for credit under this section.

1 3. School tuition organizations that receive contributions from
2 insurers for the purposes of this section.

3 4. Schools that qualify to receive scholarship monies contributed
4 by insurers for the purposes of this section.

5 5. Students who receive scholarships from monies contributed by
6 insurers for the purposes of this section.

7 D. If the allowable amount of a credit under this section exceeds
8 the insurer's state premium tax liability, the amount of the claim not
9 used to offset the premium tax liability may be carried forward as a
10 credit against the insurer's subsequent years' premium tax liability for a
11 period not to exceed five taxable years.

12 E. A credit is not allowed if the insurer designates the
13 contribution for the direct benefit of any specific student.

14 F. An insurer that claims a tax credit against state premium tax
15 liability is not required to pay any additional retaliatory tax imposed
16 pursuant to section 20-230 as a result of claiming that tax credit.

17 G. The department of insurance **AND FINANCIAL INSTITUTIONS**, with the
18 cooperation of the department of revenue, shall adopt rules and publish
19 and prescribe forms and procedures necessary for the administration of
20 this section.

21 Sec. 32. Section 20-224.07, Arizona Revised Statutes, is amended to
22 read:

23 20-224.07. Premium tax credit for contributions to school
24 tuition organization; displaced students and
25 students with disabilities

26 A. A credit is allowed against the premium tax liability incurred
27 by an insurer pursuant to section 20-224, 20-837, 20-1010, 20-1060 or
28 20-1097.07 for the amount of voluntary cash contributions made by the
29 insurer during the tax year to a school tuition organization.

30 B. The amount of the credit is the total amount of the insurer's
31 contributions for the tax year under subsection A of this section that is
32 preapproved by the department of revenue pursuant to section 43-1184,
33 subsection D.

34 C. The procedures, conditions, limitations, definitions and other
35 requirements prescribed by section 43-1184 and title 43, chapter 15 apply
36 to:

- 37 1. Insurers that claim a credit under this section.
- 38 2. Claims for credit under this section.
- 39 3. School tuition organizations that receive contributions from
40 insurers for the purposes of this section.
- 41 4. Qualified schools that participate under this section.
- 42 5. Students who receive scholarships from monies contributed by
43 insurers for the purposes of this section.

1 D. If the allowable amount of a credit under this section exceeds
2 the insurer's state premium tax liability, the amount of the claim not
3 used to offset the premium tax liability may be carried forward as a
4 credit against the insurer's subsequent years' premium tax liability for a
5 period not to exceed five taxable years.

6 E. A credit is not allowed if the insurer designates the
7 contribution for the direct benefit of any specific student.

8 F. An insurer that claims a tax credit against state premium tax
9 liability is not required to pay any additional retaliatory tax imposed
10 pursuant to section 20-230 as a result of claiming that tax credit.

11 G. The department of insurance AND FINANCIAL INSTITUTIONS, with the
12 cooperation of the department of revenue, shall adopt rules necessary for
13 the administration of this section.

14 Sec. 33. Section 20-237, Arizona Revised Statutes, is amended to
15 read:

16 20-237. Failure to provide information; penalty

17 If after a hearing and certification by the department of
18 transportation the director of THE DEPARTMENT OF insurance AND FINANCIAL
19 INSTITUTIONS finds that an insurer has failed to comply with ~~the~~
20 ~~provisions of~~ section 28-4148, the director of THE DEPARTMENT OF insurance
21 AND FINANCIAL INSTITUTIONS shall impose a civil penalty for each violation
22 of not more than ~~two hundred fifty dollars~~ \$250 per day for each day the
23 insurer is in violation of section 28-4148. The director of THE
24 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS also may suspend the
25 insurer's certificate of authority until the insurer complies with ~~the~~
26 ~~provisions of~~ section 28-4148. No penalty shall be imposed pursuant to
27 this section if noncompliance is determined by the director of THE
28 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS to have been
29 inadvertent or accidental. The burden of proving that the noncompliance
30 was inadvertent or accidental shall be on the insurer.

31 Sec. 34. Section 20-261.03, Arizona Revised Statutes, is amended to
32 read:

33 20-261.03. Qualified United States financial institution;
34 definitions

35 A. For the purposes of section 20-261.02, subsection B and section
36 20-261.06, subsection B, "qualified United States financial institution"
37 means an institution that:

38 1. Is organized, or in the case of a United States office of a
39 foreign banking organization, licensed, under the laws of the United
40 States or any state of the United States.

41 2. Is regulated, supervised and examined by federal or state
42 authorities having regulatory authority over banks and trust companies.

43 3. According to the director of THE DEPARTMENT OF insurance AND
44 FINANCIAL INSTITUTIONS or the securities valuation office of the national
45 association of insurance commissioners, meets the standards of financial

1 condition and standing that are considered necessary and appropriate to
2 regulate the quality of financial institutions whose letters of credit
3 will be acceptable to the director.

4 B. For the purposes of this article, except for the purposes of
5 section 20-261.02, subsection B and section 20-261.06, subsection B,
6 "qualified United States financial institution" means an institution that:

7 1. Is organized, or in the case of a United States branch or agency
8 office of a foreign banking organization, licensed, under the laws of the
9 United States or any state of the United States that has been granted
10 authority to operate with fiduciary powers.

11 2. Is regulated, supervised and examined by federal or state
12 authorities having regulatory authority over banks and trust companies.

13 Sec. 35. Section 20-265, Arizona Revised Statutes, is amended to
14 read:

15 20-265. Motor vehicle insurance; premium and fee comparisons
16 and complaint ratios

17 The department of insurance AND FINANCIAL INSTITUTIONS shall compile
18 comparisons of ~~premium~~ PREMIUMS and fees charged at policy inception and
19 complaint ratios for motor vehicle insurance policies that insure six or
20 fewer motor vehicles. The comparisons shall reflect premiums and fees
21 associated with the inception of a policy for not fewer than five
22 hypothetical insureds for urban areas and five hypothetical insureds for
23 rural areas. The department of insurance AND FINANCIAL INSTITUTIONS shall
24 forward copies of the comparisons of ~~premium~~ PREMIUMS and fees charged at
25 policy inception and complaint ratios to the department of transportation.
26 The director of the department of transportation in consultation with the
27 director of the department of insurance AND FINANCIAL INSTITUTIONS shall
28 make the copies available to the public. The department of insurance AND
29 FINANCIAL INSTITUTIONS may include in the ~~premium~~ comparison information
30 consumer information that describes the nature of bodily injury coverage,
31 property damage coverage, collision coverage, comprehensive coverage,
32 medical payment coverage, uninsured motorist coverage and underinsured
33 motorist coverage.

34 Sec. 36. Section 20-285, Arizona Revised Statutes, is amended to
35 read:

36 20-285. Application for license

37 A. A person who applies for a resident insurance producer license
38 shall apply to the director on a form prescribed by the director and shall
39 declare under penalty of denial, suspension or revocation of the license
40 that the statements made in the application are true, correct and complete
41 to the best of the knowledge and belief of the applicant or the
42 applicant's duly authorized representative. The applicant shall provide
43 information concerning the applicant's identity, personal history,
44 business record and experience in insurance and any other pertinent fact
45 the director requires.

1 B. Before the director approves the application of the individual,
2 the director shall find that the individual:

- 3 1. Is at least eighteen years of age.
- 4 2. Has not committed any act that is a ground for denial,
5 suspension or revocation prescribed in section 20-295.
- 6 3. Has paid the fees prescribed in section 20-167.
- 7 4. Has successfully passed the examinations for the lines of
8 authority for which the individual has applied.

9 C. Before the director approves the application of a business
10 entity, the director shall find that the business entity:

- 11 1. Has paid the fees prescribed in section 20-167.
- 12 2. Will be acting within the scope of its partnership agreement,
13 articles of incorporation or other chartering documents when the business
14 entity transacts business under the license.
- 15 3. Has designated an individually licensed insurance producer who
16 is responsible for the business entity's compliance with the insurance
17 laws of this state.

18 D. The application of a business entity shall also include the
19 names of all members, officers and directors of the business entity. For
20 any individual who is identified pursuant to this subsection and pursuant
21 to subsection C, paragraph 3 of this section, the director may require the
22 applicant to provide the information required for a license as an
23 individual.

24 E. Before the director grants a license, the director may require
25 the applicant to:

- 26 1. Provide any document that is reasonably necessary to verify the
27 information that is contained in an application and other information
28 including prior criminal records.
- 29 2. Submit a full set of fingerprints to the department. The
30 department of insurance **AND FINANCIAL INSTITUTIONS** shall submit the
31 fingerprints to the department of public safety for the purpose of
32 obtaining a state and federal criminal records check pursuant to section
33 41-1750 and Public Law 92-544. The department of public safety may
34 exchange this fingerprint data with the federal bureau of investigation.

35 F. A nonresident person who is licensed as an insurance producer in
36 another state, who becomes a resident of this state and who continues to
37 act as an insurance producer shall apply to become a resident licensee
38 pursuant to this section within ninety days.

39 Sec. 37. Section 20-289, Arizona Revised Statutes, is amended to
40 read:

41 **20-289. Expiration; surrender; renewal**

42 A. Any license that is issued pursuant to this article, other than
43 a temporary license, continues in force until it expires or the director
44 suspends, revokes or terminates the license. The license is also subject
45 to renewal pursuant to this section.

1 B. A license that is issued or renewed pursuant to this article or
2 a license that is issued or renewed pursuant to chapter 6, article 9 of
3 this title expires quadrennially as follows:

4 1. If the licensee is an individual, on the last day of the month
5 of the licensee's birthday, but not less than three years and not more
6 than four years after the last day of the month in which the license is
7 issued or is required to be renewed.

8 2. If the licensee is a business entity, on the last day of the
9 same month four years after the issuance or renewal due date of the
10 license as provided pursuant to this article.

11 C. The director may renew a license if the director receives from
12 the licensee all of the following on or before the license expiration
13 date:

14 1. An application on a form approved by the director.

15 2. The license fee prescribed in section 20-167.

16 3. Evidence that the licensee has complied with the continuing
17 education requirements prescribed in chapter 18 of this title.

18 D. Before renewing a license, the director may require the
19 applicant to:

20 1. Provide all documents that are reasonably necessary to verify
21 the information that is contained in the application and any other
22 information including prior criminal records.

23 2. Submit a full set of fingerprints to the department. The
24 department of insurance **AND FINANCIAL INSTITUTIONS** shall submit the
25 fingerprints to the department of public safety for the purpose of
26 obtaining a state and federal criminal records check pursuant to section
27 41-1750 and Public Law 92-544. The department of public safety may
28 exchange this fingerprint data with the federal bureau of investigation.

29 E. Any license for which the director does not receive timely
30 application for renewal and full payment of fees expires at midnight on
31 the renewal date. During the year after the expiration of a license under
32 this section, a person who otherwise meets the qualifications for a
33 license may renew an expired license by filing with the director a renewal
34 application, the quadrennial license fee and an additional ~~one hundred~~
35 ~~dollars~~ \$100 as a late renewal fee. Any application that is received
36 during this ~~one year~~ **ONE-YEAR** period for the same license that expired
37 under this section is deemed a renewal application. Any application that
38 is received after the ~~one year~~ **ONE-YEAR** period for the same license that
39 expired under this section is deemed a new application.

40 F. On the written request of a person who is licensed pursuant to
41 this article, the director may accept the voluntary surrender of the
42 person's authority to transact one or more lines of insurance or of the
43 person's entire license. A person who surrenders an authority or a
44 license under this subsection shall not reapply for the same authority or
45 license for at least one year after the date of the surrender.

1 Sec. 38. Section 20-336.03, Arizona Revised Statutes, is amended to
2 read:

3 20-336.03. Navigators; licensing

4 A. A person who applies for a navigator license shall apply to the
5 director on a form prescribed by the director and shall declare under
6 penalty of license denial, suspension or revocation that the statements
7 made in the application are true, correct and complete to the best of the
8 knowledge and belief of the applicant or the applicant's duly authorized
9 representative. The applicant shall provide information concerning the
10 applicant's identity, personal history, business record and experience in
11 insurance and any other pertinent fact the director requires.

12 B. Before the director approves an individual's navigator
13 application, the director shall find that the individual:

14 1. Is at least eighteen years of age.

15 2. Has not committed any act that is a ground for license denial,
16 suspension or revocation as prescribed in section 20-295 and has not been
17 convicted of a misdemeanor involving fraud or dishonesty.

18 3. Has provided evidence of navigator certification from the United
19 States department of health and human services.

20 4. Has submitted a full set of fingerprints to the director and
21 successfully completed a criminal history records check in a manner
22 prescribed by the director.

23 5. Has identified the entity with which it is affiliated and
24 supervised.

25 C. A business entity that acts as a navigator, supervises the
26 activities of individual navigators or receives funding to perform
27 navigator activities shall obtain a navigator entity license. Before the
28 director approves a business entity's navigator application, the director
29 shall find that the business entity:

30 1. Has not committed any act that is a ground for license denial,
31 suspension or revocation as prescribed in section 20-295 and has not been
32 convicted of a misdemeanor involving fraud or dishonesty.

33 2. Has designated an individually licensed navigator who is
34 responsible for the business entity's compliance with the insurance laws
35 of this state.

36 D. A business entity's navigator application shall also include the
37 names of all members, officers and directors of the business entity. For
38 any individual who is identified pursuant to this subsection, the director
39 may require the applicant to provide the information required for a
40 license as an individual.

41 E. The department of insurance **AND FINANCIAL INSTITUTIONS** shall
42 submit the fingerprints received pursuant to subsection B of this section
43 to the department of public safety for the purpose of obtaining a state
44 and federal criminal records check pursuant to section 41-1750 and Public
45 Law 92-544. The department of public safety may exchange the fingerprint

1 data it receives pursuant to this subsection with the federal bureau of
2 investigation.

3 F. Unless the person is licensed for that line of authority
4 pursuant to this title, a navigator may not:

5 1. Sell, solicit or negotiate insurance in this state for any class
6 or classes of insurance.

7 2. Recommend, endorse or offer opinions about the benefits, terms
8 and features of a particular health benefit plan or offer an opinion about
9 which health benefit plan is better or worse for a particular individual
10 or employer.

11 3. Provide any information or services related to a health benefit
12 plan or another product not offered in the exchange.

13 4. Engage in any unfair method of competition or any fraudulent,
14 deceptive or dishonest act or practice.

15 G. The expiration date for a navigator license issued to a person
16 who also holds a license pursuant to this title is the same as the
17 expiration date for the insurance producer license.

18 Sec. 39. Section 20-336.04, Arizona Revised Statutes, is amended to
19 read:

20 20-336.04. Certified application counselors; licensing

21 A. An individual who applies for a certified application counselor
22 license shall apply to the director on a form prescribed by the director
23 and shall declare under penalty of license denial, suspension or
24 revocation that the statements made in the application are true, correct
25 and complete to the best of the knowledge and belief of the applicant or
26 the applicant's duly authorized representative. The applicant shall
27 provide information concerning the applicant's identity, personal history,
28 business record and experience in insurance and any other pertinent fact
29 the director requires.

30 B. Before the director approves an individual's certified
31 application counselor application, the director shall find that the
32 individual:

33 1. Is at least eighteen years of age.

34 2. Has not committed any act that is a ground for license denial,
35 suspension or revocation as prescribed in section 20-295 and has not been
36 convicted of a misdemeanor involving fraud or dishonesty.

37 3. Has met the standards and provided evidence of certification as
38 prescribed by 45 Code of Federal Regulations section 155.225.

39 4. Has submitted a full set of fingerprints to the director and
40 successfully completed a criminal history records check in a manner
41 prescribed by the director.

42 5. Has identified the entity with which the individual is
43 affiliated and supervised.

44 C. The department of insurance **AND FINANCIAL INSTITUTIONS** shall
45 submit the fingerprints received pursuant to subsection B of this section

1 to the department of public safety for the purpose of obtaining a state
2 and federal criminal records check pursuant to section 41-1750 and Public
3 Law 92-544. The department of public safety may exchange the fingerprint
4 data it receives pursuant to this subsection with the federal bureau of
5 investigation.

6 D. Unless the person is licensed for that line of authority
7 pursuant to this title, a certified application counselor may not:

8 1. Sell, solicit or negotiate insurance in this state for any class
9 or classes of insurance.

10 2. Recommend, endorse or offer opinions about the benefits, terms
11 and features of a particular health benefit plan or offer an opinion about
12 which health benefit plan is better or worse for a particular individual
13 or employer.

14 3. Provide any information or services related to a health benefit
15 plan or another product not offered in the exchange.

16 4. Engage in any unfair method of competition or any fraudulent,
17 deceptive or dishonest act or practice.

18 E. The expiration date for a certified application counselor
19 license issued to a person who also holds a license pursuant to this title
20 is the same as the expiration date for the insurance producer license.

21 Sec. 40. Section 20-340.01, Arizona Revised Statutes, is amended to
22 read:

23 20-340.01. Bail bond agents; licensure; business entities;
24 place of business; receipt; maintenance of
25 records

26 A. A person shall not act as a bail bond agent in this state unless
27 the person is licensed by the director in accordance with this article.
28 An applicant for a bail bond agent license shall submit an affidavit
29 attesting to the applicant's residency in this state for at least one year
30 immediately preceding the date of application.

31 B. Each applicant for a bail bond agent license shall submit a full
32 set of fingerprints to the department of insurance **AND FINANCIAL**
33 **INSTITUTIONS** for the purpose of obtaining a state and federal criminal
34 records check pursuant to section 41-1750 and Public Law 92-544. The
35 department of public safety may exchange this fingerprint data with the
36 federal bureau of investigation. The department of insurance **AND**
37 **FINANCIAL INSTITUTIONS** shall not issue a license until it receives the
38 state and federal criminal history records check and the applicant is
39 qualified for licensure.

40 C. The director shall not license a resident business entity as a
41 bail bond agent unless each owner and shareholder is individually licensed
42 as a bail bond agent.

43 D. A person who is licensed as a bail bond agent in this state is
44 not authorized in this state to transact civil bonds in connection with
45 contracts, administrative proceedings or other noncriminal matters on

1 behalf of a surety insurer unless the bail bond agent is also licensed as
2 a casualty producer in this state.

3 E. Each bail bond agent shall have and maintain a place of business
4 in this state that is accessible to the public and where the bail bond
5 agent principally conducts transactions under the agent's license.

6 F. As a minimum requirement for permanent office records, each bail
7 bond agent and general lines agent who is engaged in the bail bond
8 business shall maintain a daily bond register that is the original and
9 permanent record of all bonds or undertakings executed by the licensee and
10 that states ALL OF the FOLLOWING:

- 11 1. THE number of the power of attorney form.
- 12 2. THE date the bond was executed.
- 13 3. THE name of the principal.
- 14 4. THE amount of the bond.
- 15 5. THE premium charged.
- 16 6. THE premium reported to the surety company.
- 17 7. THE security or collateral received.
- 18 8. THE date the security or collateral was received and the date
19 released.
- 20 9. THE indemnity agreements.
- 21 10. THE disposition of the bond.
- 22 11. THE date of disposition.

23 G. Each bail bond agent and general lines agent who is engaged in
24 the bail bond business and who accepts monies or any other consideration
25 for any bail bond undertaking shall for each payment received give to the
26 person paying the monies or giving the consideration a prenumbered receipt
27 as evidence of payment. The receipt must state the date, the name of the
28 principal, a description of the consideration or amount of monies received
29 and the purpose for which received, the number of the power of attorney
30 form attached to the bond, the penal sum of the bond, the name of the
31 person making the payment or giving the consideration and the terms under
32 which the monies or other consideration shall be released. Each bail bond
33 agent shall retain a duplicate copy of each receipt issued as part of the
34 agent's records.

35 H. The bail bond agent shall keep at the agent's place of business
36 the usual and customary records pertaining to transactions made under the
37 license. The licensee shall keep all the records as to any particular
38 transaction available and open to the inspection of the director at any
39 business time during the three years immediately after the date of
40 completion of the transaction.

41 I. The director may examine the business practices, books and
42 records of any bail bond agent as often as the director deems appropriate.
43 The bail bond agent shall pay the costs incurred for the examination.

1 Sec. 41. Section 20-340.04, Arizona Revised Statutes, is amended to
2 read:

3 20-340.04. Bail recovery agent prohibitions; criminal records
4 checks

5 A. ~~No~~ A person who has been convicted in any jurisdiction of theft,
6 any felony or any crime involving the carrying or illegal use or
7 possession of a deadly weapon or dangerous instrument may NOT act as a
8 bail recovery agent.

9 B. A person shall submit a full set of fingerprints to the
10 department before acting as a bail recovery agent and shall submit a new
11 set of fingerprints on or before September 1 of every third year after
12 initial identification by the bail bond agent in the report that is filed
13 with the director pursuant to section 13-3885, subsection C. The
14 department of insurance AND FINANCIAL INSTITUTIONS shall submit the
15 fingerprints to the department of public safety for the purpose of
16 obtaining a state and federal criminal records check pursuant to section
17 41-1750 and Public Law 92-544. The fingerprint processing fee collected
18 by the department shall be an amount that does not exceed the cost to the
19 department that is charged by the federal bureau of investigation for the
20 fingerprint processing to obtain federal criminal history record
21 information. The department of public safety may exchange this
22 fingerprint data with the federal bureau of investigation. The department
23 of public safety shall provide the criminal history record information to
24 the director pursuant to section 41-1750.

25 C. Any person who acts as a bail recovery agent on behalf of any
26 bail bond agent and any person who conducts any action relating to a bail
27 recovery or apprehension must be identified by the bail bond agent in the
28 report that is filed with the director pursuant to section 13-3885,
29 subsections C and D.

30 D. A bail bond agent may not employ a bail recovery agent who does
31 not comply with this section and who has not been identified by the bail
32 bond agent in the report that is filed with the director pursuant to
33 section 13-3885, subsection C. A bail bond agent who is not licensed in
34 this state shall contract with a bail bond agent in this state to retain
35 the services of a bail recovery agent in this state.

36 Sec. 42. Section 20-367, Arizona Revised Statutes, is amended to
37 read:

38 20-367. Workers' compensation appeals board; composition

39 A. A workers' compensation appeals board is established in the
40 department.

41 B. The ~~board~~ DIRECTOR shall ~~have~~ APPOINT at least nine but not more
42 than eleven members ~~who are appointed by~~ TO the ~~director~~ BOARD. The
43 members shall serve ~~three year~~ THREE-YEAR terms. A member shall not serve
44 more than two consecutive terms.

1 C. The board shall be comprised of at least:

2 1. The following voting members:

3 (a) Five representatives of insurers, one of which is the insurer
4 with the largest Arizona workers' compensation market share as reported by
5 the department of insurance AND FINANCIAL INSTITUTIONS in its latest
6 annual report. Any licensed rating organization that meets the
7 requirements prescribed in section 20-363, subsection E may nominate from
8 its membership in this state one representative for each complete twenty
9 ~~per cent~~ PERCENT share of the total statewide workers' compensation net
10 written premium for the preceding calendar year attributable to its
11 membership. The director shall appoint any remaining insurer
12 representatives needed to constitute five members as ratably as possible
13 based on distribution of the total statewide workers' compensation net
14 written premium for the preceding calendar year.

15 (b) Four representatives of the public. At least two shall be
16 representatives of employers, and the remaining public members shall be
17 persons who are knowledgeable about workers' compensation insurance.

18 2. One representative from any designated statistical agent who
19 shall serve as a nonvoting advisory member.

20 D. The board members shall select a chairperson who shall call
21 meetings as needed to consider requests made pursuant to section 20-367.01
22 or on request of the director.

23 E. The board shall submit to the director a plan of operation and
24 all amendments that are necessary or suitable to ensure the fair,
25 reasonable and equitable administration of the appeals process. The plan
26 of operation and all amendments are effective on approval by the director.

27 F. Subject to the powers of the director, the board shall review
28 appeals that are filed pursuant to section 20-367.01. The board may
29 affirm the action of the rating organization or insurer or direct any
30 rating organization or insurer to modify or reverse its application of the
31 rating system that resulted in the appeal.

32 G. Members of the board are not eligible to receive compensation or
33 travel expenses under title 38, chapter 4, article 2.

34 Sec. 43. Section 20-398, Arizona Revised Statutes, is amended to
35 read:

36 20-398. Policy forms; approval or disapproval; exemption

37 A. Except for fidelity, surety or guaranty bonds or industrial
38 insurance as provided in section 20-400.10, except for any portion of a
39 property insurance policy that contains wildfire protection services, and
40 except as to inland marine risks that by general custom of the business
41 are not written according to manual rates or rating plans, ~~no~~ A policy
42 form applying to insurance on risks or operations covered by this article
43 may NOT be delivered or issued for delivery unless the form has been filed
44 with the director and either the director has issued, within thirty days,
45 an order affirmatively approving or disapproving the form or, the

1 thirty-day period has elapsed and the director has not disapproved the
2 form as ambiguous, misleading or deceptive. On written notice given
3 within the thirty-day period to the person making the filing, the director
4 may extend the period for up to fifteen additional days to enable the
5 director to complete the review of the filing.

6 B. The director ~~may~~, by order, **MAY** exempt from the requirements of
7 this section, for as long as the director deems proper, any insurance
8 document or form as specified in the order, to which, in the director's
9 opinion, this section may not practicably be applied, or the filing and
10 approval of which are, in the director's opinion, not desirable or
11 necessary for the protection of the public.

12 C. Any property insurance policy containing wildfire protection
13 services, including wildfire mitigation and wildfire suppression services
14 conducted by a private entity, that is issued for delivery to an insured
15 in this state, ~~shall~~ contain a conspicuously stamped or written notice in
16 bold-faced type that states that the wildfire protection services are not
17 subject to review by the department ~~of insurance~~.

18 Sec. 44. Repeal

19 Section 20-400.08, Arizona Revised Statutes, is repealed.

20 Sec. 45. Section 20-400.10, Arizona Revised Statutes, is amended to
21 read:

22 20-400.10. Industrial insureds

23 A. An industrial insured as defined in section 20-401.07 may
24 purchase and an admitted insurer may sell to an industrial insured a
25 policy of insurance that is subject to article 4.1 of this chapter and
26 that is on a form that has not been filed for review or approval by the
27 director pursuant to article 4.1 of this chapter. The admitted insurer
28 may use rates for a policy provided pursuant to this section that have not
29 been filed for review or approval by the director pursuant to article 4.1
30 of this chapter.

31 B. At the inception of each new policy and at the time of each
32 renewal, but not less than annually during the term of the policy, each
33 industrial insured that purchases a policy as provided in this section
34 shall certify to the insurer on a form prescribed by the director that the
35 insured meets the definition of industrial insured prescribed in section
36 20-401.07.

37 C. Except as otherwise provided in section 20-407, subsection B,
38 the insurer shall maintain the certification described in subsection B of
39 this section in the insurer's policy file.

40 D. The following provisions do not apply to insurance issued to
41 industrial insureds pursuant to this section:

- 42 1. Section 20-229.
- 43 2. Section 20-400.
- 44 3. Sections 20-400.01 through 20-400.05 and 20-400.07.
- 45 4. Section 20-448, subsection C.

1 5. Section 20-451.
2 6. Section 20-452.
3 7. Section 20-465.
4 8. Sections 20-1111 through 20-1117.
5 9. Sections 20-1120, 20-1121 and 20-1122.
6 10. ~~Chapter 2~~, Article 4.1 of this ~~title~~ CHAPTER.
7 11. Chapter 3, article 6 of this title.
8 12. Chapter 6, articles 7 and 14 of this title.
9 E. Any policy issued for delivery to an industrial insured in this
10 state by an insurer pursuant to this section shall contain a conspicuously
11 stamped or written notice in bold-faced type that states:
12 Pursuant to Arizona Revised Statutes section 20-400.10, this
13 policy and the rates charged for it have not been filed with
14 or approved by the director of the Arizona department of
15 insurance AND FINANCIAL INSTITUTIONS. Certain provisions of
16 Arizona law, specified in Arizona Revised Statutes section
17 20-400.10, do not apply to this policy. If the insurer that
18 issued this policy becomes insolvent, insureds or claimants
19 will not be eligible for insurance guaranty fund protection
20 pursuant to Arizona Revised Statutes title 20.
21 F. An insurer shall annually file with the insurer's annual
22 statement filed pursuant to section 20-223 on a form prescribed by the
23 director the following information for the prior year ending December 31
24 for all policies issued to industrial insureds pursuant to this section:
25 1. The total number of policies written.
26 2. The total premiums written.
27 3. The total premiums earned.
28 4. The total losses paid.
29 5. The total losses incurred.
30 6. The total number of claims incurred.
31 7. Any other information the director deems appropriate.
32 Sec. 46. Section 20-401.03, Arizona Revised Statutes, is amended to
33 read:
34 20-401.03. Service of process in an action by the director
35 A. Any act of transacting an insurance business in violation of
36 section 20-401.01 by any unauthorized insurer is equivalent to and ~~shall~~
37 ~~constitute~~ CONSTITUTES an irrevocable appointment by such insurer, binding
38 ~~upon him, his~~ ON THE INSURER, THE INSURER'S executor or administrator, or
39 successor in interest if a corporation, of the secretary of state or ~~his~~
40 THE SECRETARY OF STATE'S successor in office to be the true and lawful
41 attorney of such insurer ~~upon~~ ON whom may be served all lawful process in
42 any action, suit or proceeding in any court by the director ~~of insurance~~,
43 through the attorney general, and ~~upon~~ ON whom may be served any notice,
44 order, pleading or process in any proceeding before the director ~~of~~
45 ~~insurance~~ and which arises out of transacting an insurance business in

1 this state by such insurer. Any act of transacting an insurance business
 2 in this state by any unauthorized insurer shall be signification of its
 3 agreement that any such lawful process in such court action, suit or
 4 proceedings and any such notice, order, pleading or process in such
 5 administrative proceeding before the director ~~of insurance~~ so served shall
 6 be of the same legal force and validity as personal service of process in
 7 this state ~~upon~~ ON such insurer.

8 B. Service of process in an action prescribed by subsection A of
 9 this section shall be made by delivering to and leaving with the secretary
 10 of state, or some person in apparent charge of ~~his~~ THE SECRETARY OF
 11 STATE'S office, two copies of such process. Service ~~upon~~ ON the secretary
 12 of state as such attorney shall be service ~~upon~~ ON the principal.

13 C. The secretary of state shall ~~forthwith~~ IMMEDIATELY forward, by
 14 registered or certified mail, one copy of such process or such notice,
 15 order, pleading or process in proceedings before the director to the
 16 defendant in such court proceeding or to whom the notice, order, pleading
 17 or process in such administrative proceeding is addressed or directed at
 18 its last known principal place of business and shall keep a record of all
 19 process so served on ~~him~~ THE SECRETARY OF STATE which shall show the day
 20 and hour of service. Such service shall be sufficient, provided:

21 1. Notice of such service and a copy of the court process or the
 22 notice, order, pleading or process in such administrative proceeding are
 23 sent within ten days thereafter by registered or certified mail by the
 24 director ~~of insurance~~ or the attorney general in the court proceeding or
 25 by the director ~~of insurance~~ in the administrative proceeding to the
 26 defendant in the court proceeding or to whom the notice, order, pleading
 27 or process in such administrative proceeding is addressed or directed at
 28 the last known principal place of business of the defendant in the court
 29 or administrative proceeding.

30 2. The defendant's receipt or receipts, issued by the post office
 31 with which the letter is registered or certified, showing the name of the
 32 sender of the letter and the name and address of the person or insurer to
 33 whom the letter is addressed, and an affidavit of the director ~~of~~
 34 ~~insurance~~ or the attorney general in court proceeding or of the director
 35 ~~of insurance~~ in administrative proceeding, showing compliance therewith,
 36 are filed with the clerk of the court in which such action, suit or
 37 proceeding is pending or with the director in administrative proceedings,
 38 on or before the date the defendant in the court or administrative
 39 proceeding is required to appear or respond thereto, or within such
 40 further time as the court or director ~~of insurance~~ may allow.

41 D. The director ~~of insurance~~ or the attorney general shall not be
 42 entitled to a judgment or a determination by default in any court or
 43 administrative proceeding in which court process or notice, order,
 44 pleading or process in proceedings before the director ~~of insurance~~ is

1 served under this section until the expiration of thirty days from the
2 date of filing of the affidavit of compliance.

3 E. ~~Nothing in~~ This section ~~shall~~ DOES NOT limit or affect the right
4 to serve any process, notice, order or demand ~~upon~~ ON any person or
5 insurer in any other manner now or hereafter ~~permitted~~ ALLOWED by law or
6 rules of the courts.

7 Sec. 47. Section 20-401.04, Arizona Revised Statutes, is amended to
8 read:

9 20-401.04. Action by attorney general to enforce order or
10 decision of court or director; foreign decrees

11 A. The attorney general ~~upon~~, ON request of the director, may
12 proceed in the courts of this state or any reciprocal state to enforce an
13 order or decision in any court proceeding, ~~in~~ OR any administrative
14 proceeding before the director ~~of insurance~~ or any foreign decree.

15 B. The director ~~of insurance of this state~~ shall determine which
16 states and territories qualify as reciprocal states and shall maintain at
17 all times an up-to-date list of ~~such~~ THOSE states.

18 C. A copy of any foreign decree authenticated as provided by the
19 laws of this state may be filed in the office of the clerk of any superior
20 court ~~of~~ IN this state. The clerk, ~~upon~~ ON verifying with the director ~~of~~
21 ~~insurance~~ that the decree or order qualified as a foreign decree, shall
22 treat the foreign decree in the same manner as a decree of a superior
23 court ~~of~~ IN this state. A foreign decree so filed has the same effect and
24 shall be deemed as a decree of a superior court ~~of~~ IN this state, and is
25 subject to the same procedures, defenses and proceedings for reopening,
26 vacating, ~~or~~ staying as a decree of a superior court ~~of~~ IN this state and
27 may be enforced or satisfied in like manner.

28 D. At the time of the filing of the foreign decree, the attorney
29 general shall make and file with the clerk of the court an affidavit
30 setting forth the name and last known post office address of the
31 defendant.

32 E. Promptly ~~upon~~ ON the filing of the foreign decree and the
33 affidavit, the clerk shall mail notice of the filing of the foreign decree
34 to the defendant at the address given and to the director ~~of insurance of~~
35 ~~this state~~ and shall make a note of the mailing in the docket. In
36 addition, the attorney general may mail a notice of the filing of the
37 foreign decree to the defendant and to the director ~~of insurance of this~~
38 ~~state~~ and may file proof of mailing with the clerk. Lack of mailing
39 notice of filing by the clerk ~~shall~~ DOES not affect the enforcement
40 proceedings if proof of mailing by the attorney general has been filed.

41 F. ~~No~~ AN execution or other process for enforcement of a foreign
42 decree filed under this section shall NOT issue until thirty days after
43 the date the decree is filed.

44 G. If the defendant shows the superior court that an appeal from
45 the foreign decree is pending or will be taken, or that a stay of

1 execution has been granted, the court shall stay enforcement of the
2 foreign decree until the appeal is concluded, the time for appeal expires,
3 or the stay of execution expires or is vacated, ~~upon~~ ON proof that the
4 defendant has furnished the security for the satisfaction of the decree
5 required by the state in which it was rendered.

6 H. If the defendant shows the superior court any ground ~~upon~~ ON
7 which enforcement of a decree of any superior court ~~of~~ IN this state would
8 be stayed, the court shall stay enforcement of the foreign decree for an
9 appropriate period, ~~upon~~ ON requiring the same security for satisfaction
10 of the decree ~~which~~ THAT is required in this state.

11 Sec. 48. Section 20-401.05, Arizona Revised Statutes, is amended to
12 read:

13 20-401.05. Certificate of exemption; definitions

14 A. On July 1 of each year, the director shall grant a certificate
15 of exemption to any insurer, employee benefit trust or voluntary
16 employees' beneficiary association transacting life insurance, disability
17 insurance or annuity business, or providing other health or welfare
18 benefits, under the laws of its domicile that:

19 1. Is organized and operated without profit to any person, firm,
20 partnership, association, corporation or other entity.

21 2. Is organized and operated exclusively for either of the
22 following purposes:

23 (a) Aiding educational or scientific institutions that are also
24 organized and operated without profit to any person, firm, partnership,
25 association, corporation or other entity.

26 (b) Aiding agricultural institutions if the grantee is subject to
27 regulation either as an insurer, a multiple employer welfare arrangement
28 or an employee benefit trust by its state of domicile.

29 3. Serves a purpose prescribed in paragraph 2 OF THIS SUBSECTION by
30 issuing insurance, annuity and employee benefits contracts only to or for
31 the benefit of the educational, scientific or agricultural institutions or
32 their respective members or to individuals engaged in the service of those
33 institutions.

34 4. Appoints the secretary of state, and the secretary of state's
35 successors in office, as its true and lawful attorney on whom may be
36 served all lawful process in any action, suit or proceeding in any court
37 by the director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS,
38 through the attorney general, or any action or proceeding against the
39 insurer, employee benefit trust or voluntary employees' beneficiary
40 association brought by someone other than the director of THE DEPARTMENT
41 OF insurance AND FINANCIAL INSTITUTIONS, which appointment is irrevocable,
42 binds the insurer, employee benefit trust or voluntary employees'
43 beneficiary association or any successor in interest, remains in effect as
44 long as there is in force in this state any contract or policy made or
45 issued by the insurer, employee benefit trust or voluntary employees'

1 beneficiary association or any obligation arising therefrom and must be
2 processed in accordance with sections 20-401.03 and 20-403.

3 5. Is fully and legally organized and qualified to do business and
4 has been actively doing business under the laws of the state of its
5 domicile for a period of at least twenty years before its application for
6 a certificate of exemption.

7 6. Files with the director for the director's approval a copy of
8 any policy or contract form issued to residents of this state.

9 7. Files with the director on or before March 1 of each year a copy
10 of its annual statement prepared pursuant to the laws of its state of
11 domicile, as well as any other financial material as may be requested,
12 including the annual statement or such other financial materials as may be
13 requested relating to any subsidiary or other legal entity operated by the
14 insurer, employee benefit trust or voluntary employees' beneficiary
15 association under a management contract or other form of agreement, and
16 coincident with the filing of its annual statement, pays the filing fee
17 prescribed in section 20-167.

18 8. Agrees to submit to periodic examinations as may be deemed
19 necessary by the director.

20 B. On or before March 1 of each year, any insurer holding a
21 certificate of exemption shall file with the director a form of premium
22 tax return prescribed by the director and shall pay the premium tax
23 imposed by section 20-224 on all policies of life insurance and disability
24 insurance in force with residents of this state.

25 C. After a hearing, the director may refuse to renew, or may revoke
26 or suspend, a certificate of exemption if the director finds that the
27 insurer, employee benefit trust or voluntary employees' beneficiary
28 association no longer meets the requirements of this section, or finds
29 that the insurer, employee benefit trust or voluntary employees'
30 beneficiary association has violated any ~~provisions~~ PROVISION of article 6
31 of this chapter.

32 D. For the purposes of this section:

33 1. "Agricultural institutions" means agricultural growers,
34 shippers, packers, brokers, distributors, wholesalers, receivers and
35 jobbers, or affiliated, associated and related suppliers, industries or
36 firms.

37 2. "Voluntary employees' beneficiary association" means an
38 association described in 26 United States Code section 501(c)(9).

39 Sec. 49. Section 20-403, Arizona Revised Statutes, is amended to
40 read:

41 20-403. Service of process in an action by someone other than
42 the director

43 A. The transaction of an insurance business in this state, as
44 provided in section 20-106, by, or on behalf of, an unauthorized
45 nonresident insurer shall be deemed to constitute an appointment by the

1 insurer of the director and ~~his~~ THE DIRECTOR'S successors in office as its
2 attorney, ~~upon~~ ON whom may be served all lawful process issued within this
3 state in any action or proceeding against such insurer brought by someone
4 other than the director ~~of insurance~~ and arising out of any such
5 transaction.

6 B. Such service of process shall be made by delivering to and
7 leaving with the director two copies thereof. At the time of service the
8 plaintiff shall pay ~~five dollars~~ \$5 to the director, taxable as costs in
9 the action. The director shall ~~forthwith~~ IMMEDIATELY mail by registered
10 or certified mail one of the copies of process to the defendant at its
11 principal place of business as last known to the director, ~~and~~ and shall keep
12 a record of all process so served.

13 C. Notice of service and a copy of process shall be sent by THE
14 plaintiff's attorney to THE defendant insurer at its last known principal
15 place of business by registered or certified mail. THE defendant
16 insurer's receipt, or registry receipt as to the mailing issued by the
17 post office where registered or certified, showing the name of the sender
18 and name and address of the addressee, and the affidavit of plaintiff's
19 attorney showing compliance with this subsection, shall be filed in the
20 court in which the action is pending on or before the date the defendant
21 insurer is required to appear, or within such further time as the court
22 may allow. ~~No~~ A judgment by default against the insurer may NOT be taken
23 under this section until the expiration of thirty days ~~from~~ AFTER THE date
24 of filing of the affidavit of compliance.

25 D. Service of process in ~~such~~ an action or proceeding against an
26 unauthorized resident insurer shall be valid if served ~~upon~~ ON any person
27 within this state who transacts an insurance business in this state on
28 behalf of such insurer. ~~The requirements of~~ Subsection C of this section
29 ~~shall likewise apply~~ APPLIES with respect to ~~such~~ service of process.

30 E. Service of process ~~upon such~~ ON an insurer in accordance with
31 this section shall be as valid and effective as if served ~~upon~~ ON a
32 defendant personally present in this state.

33 F. Means provided in this section for service of process ~~upon~~ ON
34 the insurer shall not be deemed to prevent service of process ~~upon~~ ON the
35 insurer by any other lawful means.

36 G. An insurer ~~which~~ THAT has been so served with process, subject
37 to section 20-405, shall have the right to appear in and defend the action
38 and employ attorneys and other persons in this state to assist in ~~its~~ THE
39 ACTION'S defense ~~thereto~~ or settlement ~~thereof~~.

40 Sec. 50. Section 20-410, Arizona Revised Statutes, is amended to
41 read:

42 20-410. Validity of surplus lines insurance; disclosure;
43 policy fees

44 A. Insurance contracts procured as surplus lines coverage are fully
45 valid and enforceable as to all parties and shall be recognized in all

1 matters in the same manner as like contracts issued by authorized
2 insurers.

3 B. Any policy and any evidence of surplus lines coverage that ~~is~~
4 ARE issued by an unauthorized insurer pursuant to this article and that ~~is~~
5 ARE issued for delivery to the insured shall contain a conspicuously
6 stamped or written notice in bold-faced type that states one of the
7 following:

8 1. If the surplus lines policy ~~or~~ AND ANY evidence of coverage ~~is~~
9 ARE issued by a surplus lines insurer that is not a domestic surplus lines
10 insurer:

11 Pursuant to section 20-401.01, subsection B, paragraph 1,
12 Arizona Revised Statutes, this policy is issued by an insurer
13 that does not possess a certificate of authority from the
14 director of the Arizona department of insurance AND FINANCIAL
15 INSTITUTIONS. If the insurer that issued this policy becomes
16 insolvent, insureds or claimants will not be eligible for
17 insurance guaranty fund protection pursuant to title 20,
18 Arizona Revised Statutes.

19 2. If the surplus lines policy ~~or~~ AND ANY evidence of coverage ~~is~~
20 ARE issued by a domestic surplus lines insurer:

21 If the insurer that issued this policy becomes insolvent,
22 insureds or claimants will not be eligible for insurance
23 guaranty fund protection pursuant to title 20, Arizona Revised
24 Statutes.

25 C. A surplus lines broker may charge and receive a fee in addition
26 to the premium for services provided in the transaction of surplus lines
27 insurance if before effecting any coverage both of the following
28 conditions are met:

29 1. The service fees and the specific services for which the fees
30 are charged are disclosed to the insured or the insured's representative
31 and are agreed to in writing by the insured or the insured's
32 representative.

33 2. The taxes prescribed in section 20-416 are paid on any fees
34 charged to the insured.

35 Sec. 51. Section 20-422, Arizona Revised Statutes, is amended to
36 read:

37 20-422. Alien insurance for coverage in Mexico

38 A. A person shall not solicit or accept applications in this state
39 for insurance or collect a commission on a policy that is to be effective
40 in Mexico and only outside the geographical limits of this state and that
41 is to be issued by an alien insurer or insurers not authorized to transact
42 insurance in this state, unless that person is licensed pursuant to
43 section 20-411, 20-411.01 or 20-411.02 or any agent or employee of that
44 licensed person or any other authorized insurance producer in this state

1 provided that the insurance producer obtains the coverage through that
2 licensed person.

3 B. Except for sections 20-411, 20-411.01, 20-411.02, 20-414 and
4 20-418, the insurance prescribed in this section is not subject to this
5 article.

6 C. Any policy and any evidence of coverage that ~~is~~ ARE issued by an
7 alien insurer and that ~~is~~ ARE issued pursuant to this section for delivery
8 to the insured in this state shall contain a conspicuously stamped or
9 written notice in bold-faced type that states:

10 This policy is issued by an insurance company that is not
11 regulated by the Arizona department of insurance AND FINANCIAL
12 INSTITUTIONS. The insurance company may not provide claims
13 service and may not be subject to service of process in
14 Arizona. If the insurance company becomes insolvent, insureds
15 or claimants will not be eligible for protection under Arizona
16 law.

17 Sec. 52. Section 20-423, Arizona Revised Statutes, is amended to
18 read:

19 20-423. Voluntary domestic organization of surplus lines
20 brokers; membership; stamping fee collection;
21 meetings; definition

22 A. A voluntary domestic organization of surplus lines brokers that
23 contracts with the director pursuant to section 20-167, subsection ~~F~~ F
24 shall be incorporated in this state as a nonprofit corporation. A surplus
25 lines broker who is licensed and in good standing in this state may be a
26 member in the organization if the broker pays any required membership fee
27 and dues required to be paid by all members.

28 B. The organization may collect stamping fees pursuant to section
29 20-167 from any of the following:

30 1. A member of the organization.

31 2. A licensed surplus lines broker who is not a member of the
32 organization.

33 3. A person who is no longer a licensed surplus lines broker if the
34 stamping fee is paid in connection with transactions that the person
35 effectuated while licensed as a surplus lines broker.

36 C. The organization shall hold an annual meeting of its members and
37 may hold special meetings of its members. Members may participate in
38 annual and special member meetings through the use of any means of
39 communication if the communication allows all members participating in the
40 meeting to simultaneously hear each other during the meeting and the
41 organization provides a meeting notice that specifies how members can
42 participate. Any member participating by this alternate means of
43 communication is deemed to be present in person at the meeting for
44 purposes of determining a quorum and voting and for any other purpose
45 authorized or required by law.

1 D. Two percent of the total membership of the organization present
2 in person or by proxy and entitled to vote at a meeting constitutes a
3 quorum for the transaction of business at the meeting.

4 E. For the purposes of this section, "stamping fee" has the same
5 meaning prescribed in section 20-167.

6 Sec. 53. Section 20-466, Arizona Revised Statutes, is amended to
7 read:

8 20-466. Fraud unit; investigators; peace officer status;
9 powers; information sharing; assessment

10 A. ~~THE~~ fraud unit is established in the department of insurance
11 AND FINANCIAL INSTITUTIONS. THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
12 AND FINANCIAL INSTITUTIONS SHALL APPOINT AN INDIVIDUAL TO OPERATE THE
13 FRAUD UNIT IN CONJUNCTION WITH OPERATING THE AUTOMOBILE THEFT AUTHORITY
14 ESTABLISHED BY SECTION 41-3451.

15 B. The fraud unit shall work in conjunction with the department of
16 public safety.

17 C. The director may investigate any act or practice of fraud
18 prohibited by section 20-466.01 and any other act or practice of fraud
19 against an insurer or entity licensed under this title. The director
20 shall administer the fraud unit.

21 D. The director may employ investigators for the fraud unit. A
22 fraud unit investigator has and shall exercise the law enforcement powers
23 of a peace officer of this state but only while acting in the course and
24 scope of employment for the department. The director shall adopt
25 guidelines for the conduct of investigations that are substantially
26 similar to the investigative policy and procedural guidelines of the
27 department of public safety for peace officers. Fraud unit investigators
28 shall not preempt the authority and jurisdiction of other law enforcement
29 agencies of this state or its political subdivisions. Fraud unit
30 investigators:

31 1. Shall have at least the qualifications prescribed by the Arizona
32 peace officer standards and training board pursuant to section 41-1822.

33 2. Are not eligible to participate in the public safety personnel
34 retirement system established by title 38, chapter 5, article 4 due solely
35 to employment as fraud unit investigators.

36 E. The director may request the submission of papers, documents,
37 reports or other evidence relating to an investigation under this section.
38 The director may issue subpoenas and take other actions pursuant to
39 section 20-160. The materials are privileged and confidential until the
40 director completes the investigation. Any documents, materials or other
41 information that is provided to the director pursuant to this section is
42 not subject to discovery or subpoena until opened for public inspection by
43 the director or, after notice and a hearing, a court determines that the
44 director would not be unduly burdened by compliance with the subpoena.
45 The director shall keep the identity of an informant confidential,

1 including any information that might identify the informant, unless the
2 request for information is made by a law enforcement agency, the attorney
3 general or a county attorney for purposes of a criminal investigation or
4 prosecution. The director may use the documents, materials or other
5 information in the furtherance of any regulatory or legal action brought
6 as a part of the director's official duties.

7 F. If the documents, materials or other information the director
8 seeks to obtain by request is located outside this state, the person
9 requested to provide the documents, materials or other information shall
10 arrange for the fraud unit or a representative, including an official of
11 the state in which the documents, materials or other information is
12 located, to examine the documents, materials or other information where it
13 is located. The director may respond to similar requests from other
14 states.

15 G. An insurer that believes a fraudulent claim has been or is being
16 made shall send to the director, on a form prescribed by the director,
17 information relative to the claim including the identity of parties
18 claiming loss or damage as a result of an accident and any other
19 information the fraud unit may require. The director shall review the
20 report and determine if further investigation is necessary. If the
21 director determines that further investigation is necessary, the director
22 may conduct an independent investigation to determine if fraud, deceit or
23 intentional misrepresentation in the submission of the claim exists. If
24 the director is satisfied that fraud, deceit or intentional
25 misrepresentation of any kind has been committed in the submission of a
26 claim, the director may report the violations of the law to the reporting
27 insurer, to the appropriate licensing agency as defined in section
28 20-466.04 and to the appropriate county attorney or the attorney general
29 for prosecution.

30 H. The director may:

31 1. Share nonpublic documents, materials or other information with
32 other state, federal and international regulatory agencies, with the
33 national association of insurance commissioners and its affiliates and
34 subsidiaries and with state, federal and international law enforcement
35 authorities if the recipient agrees and warrants that it has the authority
36 to maintain the confidentiality and privileged status of the documents,
37 materials or other information.

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

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

4 I. A disclosure to or by the director pursuant to this section or
5 as a result of sharing information pursuant to subsection ~~G~~ H of this
6 section is not a waiver of any applicable privilege or claim of
7 confidentiality in the documents, materials or other information disclosed
8 or shared.

9 J. The director shall annually assess each insurer as defined in
10 section 20-441, subsection B authorized to transact business in this state
11 up to ~~one thousand fifty dollars~~ \$1,050, as annually adjusted pursuant to
12 this subsection for the administration and operation of the fraud unit and
13 the prosecution of fraud pursuant to this section. Monies collected shall
14 be deposited, pursuant to sections 35-146 and 35-147, in the state general
15 fund. ~~The director shall annually revise the assessment amount in such a~~
16 ~~manner that the revenue derived from the assessment equals at least~~
17 ~~ninety-five per cent but not more than one hundred ten per cent of the~~
18 ~~appropriated budget of the fraud unit for the prior fiscal year.~~ MONIES
19 APPROPRIATED TO THE DEPARTMENT FOR THE FRAUD UNIT SHALL BE INCLUDED AS A
20 SEPARATE LINE ITEM IN THE GENERAL APPROPRIATIONS ACT. THE DEPARTMENT
21 SHALL USE ALL APPROPRIATED MONIES EXCLUSIVELY TO OPERATE THE FRAUD UNIT.

22 K. A person, or an officer, employee or agent of the person acting
23 within the scope of employment or agency of that officer, employee or
24 agent, who in good faith files a report or provides other information to
25 the fraud unit pursuant to this section is not subject to civil or
26 criminal liability for reporting that information to the fraud unit.

27 Sec. 54. Section 20-481.08, Arizona Revised Statutes, is amended to
28 read:

29 20-481.08. Appointment of director as agent for service of
30 process; forwarding of process; consent to
31 jurisdiction

32 Any person who is not a resident, domiciled in this state, or
33 authorized to do business in this state and WHO files a statement as
34 required by section 20-481.02 shall be deemed to have:

35 1. Consented to the jurisdiction of the courts of this state for
36 all actions arising under ~~the provisions of~~ this article.

37 2. Appointed the director ~~of insurance~~ as ~~his~~ THE PERSON'S lawful
38 agent for the purpose of accepting service of process in any action, suit
39 or proceeding that may arise under this article. Copies of all ~~such~~
40 lawful process accepted by the director as an agent shall be transmitted
41 by the director by registered or certified mail to ~~such~~ THE person at ~~his~~
42 THE PERSON'S last known address.

1 Sec. 55. Section 20-481.25, Arizona Revised Statutes, is amended to
2 read:

3 20-481.25. Acquisitions involving insurers not otherwise
4 covered; anticompetitive considerations; civil
5 penalty; definitions

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

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

11 1. A purchase of securities solely for investment purposes as long
12 as the securities are not used by voting or otherwise to cause or attempt
13 to cause the substantial lessening of competition in any insurance market
14 in this state. If a purchase of securities results in a presumption of
15 control as defined in section 20-481, the purchase of securities is not
16 solely for investment purposes unless the **INSURANCE** director ~~of insurance~~
17 of the insurer's state of domicile accepts a disclaimer of control or
18 affirmatively finds that control does not exist and the disclaimer action
19 or affirmative finding is communicated by the domiciliary insurance
20 director to the director of **THE DEPARTMENT OF insurance AND FINANCIAL**
21 **INSTITUTIONS** of this state.

22 2. The acquisition of a person by another person if both persons
23 are neither directly nor through affiliates primarily engaged in the
24 business of insurance and if preacquisition notification is filed with the
25 director pursuant to subsection C of this section thirty days before the
26 proposed effective date of the acquisition. Preacquisition notification
27 is not required if the acquisition would otherwise be excluded from this
28 section by any other provision of this subsection.

29 3. The acquisition of already affiliated persons.

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

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

43 6. An acquisition of an insurer whose domiciliary **INSURANCE**
44 director ~~of insurance~~ finds that the insurer is failing, that there is no
45 feasible alternative to improve the insurer's condition and that the

1 public benefits that would result from improving the insurer's condition
 2 through the acquisition exceed the public benefits that would result from
 3 not lessening competition and the domiciliary INSURANCE director ~~of~~
 4 ~~insurance~~ communicates these findings to the director of THE DEPARTMENT OF
 5 insurance AND FINANCIAL INSTITUTIONS of this state.

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

28 D. ~~NO~~ AN acquisition subject to the provisions of this section
 29 shall NOT substantially lessen competition in any line of insurance in
 30 this state or tend to create a monopoly. The director may enter a cease
 31 and desist order under subsection F of this section if there is
 32 substantial evidence that the effect of the acquisition may be to
 33 substantially lessen competition in any line of insurance in this state or
 34 may tend to create a monopoly or if the insurer fails to file adequate
 35 information pursuant to subsection C of this section. The director has
 36 the burden of showing prima facie evidence of a violation of this
 37 subsection. In determining if a proposed acquisition would lessen
 38 competition or tend to create a monopoly, the director shall consider the
 39 following:

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

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

3 <u>Insurer A</u>	<u>Insurer B</u>
4 (i) four per cent PERCENT	four per cent PERCENT or more
5 (ii) ten per cent PERCENT	two per cent PERCENT or more
6 (iii) fifteen per cent PERCENT	one per cent PERCENT or more

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

9 <u>Insurer A</u>	<u>Insurer B</u>
10 (i) five per cent PERCENT	five per cent PERCENT or more
11 (ii) ten per cent PERCENT	four per cent PERCENT or more
12 (iii) fifteen per cent PERCENT	three per cent PERCENT or more
13 (iv) nineteen per cent PERCENT	one per cent PERCENT or more

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

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

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

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

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

37 E. If an acquisition is not prima facie evidence of a violation of
 38 subsection D of this section, the director may establish the requisite
 39 anticompetitive effect based on other substantial evidence. If an
 40 acquisition is prima facie evidence of a violation of subsection D of this
 41 section, a party may establish the absence of the requisite
 42 anticompetitive effect based on other substantial evidence. Relevant
 43 factors in making a determination under this subsection include market
 44 shares, volatility of ranking of market leaders, number of competitors,

1 concentration, trend of concentration in the industry and ease of entry
2 into and exit from the market.

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

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

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

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

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

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

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

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

38 1. Up to and including ~~ten thousand dollars~~ \$10,000 for every day
39 of violation.

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

41 J. An insurer or other person who fails to make a filing required
42 by this section and who fails to demonstrate a good faith effort to comply
43 with the filing requirement is subject to a civil penalty of not more than
44 ~~fifty thousand dollars~~ \$50,000.

1 K. For the purposes of subsection D of this section:

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

4 2. "Market" means the relevant product and geographical markets.
5 In determining the relevant product and geographical markets, the director
6 shall consider the definitions or guidelines adopted by the national
7 association of insurance commissioners and ~~to~~ information submitted by the
8 parties to the acquisition. In the absence of sufficient information to
9 the contrary, the relevant product market is assumed to be the direct
10 written insurance premium for a line of business that is used in the
11 annual statement required to be filed by insurers doing business in this
12 state. The relevant geographical market is this state.

13 L. For the purposes of this section:

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

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

21 Sec. 56. Section 20-489.01, Arizona Revised Statutes, is amended to
22 read:

23 20-489.01. Application of other laws

24 To the extent ~~permitted~~ **ALLOWED** by this article, section 20-142,
25 subsection ~~E~~ **F** applies to this article.

26 Sec. 57. Section 20-612, Arizona Revised Statutes, is amended to
27 read:

28 20-612. Delinquency proceedings; jurisdiction; venue; nature
29 of remedy; appeal

30 A. The superior court is vested with exclusive original
31 jurisdiction of delinquency proceedings under this article, ~~and~~ and is
32 authorized to make all necessary and proper orders to carry out the
33 purposes of this article.

34 B. The venue of delinquency proceedings against a domestic, foreign
35 or alien insurer shall be in Maricopa county.

36 C. Delinquency proceedings pursuant to this article ~~shall~~
37 constitute the sole and exclusive method of liquidating, rehabilitating,
38 reorganizing or conserving an insurer, and ~~no~~ **A** court shall **NOT** entertain
39 a petition for the commencement of such proceedings unless it has been
40 filed in the name of the state on the relation of the director of **THE**
41 **DEPARTMENT OF** insurance **AND FINANCIAL INSTITUTIONS**.

42 D. An appeal shall lie to the supreme court from an order granting
43 or refusing rehabilitation, liquidation or conservation, ~~and~~ and from every
44 other order in delinquency proceedings having the character of a final
45 order as to the particular portion of the proceedings embraced therein.

1 Sec. 58. Section 20-613, Arizona Revised Statutes, is amended to
2 read:

3 20-613. Commencement of delinquency proceedings

4 A. The director ~~of insurance~~ shall commence any ~~such~~ DELINQUENCY
5 proceeding, the attorney general representing ~~him~~ THE DIRECTOR, by an
6 application to the court for an order directing the insurer to show cause
7 why the director should not have the relief prayed for. On the return of
8 the order to show cause, and after a full hearing, the court shall either
9 deny the application or grant the application, together with such other
10 relief as the nature of the case and the interests of policyholders,
11 creditors, stockholders, members, subscribers or the public requires.

12 B. The director may file with the superior court a certificate
13 stating that the delinquency proceeding is of special public importance.
14 On receipt of the certificate the presiding judge of the superior court
15 immediately shall designate a judge to hear and determine the proceeding.
16 The designated judge shall assign the proceeding for hearing at the
17 earliest practicable date and cause the proceeding to be expedited in
18 every way, including applications for temporary restraining orders,
19 preliminary injunctions and orders appointing receivers. An expedited
20 hearing under this subsection is in addition to the requirements of
21 section 20-172, subsection A.

22 C. Pending proceedings commenced under section 20-169, the director
23 is not precluded from commencing a delinquency proceeding under this
24 article. The pendency of proceedings under section 20-169 is not a ground
25 for denying an application for an order under this article.

26 Sec. 59. Section 20-624, Arizona Revised Statutes, is amended to
27 read:

28 20-624. Conduct of delinquency proceedings against domestic
29 and alien insurers

30 A. ~~When~~ IF under this article a receiver is to be appointed in
31 delinquency proceedings for a domestic or alien insurer, the court shall
32 appoint the director ~~of insurance~~ as receiver. The court shall order the
33 receiver to take immediate possession of the assets of the insurer and to
34 administer them under the orders of the court.

35 B. As domiciliary receiver, the director ~~shall be~~ IS vested by
36 operation of law with the title to all of the property, contracts and
37 rights of action and all of the books and records of the insurer, wherever
38 located, as of the date of entry of the order directing ~~him~~ THE DIRECTOR
39 to rehabilitate or liquidate a domestic insurer or to liquidate the United
40 States branch of an alien insurer domiciled in this state, and ~~he~~ THE
41 DIRECTOR shall have the right to recover the assets and reduce them to
42 possession, except that ancillary receivers in reciprocal states ~~shall~~
43 ~~have~~, as to assets located in their respective states, SHALL HAVE the
44 rights and powers ~~which~~ THAT are prescribed in this article for ancillary
45 receivers appointed in this state as to assets located in this state.

1 C. The recording of a certified copy of the order directing
 2 possession to be taken in the office of the county recorder of the county
 3 where the proceedings are pending shall impart the same notice as would be
 4 imparted by a deed, a bill of sale or any other evidence of title duly
 5 recorded or filed.

6 D. The director as domiciliary receiver shall be responsible for
 7 the proper administration of all assets coming into ~~his~~ THE DIRECTOR'S
 8 possession or control. The court may at any time require a bond from ~~him~~
 9 THE DIRECTOR or ~~his~~ THE DIRECTOR'S deputies if deemed desirable for the
 10 protection of the assets.

11 E. ~~Upon~~ ON taking possession of the assets of an insurer, the
 12 domiciliary receiver ~~shall~~, subject to the direction of the court, SHALL
 13 immediately proceed to conduct the business of the insurer or to take such
 14 steps as are authorized by this article for the purpose of rehabilitating,
 15 liquidating or conserving the affairs or assets of the insurer.

16 Sec. 60. Section 20-625, Arizona Revised Statutes, is amended to
 17 read:

18 20-625. Conduct of delinquency proceedings against foreign
 19 insurers

20 A. ~~When~~ IF under this article an ancillary receiver is to be
 21 appointed in delinquency proceedings for an insurer not domiciled in this
 22 state, the court shall appoint the director ~~of insurance~~ as ancillary
 23 receiver. The director shall file a petition requesting the appointment
 24 on the grounds set forth in section 20-619 if ~~he~~ THE DIRECTOR finds that
 25 there are sufficient assets of the insurer located in this state to
 26 justify the appointment of an ancillary receiver, or if ten or more
 27 persons resident in this state having claims against ~~such~~ THE insurer file
 28 a petition with the director requesting the appointment of an ancillary
 29 receiver.

30 B. The domiciliary receiver, for the purpose of liquidating an
 31 insurer domiciled in a reciprocal state, shall be vested by operation of
 32 law with the title to all of the property, contracts and rights of action
 33 and all of the books and records of the insurer located in this
 34 state, ~~and~~ ~~he~~ THE DOMICILIARY RECEIVER shall have the immediate right to
 35 recover balances due from local agents and to obtain possession of any
 36 books and records of the insurer found in this state. ~~he~~ THE DOMICILIARY
 37 RECEIVER shall also be entitled to recover the other assets of the insurer
 38 located in this state, except that ~~upon~~ ON the appointment of an ancillary
 39 receiver in this state, the ancillary receiver shall during the ancillary
 40 receivership proceedings have the sole right to recover such other assets.
 41 The ancillary receiver ~~shall~~, as soon as practicable, SHALL liquidate from
 42 ~~their~~ ITS respective securities those special deposit claims and secured
 43 claims ~~which~~ THAT are proved and allowed in the ancillary proceedings in
 44 this state, ~~and~~ shall pay the necessary expenses of the proceedings. ~~At~~
 45 ~~remaining assets~~ ~~he~~ THE ANCILLARY RECEIVER shall promptly transfer ALL

1 REMAINING ASSETS to the domiciliary receiver. Subject to the foregoing
2 provisions, the ancillary receiver and ~~his~~ THE ANCILLARY RECEIVER'S
3 deputies shall have the same powers and be subject to the same duties with
4 respect to the administration of such assets as a receiver of an insurer
5 domiciled in this state.

6 C. The domiciliary receiver of an insurer domiciled in a reciprocal
7 state may sue in this state to recover any assets of the insurer to which
8 ~~the~~ THE DOMICILIARY RECEIVER may be entitled under the laws of this state.

9 Sec. 61. Section 20-662, Arizona Revised Statutes, is amended to
10 read:

11 20-662. Arizona property and casualty insurance guaranty fund

12 A. The Arizona property and casualty insurance guaranty fund is
13 established within the department ~~of insurance~~. The fund shall be
14 deposited in a depository designated by the director and shall exercise
15 its powers through a board established pursuant to section 20-663.

16 B. For the purpose of assessment, the fund shall be divided into
17 three separate accounts:

- 18 1. The automobile insurance account.
- 19 2. The workers' compensation insurance account.
- 20 3. The account for all other insurance to which this article
21 applies.

22 C. All costs, expenses and liabilities of the fund shall be paid by
23 the fund and shall not be a general obligation of ~~the~~ THIS state.

24 D. All monies placed in the accounts of the fund may be expended
25 only for the purposes of this article and only for the purposes of the
26 account into which the monies were placed. ~~No~~ Monies placed in one of the
27 three separate accounts established by this section may NOT be used
28 directly or indirectly for any other purpose, including to satisfy an
29 obligation attributable to another account.

30 Sec. 62. Section 20-663, Arizona Revised Statutes, is amended to
31 read:

32 20-663. Guaranty fund board; composition; compensation

33 A. The guaranty fund board is established within the department of
34 insurance AND FINANCIAL INSTITUTIONS consisting of eleven members who are
35 appointed by the governor. Membership on the board shall be for a term of
36 three years.

37 B. The members of the board shall be appointed from a list of
38 persons submitted to the governor by the director of THE DEPARTMENT OF
39 insurance AND FINANCIAL INSTITUTIONS and shall be representative of a
40 cross section of the industry that is authorized to transact property or
41 casualty insurance within this state. The board shall be composed of:

- 42 1. Nine members, each representing a different insurer that is
43 authorized to transact property or casualty insurance business in this
44 state, including at least one member who represents a workers'
45 compensation insurer that has been authorized to transact workers'

1 compensation insurance business in this state for at least ten consecutive
2 years.

3 2. One member who is a casualty insurance producer residing in this
4 state.

5 3. One member who represents the general public.

6 C. The board shall conduct periodic meetings in Phoenix. Meetings
7 shall be held on the call of the director or on the written request of any
8 two members of the board.

9 D. Subject to the powers of the director, the board shall
10 administer, operate and manage the fund pursuant to this article. The
11 board shall advise and counsel ~~with~~ the director on matters relating to
12 the solvency of insurers.

13 E. Members of the board ~~shall receive no~~ ARE NOT ENTITLED TO
14 RECEIVE compensation and ~~shall not be entitled to~~ travel expenses as
15 authorized by title 38, chapter 4, article 2, but ~~shall be~~ ARE entitled to
16 be reimbursed for expenses incurred by them as members of the board from
17 the assets of the fund.

18 Sec. 63. Section 20-671, Arizona Revised Statutes, is amended to
19 read:

20 20-671. Special meetings closed

21 Notwithstanding any ~~provision of~~ law to the contrary, special
22 meetings of the board in which the financial condition of any member
23 insurer is discussed, ~~shall not be open to the public and only members of~~
24 the board, the director of THE DEPARTMENT OF insurance AND FINANCIAL
25 INSTITUTIONS and other persons specifically authorized by the board may
26 attend such meetings.

27 Sec. 64. Section 20-678, Arizona Revised Statutes, is amended to
28 read:

29 20-678. Examination of the fund; annual report

30 The fund ~~shall be~~ IS subject to examination by the director. The
31 fund shall, ~~annually,~~ report its financial condition for the preceding
32 year, ~~to the legislature, member insurers and the director.~~ At the
33 conclusion of the fund's handling of each insolvency, an audit of the
34 financial transactions relating to such insolvency shall be made by the
35 director ~~of insurance~~ or an independent accounting firm.

36 Sec. 65. Section 20-683, Arizona Revised Statutes, is amended to
37 read:

38 20-683. Life and disability insurance guaranty fund

39 A. The life and disability insurance guaranty fund is established
40 in the department ~~of insurance~~. The fund shall be deposited in a
41 depository designated by the director. All member insurers shall be
42 members of the fund as a condition of their authority to transact
43 insurance or a health care services organization business in this state.
44 For the purposes of administration and assessment, the fund shall maintain
45 three accounts:

1 1. The disability account.

2 2. The life insurance account.

3 3. The annuity account.

4 B. The fund is under the immediate supervision of the director and
5 is subject to the applicable provisions of the insurance laws of this
6 state.

7 C. All costs, expenses and liabilities of the fund shall be paid by
8 the fund and shall not be a general obligation of the state.

9 D. All monies placed in the accounts of the fund may be expended
10 for the purposes of this article.

11 Sec. 66. Section 20-684, Arizona Revised Statutes, is amended to
12 read:

13 20-684. Life and disability insurance guaranty fund board;
14 composition; compensation

15 A. Subject to the powers of the director, the life and disability
16 insurance guaranty fund shall be administered by a board of eleven
17 members. Each member of the board shall serve for a term of three years.
18 Of the members first appointed, three shall serve for terms of one year,
19 three shall serve for terms of two years and three shall serve for terms
20 of three years.

21 B. The members of the board shall be appointed by the governor from
22 a list of persons submitted to the governor by the director of **THE**
23 **DEPARTMENT OF** insurance **AND FINANCIAL INSTITUTIONS**. In submitting
24 selections for the board, the director shall consider whether all member
25 insurers are fairly represented.

26 C. Members of the board are not entitled to receive compensation
27 and travel expenses as authorized by title 38, chapter 4, article 2 but
28 are entitled to be reimbursed for expenses incurred by them as members of
29 the board from the assets of the fund.

30 Sec. 67. Section 20-706, Arizona Revised Statutes, is amended to
31 read:

32 20-706. Filing and publication of articles; appointment of
33 agent to receive process; issuance of certificate

34 A. The articles of incorporation shall be filed in the office of
35 the corporation commission, ~~and~~ certified copies ~~thereof~~ **OF THE ARTICLES**
36 **OF INCORPORATION** shall be filed with the director of **THE DEPARTMENT OF**
37 insurance **AND FINANCIAL INSTITUTIONS**.

38 B. The articles of incorporation shall be published as required by
39 title 10.

40 C. The corporation shall appoint a statutory agent located in this
41 state on whom all process in any action or proceeding may be served and
42 shall file originals of ~~such~~ **THE** appointment in the director's office and
43 in the corporation commission's office. Any termination of ~~such~~ **THE**
44 statutory agent shall not take effect until the corporation has appointed
45 a new, valid statutory agent.

1 D. The corporation shall not transact business as an insurer until
2 it has applied for and received from the director a certificate of
3 authority as provided by this title.

4 Sec. 68. Section 20-713, Arizona Revised Statutes, is amended to
5 read:

6 20-713. Bylaws of mutual insurer

7 A. The initial board of directors of a domestic mutual insurer
8 shall adopt original bylaws for the government of the corporation and
9 conduct of its business. The bylaws shall be subject to the approval of
10 the insurer's members at the next succeeding annual meeting of members,
11 and no bylaw provision shall thereafter be effective ~~which~~ THAT is not so
12 approved. Bylaws shall be revoked or modified only by vote of the
13 insurer's members at a meeting of which notice was given as provided in
14 the bylaws.

15 B. The bylaws shall provide that each member of the insurer is
16 entitled to one vote in the election of corporate directors and on all
17 matters coming before membership meetings, ~~and that~~ ~~such~~ EACH vote may be
18 exercised in person or by proxy.

19 C. The insurer shall promptly file with the director of THE
20 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS a copy, certified by
21 the insurer's secretary, of ~~such~~ THE bylaws and of every modification
22 ~~thereof~~ OF or ~~of~~ addition ~~thereto~~ TO THE BYLAWS. The director shall
23 disapprove any bylaw provision deemed by ~~him~~ THE DIRECTOR to be unlawful,
24 inadequate, unfair or detrimental to the proper interests and protection
25 of the insurer's members or any class ~~thereof~~ OF THE INSURER'S MEMBERS.
26 The insurer shall not, after receiving written notice of such disapproval
27 and during the existence thereof, effectuate any DISAPPROVED bylaw
28 provision ~~so disapproved~~.

29 Sec. 69. Section 20-714, Arizona Revised Statutes, is amended to
30 read:

31 20-714. Quorum of members of mutual insurer

32 A domestic mutual insurer may in its bylaws adopt a reasonable
33 provision for determining a quorum of members at any meeting ~~thereof~~ OF
34 THE INSURER, but no provision recognizing a quorum of fewer than a simple
35 majority of all the insurer's members shall be effective unless approved
36 as reasonable by the director of THE DEPARTMENT OF insurance AND FINANCIAL
37 INSTITUTIONS. This section ~~shall~~ DOES not affect any other ~~provision of~~
38 law requiring A vote of a larger percentage of members for a specified
39 purpose.

40 Sec. 70. Section 20-718, Arizona Revised Statutes, is amended to
41 read:

42 20-718. Enforcement of contingent liability

43 A. If at any time the assets of a domestic mutual insurer are less
44 than its liabilities and the minimum amount of surplus required of it by
45 this title for authority to transact the kinds of insurance being

1 transacted, and the deficiency is not cured from other sources, its
2 directors shall levy an assessment only ~~upon~~ ON its members who, at any
3 time within the twelve months immediately preceding the date notice of
4 such assessment was mailed to them, held policies providing for contingent
5 liability, and such members shall be liable to the insurer for the amount
6 so assessed.

7 B. The assessment shall be for such an amount as is required to
8 cure such deficiency and to provide a reasonable amount of working funds
9 above such minimum amount of surplus, but such working funds so provided
10 shall not exceed five ~~per cent~~ PERCENT of the insurer's liabilities as of
11 the date ~~upon~~ ON which the amount of such deficiency was determined.

12 C. No one policy or member as to such policy shall be assessed or
13 charged with an aggregate of contingent liability as to obligations
14 incurred by the insurer in any one calendar year, in excess of the number
15 of times the premium as stated in the policy as computed solely ~~upon~~ ON
16 premium earned on such policy during that year.

17 D. No member shall have an offset against any assessment for which
18 ~~he~~ THE MEMBER is liable, on account of any claim for unearned premium or
19 loss payable.

20 E. As to life insurance, any part of such an assessment ~~upon~~ ON a
21 member ~~which~~ THAT remains unpaid following notice of assessment, demand
22 for payment and lapse of a reasonable waiting period as specified in such
23 notice, ~~may~~, if approved by the director of THE DEPARTMENT OF insurance
24 AND FINANCIAL INSTITUTIONS as being in the best interests of the insurer
25 and its members, MAY be secured by placing a lien ~~upon~~ ON the cash
26 surrender values and accumulated dividends held by the insurer to the
27 credit of such member.

28 Sec. 71. Section 20-724, Arizona Revised Statutes, is amended to
29 read:

30 20-724. ~~Illegal dividends; violation; classification~~

31 A. Any director of a domestic stock or mutual insurer who knowingly
32 votes for or concurs in declaration or payment of an illegal dividend to
33 stockholders or members is guilty of a class 2 misdemeanor, ~~and~~ and is
34 jointly and severally liable, together with other such directors, for any
35 loss thereby sustained by the insurer.

36 B. The stockholders or members knowingly receiving such an illegal
37 dividend shall be liable in the amount ~~thereof~~ OF THE ILLEGAL DIVIDEND to
38 the insurer.

39 C. The director of THE DEPARTMENT OF insurance AND FINANCIAL
40 INSTITUTIONS may revoke or suspend the certificate of authority of an
41 insurer ~~which~~ THAT has declared or paid an illegal dividend.

1 Sec. 72. Section 20-727, Arizona Revised Statutes, is amended to
2 read:

3 20-727. Management and exclusive agency contracts

4 A. ~~No~~ A domestic stock or mutual insurer shall NOT make any
5 contract whereby any person or persons are granted or are to enjoy in fact
6 the management of the insurer to the substantial exclusion of its board of
7 directors, or are to have the controlling or preemptive right to produce
8 substantially all insurance business for the insurer, unless ~~such~~ THE
9 contract is filed with the director of THE DEPARTMENT OF insurance AND
10 FINANCIAL INSTITUTIONS and ~~be~~ IS subject to ~~his~~ THE DIRECTOR'S approval.
11 The contract shall be deemed approved unless disapproved by the director
12 within twenty days after date of filing, subject to such reasonable
13 extension of time as the director may require by notice given within such
14 twenty days. Any disapproval shall be delivered to the insurer in
15 writing, stating the grounds ~~therefor~~ FOR THE DISAPPROVAL.

16 B. The director shall disapprove any such contract if ~~he~~ THE
17 DIRECTOR finds that it:

- 18 1. Subjects the insurer to excessive charges.
- 19 2. Is to extend for an unreasonable length of time.
- 20 3. Does not contain fair and adequate standards of performance.
- 21 4. Contains other inequitable provisions or provisions ~~which~~ THAT
22 impair the proper interests of stockholders or members of the insurer.

23 Sec. 73. Section 20-729, Arizona Revised Statutes, is amended to
24 read:

25 20-729. Conversion of stock insurer to mutual insurer

26 A. A domestic stock insurer other than a title insurer may become a
27 domestic mutual insurer pursuant to such plan and procedure as may be
28 approved in advance by the director ~~of insurance~~.

29 B. The director shall not approve any such plan, procedure or
30 mutualization unless:

- 31 1. It is equitable to both stockholders and policyholders.
- 32 2. It is subject to approval by a vote of the holders of not less
33 than three-fourths of the insurer's capital stock having voting rights and
34 by a vote of not less than two-thirds of the insurer's policyholders who
35 vote on such plan in person, by proxy or by mail pursuant to such notice
36 and procedure as may be approved by the director.
- 37 3. If a life insurer, the right to vote thereon is limited to those
38 policyholders whose policies have face amounts of not less than ~~one~~
39 ~~thousand dollars~~ \$1,000 and have been in force for one year or more.
- 40 4. Mutualization will result in retirement of shares of the
41 insurer's capital stock at a price not in excess of the fair market value
42 thereof as determined by competent disinterested appraisers.
- 43 5. The plan provides for the purchase of the shares of any
44 ~~non-consenting~~ NONCONSENTING stockholder in accordance with ~~the provisions~~
45 ~~of~~ title 10, chapter 13 and such nonconsenting stockholders shall have all

1 the rights and restrictions applicable under such section to stockholders
2 of a private corporation who do not consent to the agreed manner of
3 converting the shares of stock of such private corporation ~~upon~~ ON
4 proposal for consolidation.

5 6. The plan provides for definite conditions to be fulfilled by a
6 designated early date ~~upon~~ ON which such mutualization will be deemed
7 effective.

8 7. The mutualization leaves the insurer with surplus funds
9 reasonably adequate for the security of its policyholders and to continue
10 successfully in business in the states in which it is then authorized to
11 transact insurance, and for the kinds of insurance included in its
12 certificate of authority.

13 C. This section ~~shall~~ DOES not apply to mutualization under order
14 of court pursuant to rehabilitation or reorganization of an insurer under
15 ~~article 4 of~~ chapter 3, ARTICLE 4 of this title.

16 Sec. 74. Section 20-730, Arizona Revised Statutes, is amended to
17 read:

18 20-730. Conversion of mutual insurer to stock insurer

19 A. A domestic mutual insurer may become a domestic stock insurer
20 pursuant to such plan ~~and~~ OR procedure as ~~it~~ IS approved in advance by the
21 director ~~of insurance~~.

22 B. The director shall not approve any such plan or procedure
23 unless:

24 1. IT IS equitable to the insurer's members.

25 2. IT IS subject to approval by vote of not less than ~~three-fourths~~
26 THREE-FOURTHS of the insurer's current members voting thereon in person,
27 by proxy, ~~or~~ or by mail at a meeting of members called for the purpose
28 pursuant to such notice and procedure as may be approved by the
29 director. If a life insurer, the right to vote may be limited to members
30 whose policies have face amounts of not less than ~~one thousand dollars~~
31 \$1,000 and have been in force one year or more.

32 3. The equity of each policyholder in the insurer is determinable
33 under a fair formula approved by the director, which ~~equity~~ shall be based
34 ~~upon~~ ON not less than the insurer's entire surplus, after deducting
35 contributed or borrowed surplus funds, plus a reasonable present equity in
36 its reserves and in all nonadmitted assets.

37 4. The policyholders entitled to participate in the purchase of
38 stock or distribution of assets ~~shall~~ include all current policyholders
39 and all existing persons who had been a policyholder of the insurer within
40 three years ~~prior to~~ BEFORE the date such plan was submitted to the
41 director.

42 5. The plan gives to each policyholder of the insurer as specified
43 in paragraph 4 of this ~~section~~ SUBSECTION a preemptive right to acquire
44 ~~his~~ THE POLICYHOLDER'S proportionate part of all of the proposed capital
45 stock of the insurer, within a designated reasonable period, and to apply

1 ~~upon~~ ON the purchase thereof the amount of ~~his~~ THE POLICYHOLDER'S equity
2 in the insurer as determined under paragraph 3 of this ~~section~~ SUBSECTION.

3 6. Shares are so offered to policyholders at a price not greater
4 than that thereafter offered to others nor at more than double the par
5 value of the shares.

6 7. The plan provides for payment to each policyholder not electing
7 to apply ~~his~~ THE POLICYHOLDER'S equity in the insurer for or ~~upon~~ ON the
8 purchase price of stock to which preemptively entitled, of cash in the
9 amount of not less than fifty ~~per-cent~~ PERCENT of the amount of ~~his~~ THE
10 POLICYHOLDER'S equity not so used for the purchase of stock, and which
11 cash payment together with stock so purchased, if any, shall constitute
12 full payment and discharge of the policyholder's equity as an owner of
13 such mutual insurer.

14 8. The plan, when completed, would provide for the converted
15 insurer paid-in capital stock in an amount not less than the minimum
16 paid-in capital required of a domestic stock insurer transacting like
17 kinds of insurance, together with surplus funds in amount not less than
18 ~~one-half~~ ONE-HALF of such required capital.

19 Sec. 75. Section 20-731, Arizona Revised Statutes, is amended to
20 read:

21 20-731. Merger or consolidation of stock insurers; hearings;
22 notice

23 A. Any domestic stock insurer except a title insurer may merge or
24 consolidate with another domestic or foreign stock insurer by complying
25 with the provisions of general law governing the merger or consolidation
26 of stock corporations formed for profit, but subject to subsection B of
27 this section.

28 B. ~~No~~ A merger or consolidation is NOT effective under this section
29 unless in advance of the merger or consolidation the plan and agreement
30 have been filed with and approved in writing by the director ~~of~~
31 ~~insurance~~. The director may hold a public hearing on the plan and
32 agreement as prescribed in section 20-161, and the director shall approve
33 the merger or consolidation unless the director finds the plan or
34 agreement:

35 1. Is contrary to law.

36 2. Is unfair in the terms and conditions of the issuance and
37 exchange of securities.

38 3. Would substantially reduce the security of and service to be
39 rendered to policyholders of the domestic insurer in this state or
40 elsewhere.

41 C. Any public hearing referred to in subsection B of this section
42 shall be held within thirty days after the plan and agreement of merger is
43 filed, and at least twenty-five days' written notice thereof shall be
44 given by the director to the insurer corporations involved. Not less than
45 ten days' written notice of the hearing shall be given by the insurer

1 corporations to their shareholders. The insurers filing the plan and
2 agreement, shareholders, any person to whom written notice of hearing was
3 sent and any other person whose interest may be affected thereby shall
4 have the right to present evidence, examine and cross-examine the
5 witnesses and offer oral and written arguments at the hearing. The
6 director shall make a determination within thirty days after the
7 conclusion of the hearing. Except as otherwise provided in this
8 subsection, ~~the provisions of~~ title 41, chapter 6, article 10 shall apply
9 to hearings, orders and appeals.

10 D. A domestic title insurer may merge or consolidate with another
11 domestic or foreign title insurer by complying with ~~the provisions of~~
12 section 20-1576.

13 Sec. 76. Section 20-733, Arizona Revised Statutes, is amended to
14 read:

15 20-733. Merger or consolidation of mutual insurers

16 A. A domestic mutual insurer shall not merge or consolidate with a
17 stock insurer.

18 B. A domestic mutual insurer may merge or consolidate with another
19 mutual insurer in accordance with procedures prescribed by general laws
20 applying to corporations formed for profit, except as provided by this
21 section.

22 C. The plan and agreement for merger or consolidation shall be
23 submitted to and approved by at least ~~two-thirds~~ TWO-THIRDS of the members
24 of each mutual insurer involved voting thereon at meetings called for the
25 purpose pursuant to such reasonable notice and procedure as has been
26 approved by the director of THE DEPARTMENT OF insurance AND FINANCIAL
27 INSTITUTIONS. If a life insurer, the right to vote may be limited to
28 members whose policies are in A face amount of not less than ~~one thousand~~
29 ~~dollars~~ \$1,000 and have been in force one year or more.

30 D. ~~No such~~ A merger or consolidation shall NOT be effectuated
31 unless in advance thereof the plan and agreement therefor have been filed
32 with and approved in writing by the director of THE DEPARTMENT OF
33 insurance AND FINANCIAL INSTITUTIONS. The director shall give ~~his~~
34 approval within a reasonable time after filing unless ~~he~~ THE DIRECTOR
35 finds the plan or agreement:

36 1. Inequitable to the policyholders of any domestic insurer
37 involved.

38 2. Would substantially reduce the security of and service to be
39 rendered to policyholders of the domestic insurer in this state or
40 elsewhere.

41 E. If the director does not approve the plan or agreement ~~he~~ THE
42 DIRECTOR shall so notify the insurer in writing specifying ~~his~~ THE reasons
43 ~~therefor~~ FOR THE DISAPPROVAL.

1 Sec. 77. Section 20-735, Arizona Revised Statutes, is amended to
2 read:

3 20-735. Distribution of assets of mutual insurer on
4 liquidation

5 A. ~~upon~~ ON any liquidation of a domestic mutual insurer, its assets
6 remaining after discharge of its indebtedness, policy obligations,
7 repayment of contributed or borrowed surplus, if any, and expenses of
8 administration, shall be distributed to existing persons who were its
9 members at any time within thirty-six months next preceding the date the
10 liquidation was authorized or ordered, or the date of last termination of
11 the insurer's certificate of authority, whichever date is the earliest.

12 B. The distributive share of each such member shall be in the
13 proportion that the aggregate premiums earned by the insurer on the
14 policies of the member during the combined periods of ~~his~~ THE MEMBER'S
15 membership bear to the aggregate of all premiums so earned on the policies
16 of all such members. The insurer may, and if THE INSURER IS a life
17 insurer shall, make a reasonable classification of its policies so held by
18 such members and a formula based ~~upon~~ ON such classification for
19 determining the equitable distributive share of each such member. Such
20 classification and formula shall be subject to the approval of the
21 director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS.

22 Sec. 78. Section 20-776, Arizona Revised Statutes, is amended to
23 read:

24 20-776. Service of legal process; liabilities under judgment
25 on such service

26 A. Legal process shall be served ~~upon~~ ON a domestic reciprocal
27 insurer by serving the insurer's attorney at ~~his~~ THE ATTORNEY'S principal
28 offices or by serving the director of THE DEPARTMENT OF insurance AND
29 FINANCIAL INSTITUTIONS as the insurer's attorney-in-fact.

30 B. Any judgment based ~~upon~~ ON legal process so served shall be
31 binding ~~upon~~ ON each of the insurer's subscribers as their respective
32 interests may appear, but in an amount not exceeding their respective
33 contingent liabilities, if any, the same as though personal service of
34 process was had ~~upon~~ ON each such subscriber.

35 Sec. 79. Section 20-822, Arizona Revised Statutes, is amended to
36 read:

37 20-822. Definitions

38 In this article, unless the context otherwise requires, ~~:-~~

39 ~~1. "Department" means the department of insurance.~~

40 ~~2. "Director" means the director of the department of insurance.~~

41 ~~3.~~ "hospital service corporations", "medical service corporations",
42 "dental service corporations", "optometric service corporations" and
43 "hospital, medical, dental and optometric service corporations" mean
44 corporations organized under the laws of this state for the purpose of
45 establishing, maintaining, ~~and~~ and operating nonprofit hospital service or

1 medical or dental or optometric service plans, or a combination of such
2 plans, whereby hospital, medical or dental or optometric service may be
3 provided by hospitals, which within the meaning of this article may
4 include extended care facilities and home health agencies, or by
5 physicians, which within the meaning of this article may include
6 professional and technical personnel under the direction of a physician,
7 or by podiatrists, or by dentists which may include those engaged in the
8 general practice of dentistry as well as the specialized or restricted
9 practice of dentistry, or by optometrists which may include those engaged
10 in the general practice of optometry as well as the specialized or
11 restricted practice of optometry, with which the corporations have
12 contracted for such purpose, to such of the public as become subscribers
13 to the corporations under contracts ~~which~~ THAT entitle each subscriber to
14 certain hospital, medical, dental or optometric service, or in the case of
15 hospital service corporations or medical service corporations, all such
16 services, or whereby as operating expense or refunds, payments may be made
17 to subscribers with respect to any such service that is rendered by a
18 hospital, physician, podiatrist, dentist or optometrist with which the
19 corporations have not so contracted.

20 Sec. 80. Section 20-824, Arizona Revised Statutes, is amended to
21 read:

22 20-824. Application for certificate; fee

23 Such a corporation may issue contracts to its subscribers only when
24 the director ~~of insurance~~ has, by certificate of authority, authorized it
25 so to do. Application for a certificate of authority shall be made on
26 forms supplied or approved by the director containing such information as
27 ~~he~~ THE DIRECTOR deems necessary. Each application for a certificate of
28 authority shall be accompanied by the fee prescribed by ~~article 2 of~~
29 chapter 1, ARTICLE 2 of this title for medical, hospital, dental and
30 optometric service corporations and copies of the following documents:

- 31 1. Articles of incorporation.
- 32 2. Bylaws.
- 33 3. Proposed contracts between the applicant and participating
34 hospitals, physicians, dentists or optometrists showing the terms under
35 which service is to be furnished to subscribers.
- 36 4. Proposed contracts to be issued to subscribers.
- 37 5. A table of rates to be charged to subscribers.
- 38 6. Financial statement of the corporation, including the amounts of
39 contributions paid or agreed to be paid to the corporation for working
40 capital, and the name or names of each contributor and the terms of each
41 contribution.
- 42 7. A statement of the area in which the corporation proposes to
43 operate.

1 Sec. 81. Section 20-835, Arizona Revised Statutes, is amended to
2 read:

3 20-835. Judicial review of decisions of director

4 All orders of the director ~~of insurance~~ made pursuant to this
5 article ~~shall be~~ ARE subject to ~~the provisions of article 2 of~~ chapter 1,
6 ARTICLE 2 of this title, including the right of hearing, rehearing and
7 appeal.

8 Sec. 82. Section 20-873, Arizona Revised Statutes, is amended to
9 read:

10 20-873. Consolidation or merger

11 A. A domestic fraternal benefit society may consolidate or merge
12 with any other society if it complies with this section. The society
13 shall file the following with the director:

14 1. A certified copy of the written contract that contains in full
15 the terms and conditions of the consolidation or merger.

16 2. A sworn statement by the president and secretary or other
17 corresponding officers of each society that shows the financial condition
18 of each society on a date designated by the director. The date shall not
19 be earlier than December 31 next preceding the date of the contract.

20 3. A verified certificate of the president and secretary or other
21 corresponding officers of each society stating that the consolidation or
22 merger has been approved by a two-thirds vote of the supreme governing
23 body of each society and that the vote was conducted at a regular or
24 special meeting of each society, or if ~~permitted~~ ALLOWED by the laws of
25 the society, by mail.

26 4. Evidence that at least sixty days before the action of the
27 supreme governing body of each society the text of the contract was
28 furnished to all members of each society either by mail or publication in
29 full in the official publication of each society. The affidavit of any
30 officer of the society or of any person who is authorized by the society
31 to mail any notice or document stating that the notice or document was
32 addressed and mailed is prima facie evidence that the notice or document
33 was furnished to the addressees.

34 B. The director shall approve the consolidation or merger and shall
35 issue a certificate of approval if the director finds that the contract
36 conforms with the requirements of this section, that the financial
37 statements are correct and that the consolidation or merger is just and
38 equitable to the members of each society. On the director's approval, the
39 contract is in full force and effect, except that if one of the parties to
40 the contract is incorporated under the laws of any other state or
41 territory, the consolidation or merger does not become effective until the
42 consolidation or merger is approved pursuant to the laws of that state or
43 territory and a certificate of approval is filed with the director of THE
44 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS in this state. If the
45 laws of the other state or territory do not provide for consolidation or

1 merger, the consolidation or merger does not become effective until it has
2 been approved by and a certificate of approval is filed with the INSURANCE
3 director ~~of insurance~~ in that state or territory.

4 C. After the consolidation or merger becomes effective, all of the
5 rights, franchises and interests of the consolidated or merged societies
6 in and to real, personal and mixed property are vested in the society
7 resulting from or remaining after the consolidation or merger. No other
8 instrument is necessary to convey any property interests, except that
9 conveyances of real property shall be evidenced by proper deeds. The
10 title to any real estate or any interest in real estate that is vested
11 under the laws of this state in any of the societies that are consolidated
12 or merged does not revert or is not impaired in any way by reason of the
13 merger or consolidation but vests absolutely in the society that results
14 from or remains after the consolidation or merger.

15 Sec. 83. Section 20-884, Arizona Revised Statutes, is amended to
16 read:

17 20-884. Valuation

18 A. The standards of valuation for certificates that are issued
19 before January 1, 1996 are the standards of valuation that were in effect
20 immediately before January 1, 1995.

21 B. The minimum standards of valuation for certificates that are
22 issued on or after January 1, 1996 shall be based on the following tables:

23 1. For certificates of life insurance: the commissioner's 1941
24 standard ordinary mortality table, the commissioner's 1941 standard
25 industrial mortality table, the commissioner's 1958 standard ordinary
26 mortality table, the commissioner's 1980 standard ordinary mortality table
27 or a more recent table that applies to life insurers.

28 2. For annuity and pure endowment certificates, total and permanent
29 disability benefits, accidental death benefits and noncancellable accident
30 and health benefits: the tables that are authorized for use by like
31 insurers in this state.

32 C. The tables listed under subsection B OF THIS SECTION shall be
33 under the valuation methods and standards, including interest assumptions,
34 that are in accordance with the laws of this state applicable to life
35 insurers issuing policies containing like benefits.

36 D. The director may accept other standards for valuation if the
37 director finds that the reserves produced by those standards will not be
38 less in the aggregate than the reserves computed in accordance with the
39 minimum valuation standards prescribed by this section. The director may
40 vary the standards of mortality that apply to all benefit contracts on
41 substandard lives or other extra hazardous lives issued by a society
42 authorized to do business in this state.

43 E. With the consent of the INSURANCE director ~~of insurance~~ in the
44 domiciliary state of the society and under any conditions that the
45 director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS in this

1 state may impose, a society may establish and maintain reserves on its
2 certificates in excess of the reserves required by the standards of
3 valuation, except that the contractual rights of a benefit member are not
4 affected by the excess reserves.

5 Sec. 84. Section 20-885, Arizona Revised Statutes, is amended to
6 read:

7 20-885. Reports

8 Each fraternal benefit society shall file reports as follows:

9 1. Unless the director extends the time for filing for good cause
10 shown, on or before March 1, each society transacting business in this
11 state shall annually file with the director a true statement of its
12 financial condition, transactions and affairs for the preceding calendar
13 year and shall pay the fee prescribed by section 20-167 for filing the
14 statement. The statement shall be in the general form and context that is
15 approved by the national association of insurance commissioners for
16 fraternal benefit societies, supplemented by any additional information
17 that the director requires.

18 2. At the time of filing its annual statement pursuant to paragraph
19 1 of this section, each society shall also file with the director a
20 valuation of its certificates in force as of the preceding December 31.
21 On a showing of good cause, the director may extend the time for filing
22 the valuation for a period of not more than two calendar months. The
23 valuation shall be conducted pursuant to section 20-884. A qualified
24 actuary shall certify the valuation and underlying data, ~~or~~, or, at the
25 expense of the society, an actuary of the **INSURANCE** department ~~of~~
26 ~~insurance~~ in the domiciliary state of the society shall verify the
27 valuation and underlying data.

28 Sec. 85. Section 20-893, Arizona Revised Statutes, is amended to
29 read:

30 20-893. Exemption of societies and associations and orders
31 from insurance laws

32 A. The following fraternal benefit societies and associations or
33 orders are exempt from compliance with this article and all other
34 insurance laws of this state:

35 1. Fraternal benefit societies that were doing business in this
36 state on January 1, 1955 and that provide benefits exclusively through
37 local or subordinate lodges.

38 2. Fraternal benefit societies that admit to membership only those
39 persons who are engaged in one or more crafts or hazardous occupations, in
40 the same or similar lines of business, and that insure only their own
41 members, their families, the descendants of members and the ladies'
42 auxiliaries to those societies.

43 3. Any association or order, with respect to the sale of life
44 insurance and annuities, only if any policy or contract issued pursuant to

1 the exemption prescribed in this subsection contains a conspicuously
2 stamped or written notice in bold type that states:

3 This policy is issued by an association or order that
4 does not possess a certificate of authority from the director
5 of the Arizona department of insurance **AND FINANCIAL**
6 **INSTITUTIONS**. If the association or order that issued this
7 policy becomes insolvent, members or claimants will not be
8 eligible for insurance guaranty fund protection pursuant to
9 title 20, Arizona Revised Statutes.

10 B. Each association or order that intends on doing business in this
11 state and that is not licensed under this title shall provide proof
12 satisfactory to the department that it is a nonprofit organization that is
13 exempt from taxation under section 501(c) of the internal revenue code and
14 is subject to the following:

15 1. On or before June 1 of each preceding year, each association and
16 order shall file with the director a true and complete statement of its
17 statutory financial condition, transactions and affairs for the preceding
18 calendar year, audited by an independent certified public accountant,
19 together with an actuarial memorandum issued by a qualified actuary
20 pursuant to section 20-696.04, and shall pay a filing fee at the
21 determination of the director. The statement and actuarial memorandum are
22 approved thirty days after filing unless the director, within the
23 thirty-day period, has issued an order affirmatively approving or
24 disapproving the filing.

25 2. The director may require an association or order to file
26 financial statements on a quarterly basis and may require an association
27 or order to file financial statements on other than an annual or quarterly
28 basis due to factors or trends affecting insurers writing a particular
29 class or classes of business or because of changes in the management or
30 financial or operating condition of the association or order.

31 3. If, in the opinion of the director, an association or order does
32 not possess sufficient capital and surplus based on eligible assets
33 pursuant to chapter 3, article 2 of this title to meet its liabilities,
34 the director may order the association or order to increase its capital or
35 surplus, or both, to amounts the director deems sufficient. If the
36 association or order fails to comply with the order, the director may
37 order the association or order to cease and desist from assuming any
38 additional liabilities in this state until such time as the association or
39 order is able to comply with the capital and surplus requirements.

40 C. Except for a society prescribed by subsection A **OF THIS SECTION**,
41 a fraternal benefit society or association or order that is exempt from
42 the requirements of this article pursuant to this section shall not give
43 to or allow any person any compensation for procuring new members.

1 D. A society that is organized and incorporated before January 1,
2 1955, that provides for benefits in case of death or disability resulting
3 solely from an accident and that does not obligate itself to pay natural
4 death or sick benefits may secure a certificate of authority under this
5 article if it was authorized before January 1, 1955. The society has all
6 of the privileges and is subject to all of the provisions of this article,
7 except that the provisions of this article relating to medical
8 examinations, standard provisions, prohibited provisions, valuations of
9 certificates and incontestability do not apply.

10 E. The director by examination or otherwise may require any
11 information that will enable the director to determine if the society or
12 association or order is exempt from this article.

13 Sec. 86. Section 20-1008, Arizona Revised Statutes, is amended to
14 read:

15 20-1008. Examination of prepaid dental plan organization

16 A. The director may once in each six months for the first three
17 years after organization and once each year thereafter, or more often if
18 deemed necessary by the director, visit each prepaid dental plan
19 organization organized under the laws of this state and examine its
20 financial condition and its ability to meet its liabilities and its
21 compliance with the laws of this state affecting the conduct of its
22 business. The director may annually visit and examine each prepaid dental
23 plan organization not organized under the laws of this state but
24 authorized to transact business in this state.

25 B. The director may in like manner examine each prepaid dental plan
26 organization applying for an initial certificate of authority to do
27 business in this state.

28 C. In lieu of making an examination, the director may accept a full
29 report of the most recent examination of a foreign or alien prepaid dental
30 plan organization, certified to by the appropriate examining official of
31 another state, territory, commonwealth or district of the United States.

32 D. On request by the director of the department of insurance **AND**
33 **FINANCIAL INSTITUTIONS**, the director of the department of health services
34 or another person the director of the department of insurance **AND**
35 **FINANCIAL INSTITUTIONS** determines to be qualified may participate in the
36 examinations and visits described in this section to verify the existence
37 of an effective prepaid dental plan and to review the delivery of services
38 by the prepaid dental plan organization.

39 Sec. 87. Section 20-1051, Arizona Revised Statutes, is amended to
40 read:

41 20-1051. Definitions

42 In this article, unless the context otherwise requires:

43 ~~1. "Director" means the director of the department of insurance.~~

44 ~~2.~~ 1. "Enrollee" means an individual who has been enrolled in a
45 health care plan.

1 ~~3.~~ 2. "Evidence of coverage" means any certificate, agreement or
2 contract issued to an enrollee and setting out the coverage to which the
3 enrollee is entitled.

4 ~~4.~~ 3. "Genetic information" means information about genes, gene
5 products and inherited characteristics that may derive from the individual
6 or a family member, including information regarding carrier status and
7 information derived from laboratory tests that identify mutations in
8 specific genes or chromosomes, physical medical examinations, family
9 histories and direct analysis of genes or chromosomes.

10 ~~5.~~ 4. "Health care plan" means any contractual arrangement whereby
11 any health care services organization undertakes to provide directly or to
12 arrange for all or a portion of contractually covered health care services
13 and to pay or make reimbursement for any remaining portion of the health
14 care services on a prepaid basis through insurance or otherwise. A health
15 care plan shall include those health care services required in this
16 article or in any rule adopted pursuant to this article.

17 ~~6.~~ 5. "Health care services" means services for the purpose of
18 diagnosing, preventing, alleviating, curing or healing human illness or
19 injury.

20 ~~7.~~ 6. "Health care services organization" means any person that
21 undertakes to conduct one or more health care plans. Unless the context
22 otherwise requires, health care services organization includes a provider
23 sponsored health care services organization.

24 ~~8.~~ 7. "Health status-related factor" means any factor in relation
25 to the health of the individual or a dependent of the individual enrolled
26 or to be enrolled in a health care services organization including:

- 27 (a) Health status.
- 28 (b) Medical condition, including physical and mental illness.
- 29 (c) Claims experience.
- 30 (d) Receipt of health care.
- 31 (e) Medical history.
- 32 (f) Genetic information.
- 33 (g) Evidence of insurability, including conditions arising out of
34 acts of domestic violence as defined in section 20-448.
- 35 (h) The existence of a physical or mental disability.

36 ~~9.~~ 8. "Network plan" means health care services that are provided
37 by a health care services organization under which the financing and
38 delivery of health care services are provided, in whole or in part,
39 through a defined set of providers under contract with the health care
40 services organization.

41 ~~10.~~ 9. "Person" means any natural or artificial person
42 including, ~~but not limited to,~~ individuals, partnerships, associations,
43 providers of health care, trusts, insurers, hospital or medical service
44 corporations or other corporations, prepaid group practice plans,
45 foundations for medical care and health maintenance organizations.

1 ~~11.~~ 10. "Provider" means any physician, hospital or other person
2 that is licensed or otherwise authorized to furnish health care services
3 in this state.

4 ~~12.~~ 11. "Provider sponsored health care services organization"
5 means a provider sponsored organization that provides at least one health
6 care plan only to medicare beneficiaries under the medicare-plus-choice
7 program established under the balanced budget act of 1997 (42 United
8 States Code sections 1395w-21 through 1395w-28 and title XVIII, part C of
9 the social security act, sections 1851 through 1859).

10 ~~13.~~ 12. "Provider sponsored organization" means an entity that:

11 (a) Is a legal aggregation of providers that operate collectively to
12 provide health care services to medicare beneficiaries under the
13 medicare-plus-choice program established under the balanced budget act of
14 1997 (42 United States Code sections 1395w-21 through 1395w-28 and title
15 XVIII, part C of the social security act, sections 1851 through 1859).

16 (b) Acts through a licensed firm or corporation that has authority
17 over the entity's activities and responsibility for satisfying the
18 requirements of this article relating to the operation of a provider
19 sponsored health care services organization.

20 (c) Provides a substantial proportion of the health care services
21 required to be provided under the medicare-plus-choice program established
22 under the balanced budget act of 1997 (42 United States Code sections
23 1395w-21 through 1395w-28 and title XVIII, part C of the social security
24 act, sections 1851 through 1859) directly through providers or affiliated
25 groups of providers.

26 ~~14.~~ 13. "Registered nurse practitioner" has the same meaning
27 prescribed in section 32-1601.

28 Sec. 88. Section 20-1057, Arizona Revised Statutes, is amended to
29 read:

30 20-1057. Evidence of coverage by health care services
31 organizations; renewability; definitions

32 A. Every enrollee in a health care plan shall be issued an evidence
33 of coverage by the responsible health care services organization.

34 B. Any contract, except accidental death and dismemberment, applied
35 for that provides family coverage shall also provide, as to such coverage
36 of family members, that the benefits applicable for children shall be
37 payable with respect to a newly born child of the enrollee from the
38 instant of such child's birth, to a child adopted by the enrollee,
39 regardless of the age at which the child was adopted, and to a child who
40 has been placed for adoption with the enrollee and for whom the
41 application and approval procedures for adoption pursuant to section 8-105
42 or 8-108 have been completed to the same extent that such coverage applies
43 to other members of the family. The coverage for newly born or adopted
44 children or children placed for adoption shall include coverage of injury
45 or sickness including necessary care and treatment of medically diagnosed

1 congenital defects and birth abnormalities. If payment of a specific
2 premium is required to provide coverage for a child, the contract may
3 require that notification of birth, adoption or adoption placement of the
4 child and payment of the required premium must be furnished to the insurer
5 within thirty-one days after the date of birth, adoption or adoption
6 placement in order to have the coverage continue beyond the thirty-one day
7 period.

8 C. Any contract, except accidental death and dismemberment, that
9 provides coverage for psychiatric, drug abuse or alcoholism services shall
10 require the health care services organization to provide reimbursement for
11 such services in accordance with the terms of the contract without regard
12 to whether the covered services are rendered in a psychiatric special
13 hospital or general hospital.

14 D. No evidence of coverage or amendment to the coverage shall be
15 issued or delivered to any person in this state until a copy of the form
16 of the evidence of coverage or amendment to the coverage has been filed
17 with and approved by the director.

18 E. An evidence of coverage shall contain a clear and complete
19 statement if a contract, or a reasonably complete summary if a certificate
20 of contract, of:

21 1. The health care services and the insurance or other benefits, if
22 any, to which the enrollee is entitled under the health care plan.

23 2. Any limitations of the services, kind of services, benefits or
24 kind of benefits to be provided, including any deductible or copayment
25 feature.

26 3. Where and in what manner information is available as to how
27 services may be obtained.

28 4. The enrollee's obligation, if any, respecting charges for the
29 health care plan.

30 F. An evidence of coverage shall not contain provisions or
31 statements that are unjust, unfair, inequitable, misleading or deceptive,
32 that encourage misrepresentation or that are untrue.

33 G. The director shall approve any form of evidence of coverage if
34 the requirements of subsections E and F of this section are met. It is
35 unlawful to issue such form until approved. If the director does not
36 disapprove any such form within forty-five days after the filing of the
37 form, it is deemed approved. If the director disapproves a form of
38 evidence of coverage, the director shall notify the health care services
39 organization. In the notice, the director shall specify the reasons for
40 the director's disapproval. The director shall grant a hearing on such
41 disapproval within fifteen days after a request for a hearing in writing
42 is received from the health care services organization.

43 H. A health care services organization shall not cancel or refuse
44 to renew an enrollee's evidence of coverage that was issued on a group
45 basis without giving notice of the cancellation or nonrenewal to the

1 enrollee and, on request of the director, to the department of insurance
2 **AND FINANCIAL INSTITUTIONS**. A notice by the organization to the enrollee
3 of cancellation or nonrenewal of the enrollee's evidence of coverage shall
4 be mailed to the enrollee at least sixty days before the effective date of
5 such cancellation or nonrenewal. The notice shall include or be
6 accompanied by a statement in writing of the reasons as stated in the
7 contract for such action by the organization. Failure of the organization
8 to comply with this subsection shall invalidate any cancellation or
9 nonrenewal except a cancellation or nonrenewal for nonpayment of premium,
10 for fraud or misrepresentation in the application or other enrollment
11 documents or for loss of eligibility as defined in the evidence of
12 coverage. A health care services organization shall not cancel an
13 enrollee's evidence of coverage issued on a group basis because of the
14 enrollee's or dependent's age, except for loss of eligibility as defined
15 in the evidence of coverage, sex, health status-related factor, national
16 origin or frequency of utilization of health care services of the
17 enrollee. An evidence of coverage issued on a group basis shall clearly
18 delineate all terms under which the health care services organization may
19 cancel or refuse to renew an evidence of coverage for an enrollee or
20 dependent. Nothing in this subsection prohibits the cancellation or
21 nonrenewal of a health benefits plan contract issued on a group basis for
22 any of the reasons allowed in section 20-2309. A health care services
23 organization may cancel or nonrenew an evidence of coverage issued to an
24 individual on a nongroup basis only for the reasons allowed by subsection
25 N of this section.

26 I. A health care plan that provides coverage for surgical services
27 for a mastectomy shall also provide coverage incidental to the patient's
28 covered mastectomy for surgical services for reconstruction of the breast
29 on which the mastectomy was performed, surgery and reconstruction of the
30 other breast to produce a symmetrical appearance, prostheses, treatment of
31 physical complications for all stages of the mastectomy, including
32 lymphedemas, and at least two external postoperative prostheses subject to
33 all of the terms and conditions of the policy.

34 J. A contract that provides coverage for surgical services for a
35 mastectomy shall also provide coverage for mammography screening performed
36 on dedicated equipment for diagnostic purposes on referral by a patient's
37 physician, subject to all of the terms and conditions of the policy and
38 according to the following guidelines:

39 1. A baseline mammogram for a woman from age thirty-five to
40 thirty-nine.

41 2. A mammogram for a woman from age forty to forty-nine every two
42 years or more frequently based on the recommendation of the woman's
43 physician.

44 3. A mammogram every year for a woman fifty years of age and over.

1 K. Any contract that is issued to the enrollee and that provides
2 coverage for maternity benefits shall also provide that the maternity
3 benefits apply to the costs of the birth of any child legally adopted by
4 the enrollee if all the following are true:

- 5 1. The child is adopted within one year of birth.
- 6 2. The enrollee is legally obligated to pay the costs of birth.
- 7 3. All preexisting conditions and other limitations have been met
8 and all deductibles and copayments have been paid by the enrollee.
- 9 4. The enrollee has notified the insurer of the enrollee's
10 acceptability to adopt children pursuant to section 8-105 within sixty
11 days after such approval or within sixty days after a change in insurance
12 policies, plans or companies.

13 L. The coverage prescribed by subsection K of this section is
14 excess to any other coverage the natural mother may have for maternity
15 benefits except coverage made available to persons pursuant to title 36,
16 chapter 29 ~~but not including coverage made available to persons defined as~~
17 ~~eligible under section 36-2901, paragraph 6, subdivisions (b), (c), (d)~~
18 ~~and (e)~~. If such other coverage exists the agency, attorney or individual
19 arranging the adoption shall make arrangements for the insurance to pay
20 those costs that may be covered under that policy and shall advise the
21 adopting parent in writing of the existence and extent of the coverage
22 without disclosing any confidential information such as the identity of
23 the natural parent. The enrollee adopting parents shall notify their
24 health care services organization of the existence and extent of the other
25 coverage. A health care services organization is not required to pay any
26 costs in excess of the amounts it would have been obligated to pay to its
27 hospitals and providers if the natural mother and child had received the
28 maternity and newborn care directly from or through that health care
29 services organization.

30 M. Each health care services organization shall offer membership to
31 the following in a conversion plan that provides the basic health care
32 benefits required by the director:

- 33 1. Each enrollee including the enrollee's enrolled dependents
34 leaving a group.
- 35 2. Each enrollee and the enrollee's dependents who would otherwise
36 cease to be eligible for membership because of the age of the enrollee or
37 the enrollee's dependents or the death or the dissolution of marriage of
38 an enrollee.

39 N. A health care services organization shall not cancel or nonrenew
40 an evidence of coverage issued to an individual on a nongroup basis,
41 including a conversion plan, except for any of the following reasons and
42 in compliance with the notice and disclosure requirements contained in
43 subsection H of this section:

- 44 1. The individual has failed to pay premiums or contributions in
45 accordance with the terms of the evidence of coverage or the health care

1 services organization has not received premium payments in a timely
2 manner.

3 2. The individual has performed an act or practice that constitutes
4 fraud or the individual made an intentional misrepresentation of material
5 fact under the terms of the evidence of coverage.

6 3. The health care services organization has ceased to offer
7 coverage to individuals that is consistent with the requirements of
8 sections 20-1379 and 20-1380.

9 4. If the health care services organization offers a health care
10 plan in this state through a network plan, the individual no longer
11 resides, lives or works in the service area served by the network plan or
12 in an area for which the health care services organization is authorized
13 to transact business but only if the coverage is terminated uniformly
14 without regard to any health status-related factor of the covered
15 individual.

16 5. If the health care services organization offers health coverage
17 in this state in the individual market only through one or more bona fide
18 associations, the membership of the individual in the association has
19 ceased but only if that coverage is terminated uniformly without regard to
20 any health status-related factor of any covered individual.

21 O. A conversion plan may be modified if the modification complies
22 with the notice and disclosure provisions for cancellation and nonrenewal
23 under subsection H of this section. A modification of a conversion plan
24 that has already been issued shall not result in the effective elimination
25 of any benefit originally included in the conversion plan.

26 P. Any person who is a United States armed forces reservist, who is
27 ordered to active military duty on or after August 22, 1990 and who was
28 enrolled in a health care plan shall have the right to reinstate such
29 coverage upon ON release from active military duty subject to the
30 following conditions:

31 1. The reservist shall make written application to the health plan
32 within ninety days of discharge from active military duty or within one
33 year of hospitalization continuing after discharge. Coverage shall be
34 effective upon ON receipt of the application by the health plan.

35 2. The health plan may exclude from such coverage any health or
36 physical condition arising during and occurring as a direct result of
37 active military duty.

38 Q. The director shall adopt emergency rules that are applicable to
39 persons who are leaving active service in the armed forces of the United
40 States and returning to civilian status consistent with subsection P of
41 this section and that include:

- 42 1. Conditions of eligibility.
- 43 2. Coverage of dependents.
- 44 3. Preexisting conditions.
- 45 4. Termination of insurance.

1 5. Probationary periods.

2 6. Limitations.

3 7. Exceptions.

4 8. Reductions.

5 9. Elimination periods.

6 10. Requirements for replacement.

7 11. Any other conditions of evidences of coverage.

8 R. Any contract that provides maternity benefits shall not restrict
9 benefits for any hospital length of stay in connection with childbirth for
10 the mother or the newborn child to less than forty-eight hours following a
11 normal vaginal delivery or ninety-six hours following a cesarean section.
12 The contract shall not require the provider to obtain authorization from
13 the health care services organization for prescribing the minimum length
14 of stay required by this subsection. The contract may provide that an
15 attending provider in consultation with the mother may discharge the
16 mother or the newborn child before the expiration of the minimum length of
17 stay required by this subsection. The health care services organization
18 shall not:

19 1. Deny the mother or the newborn child eligibility or continued
20 eligibility to enroll or to renew coverage under the terms of the contract
21 solely for the purpose of avoiding the requirements of this subsection.

22 2. Provide monetary payments or rebates to mothers to encourage
23 those mothers to accept less than the minimum protections available
24 pursuant to this subsection.

25 3. Penalize or otherwise reduce or limit the reimbursement of an
26 attending provider because that provider provided care to any insured
27 under the contract in accordance with this subsection.

28 4. Provide monetary or other incentives to an attending provider to
29 induce that provider to provide care to an insured under the contract in a
30 manner that is inconsistent with this subsection.

31 5. Except as described in subsection S of this section, restrict
32 benefits for any portion of a period within the minimum length of stay in
33 a manner that is less favorable than the benefits provided for any
34 preceding portion of that stay.

35 S. Nothing in subsection R of this section:

36 1. Requires a mother to give birth in a hospital or to stay in the
37 hospital for a fixed period of time following the birth of the child.

38 2. Prevents a health care services organization from imposing
39 deductibles, coinsurance or other cost sharing in relation to benefits for
40 hospital lengths of stay in connection with childbirth for a mother or a
41 newborn child under the contract, except that any coinsurance or other
42 cost sharing for any portion of a period within a hospital length of stay
43 required pursuant to subsection R of this section shall not be greater
44 than the coinsurance or cost sharing for any preceding portion of that
45 stay.

1 3. Prevents a health care services organization from negotiating
2 the level and type of reimbursement with a provider for care provided in
3 accordance with subsection R of this section.

4 T. Any contract or evidence of coverage that provides coverage for
5 diabetes shall also provide coverage for equipment and supplies that are
6 medically necessary and that are prescribed by a health care provider
7 including:

- 8 1. Blood glucose monitors.
- 9 2. Blood glucose monitors for the legally blind.
- 10 3. Test strips for glucose monitors and visual reading and urine
11 testing strips.
- 12 4. Insulin preparations and glucagon.
- 13 5. Insulin cartridges.
- 14 6. Drawing up devices and monitors for the visually impaired.
- 15 7. Injection aids.
- 16 8. Insulin cartridges for the legally blind.
- 17 9. Syringes and lancets including automatic lancing devices.
- 18 10. Prescribed oral agents for controlling blood sugar that are
19 included on the plan formulary.
- 20 11. To the extent coverage is required under medicare, podiatric
21 appliances for prevention of complications associated with diabetes.
- 22 12. Any other device, medication, equipment or supply for which
23 coverage is required under medicare from and after January 1, 1999. The
24 coverage required in this paragraph is effective six months after the
25 coverage is required under medicare.

26 U. Nothing in subsection T of this section:

27 1. Entitles a member or enrollee of a health care services
28 organization to equipment or supplies for the treatment of diabetes that
29 are not medically necessary as determined by the health care services
30 organization medical director or the medical director's designee.

31 2. Provides coverage for diabetic supplies obtained by a member or
32 enrollee of a health care services organization without a prescription
33 unless otherwise ~~permitted~~ **ALLOWED** pursuant to the terms of the health
34 care plan.

35 3. Prohibits a health care services organization from imposing
36 deductibles, coinsurance or other cost sharing in relation to benefits for
37 equipment or supplies for the treatment of diabetes.

38 V. Any contract or evidence of coverage that provides coverage for
39 prescription drugs shall not limit or exclude coverage for any
40 prescription drug prescribed for the treatment of cancer on the basis that
41 the prescription drug has not been approved by the United States food and
42 drug administration for the treatment of the specific type of cancer for
43 which the prescription drug has been prescribed, if the prescription drug
44 has been recognized as safe and effective for treatment of that specific
45 type of cancer in one or more of the standard medical reference compendia

1 prescribed in subsection W of this section or medical literature that
2 meets the criteria prescribed in subsection W of this section. The
3 coverage required under this subsection includes covered medically
4 necessary services associated with the administration of the prescription
5 drug. This subsection does not:

6 1. Require coverage of any prescription drug used in the treatment
7 of a type of cancer if the United States food and drug administration has
8 determined that the prescription drug is contraindicated for that type of
9 cancer.

10 2. Require coverage for any experimental prescription drug that is
11 not approved for any indication by the United States food and drug
12 administration.

13 3. Alter any law with regard to provisions that limit the coverage
14 of prescription drugs that have not been approved by the United States
15 food and drug administration.

16 4. Notwithstanding section 20-1057.02, require reimbursement or
17 coverage for any prescription drug that is not included in the drug
18 formulary or list of covered prescription drugs specified in the contract
19 or evidence of coverage.

20 5. Notwithstanding section 20-1057.02, prohibit a contract or
21 evidence of coverage from limiting or excluding coverage of a prescription
22 drug, if the decision to limit or exclude coverage of the prescription
23 drug is not based primarily on the coverage of prescription drugs required
24 by this section.

25 6. Prohibit the use of deductibles, coinsurance, copayments or
26 other cost sharing in relation to drug benefits and related medical
27 benefits offered.

28 W. For the purposes of subsection V of this section:

29 1. The acceptable standard medical reference compendia are the
30 following:

31 (a) The American hospital formulary service drug information, a
32 publication of the American society of health system pharmacists.

33 (b) The national comprehensive cancer network drugs and biologics
34 compendium.

35 (c) Thomson Micromedex compendium DrugDex.

36 (d) Elsevier gold standard's clinical pharmacology compendium.

37 (e) Other authoritative compendia as identified by the secretary of
38 the United States department of health and human services.

39 2. Medical literature may be accepted if all of the following
40 apply:

41 (a) At least two articles from major peer reviewed professional
42 medical journals have recognized, based on scientific or medical criteria,
43 the drug's safety and effectiveness for treatment of the indication for
44 which the drug has been prescribed.

1 (b) No article from a major peer reviewed professional medical
2 journal has concluded, based on scientific or medical criteria, that the
3 drug is unsafe or ineffective or that the drug's safety and effectiveness
4 cannot be determined for the treatment of the indication for which the
5 drug has been prescribed.

6 (c) The literature meets the uniform requirements for manuscripts
7 submitted to biomedical journals established by the international
8 committee of medical journal editors or is published in a journal
9 specified by the United States department of health and human services as
10 acceptable peer reviewed medical literature pursuant to section
11 186(t)(2)(B) of the social security act (42 United States Code section
12 1395x(t)(2)(B)).

13 X. A health care services organization shall not issue or deliver
14 any advertising matter or sales material to any person in this state until
15 the health care services organization files the advertising matter or
16 sales material with the director. This subsection does not require a
17 health care services organization to have the prior approval of the
18 director to issue or deliver the advertising matter or sales material. If
19 the director finds that the advertising matter or sales material, in whole
20 or in part, is false, deceptive or misleading, the director may issue an
21 order disapproving the advertising matter or sales material, directing the
22 health care services organization to cease and desist from issuing,
23 circulating, displaying or using the advertising matter or sales material
24 within a period of time specified by the director but not less than ten
25 days and imposing any penalties prescribed in this title. At least five
26 days before issuing an order pursuant to this subsection, the director
27 shall provide the health care services organization with a written notice
28 of the basis of the order to provide the health care services organization
29 with an opportunity to cure the alleged deficiency in the advertising
30 matter or sales material within a single five day period for the
31 particular advertising matter or sales material at issue. The health care
32 services organization may appeal the director's order pursuant to title
33 41, chapter 6, article 10. Except as otherwise provided in this
34 subsection, a health care services organization may obtain a stay of the
35 effectiveness of the order as prescribed in section 20-162. If the
36 director certifies in the order and provides a detailed explanation of the
37 reasons in support of the certification that continued use of the
38 advertising matter or sales material poses a threat to the health, safety
39 or welfare of the public, the order may be entered immediately without
40 opportunity for cure and the effectiveness of the order is not stayed
41 pending the hearing on the notice of appeal but the hearing shall be
42 promptly instituted and determined.

43 Y. Any contract or evidence of coverage that is offered by a health
44 care services organization and that contains a prescription drug benefit

1 shall provide coverage of medical foods to treat inherited metabolic
2 disorders as provided by this section.

3 Z. The metabolic disorders triggering medical foods coverage under
4 this section shall:

5 1. Be part of the newborn screening program prescribed in section
6 36-694.

7 2. Involve amino acid, carbohydrate or fat metabolism.

8 3. Have medically standard methods of diagnosis, treatment and
9 monitoring including quantification of metabolites in blood, urine or
10 spinal fluid or enzyme or DNA confirmation in tissues.

11 4. Require specially processed or treated medical foods that are
12 generally available only under the supervision and direction of a
13 physician who is licensed pursuant to title 32, chapter 13 or 17 or a
14 registered nurse practitioner who is licensed pursuant to title 32,
15 chapter 15, that must be consumed throughout life and without which the
16 person may suffer serious mental or physical impairment.

17 AA. Medical foods eligible for coverage under this section shall be
18 prescribed or ordered under the supervision of a physician licensed
19 pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner
20 who is licensed pursuant to title 32, chapter 15 as medically necessary
21 for the therapeutic treatment of an inherited metabolic disease.

22 BB. A health care services organization shall cover at least fifty
23 ~~per cent~~ PERCENT of the cost of medical foods prescribed to treat
24 inherited metabolic disorders and covered pursuant to this section. An
25 organization may limit the maximum annual benefit for medical foods under
26 this section to ~~five thousand dollars~~ \$5,000, which applies to the cost of
27 all prescribed modified low protein foods and metabolic formula.

28 CC. Unless preempted under federal law or unless federal law
29 imposes greater requirements than this section, this section applies to a
30 provider sponsored health care services organization.

31 DD. For the purposes of:

32 1. This section:

33 (a) "Inherited metabolic disorder" means a disease caused by an
34 inherited abnormality of body chemistry and includes a disease tested
35 under the newborn screening program prescribed in section 36-694.

36 (b) "Medical foods" means modified low protein foods and metabolic
37 formula.

38 (c) "Metabolic formula" means foods that are all of the following:

39 (i) Formulated to be consumed or administered enterally under the
40 supervision of a physician who is licensed pursuant to title 32, chapter
41 13 or 17 or a registered nurse practitioner who is licensed pursuant to
42 title 32, chapter 15.

43 (ii) Processed or formulated to be deficient in one or more of the
44 nutrients present in typical foodstuffs.

1 (iii) Administered for the medical and nutritional management of a
2 person who has limited capacity to metabolize foodstuffs or certain
3 nutrients contained in the foodstuffs or who has other specific nutrient
4 requirements as established by medical evaluation.

5 (iv) Essential to a person's optimal growth, health and metabolic
6 homeostasis.

7 (d) "Modified low protein foods" means foods that are all of the
8 following:

9 (i) Formulated to be consumed or administered enterally under the
10 supervision of a physician who is licensed pursuant to title 32, chapter
11 13 or 17 or a registered nurse practitioner who is licensed pursuant to
12 title 32, chapter 15.

13 (ii) Processed or formulated to contain less than one gram of
14 protein per unit of serving, but does not include a natural food that is
15 naturally low in protein.

16 (iii) Administered for the medical and nutritional management of a
17 person who has limited capacity to metabolize foodstuffs or certain
18 nutrients contained in the foodstuffs or who has other specific nutrient
19 requirements as established by medical evaluation.

20 (iv) Essential to a person's optimal growth, health and metabolic
21 homeostasis.

22 2. Subsection B of this section, "child", for purposes of initial
23 coverage of an adopted child or a child placed for adoption but not for
24 purposes of termination of coverage of such child, means a person WHO IS
25 under eighteen years of age.

26 Sec. 89. Section 20-1098.17, Arizona Revised Statutes, is amended
27 to read:

28 20-1098.17. Effect of fees payment; premium tax

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

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

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

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

39 B. Notwithstanding subsection A of this section, an agency captive
40 insurer that insures risks on policies as specified in section 20-1098.01,
41 subsection A, paragraph 3, subdivision (b) shall pay the premium tax
42 prescribed in section 20-224 for such policies that is in excess of any
43 fees paid pursuant to section 20-167.

1 Sec. 90. Section 20-1098.23, Arizona Revised Statutes, is amended
2 to read:

3 20-1098.23. Confidentiality of information; exceptions

4 A. Notwithstanding title 39, chapter 1, information submitted
5 pursuant to this article is confidential and the director and the
6 director's employees and agents shall not provide the information to any
7 other person without the permission of the captive insurer, except that:

8 1. This section does not apply to the department's use of
9 information submitted by a captive insurer for any regulatory purpose,
10 disciplinary action or hearing. **THE DIRECTOR SHALL PROVIDE THE CAPTIVE**
11 **INSURER WITH A COPY OF ANY DOCUMENT THAT THE DIRECTOR BELIEVES SUPPORTS A**
12 **VIOLATION OF THIS TITLE OR THAT JUSTIFIES ANY REGULATORY OR OTHER ACTION**
13 **AGAINST THE CAPTIVE INSURER. A DISCLOSURE PURSUANT TO THIS PARAGRAPH IS**
14 **NOT A WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN**
15 **THE DISCLOSED DOCUMENT.**

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

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

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

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

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

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

34 5. The director may provide the information to the industrial
35 commission of Arizona. The industrial commission shall maintain the
36 confidentiality of the information pursuant to this section.

37 6. For the purpose of administering this article and promoting this
38 state's captive insurance industry, the director may disclose only the
39 following information about licensed captive insurers:

40 (a) **THE** name of the captive insurer.

41 (b) **THE** date licensed.

42 (c) **THE** type of captive insurer.

43 (d) **THE** business or industry of the owners or members.

44 (e) **THE CAPTIVE INSURER'S** license status.

45 B. This section does not apply to risk retention groups.

1 Sec. 91. Section 20-1379, Arizona Revised Statutes, is amended to
2 read:

3 20-1379. Guaranteed availability of individual health
4 insurance coverage; prior group coverage;
5 definitions

6 A. Every health care insurer that offers individual health
7 insurance coverage in the individual market in this state shall provide
8 guaranteed availability of coverage to an eligible individual who desires
9 to enroll in individual health insurance coverage and shall not:

10 1. Decline to offer that coverage to, or deny enrollment of, that
11 individual.

12 2. Impose any preexisting condition exclusion for that coverage.

13 B. Every health care insurer that offers individual health
14 insurance coverage in the individual market in this state shall offer all
15 policy forms of health insurance coverage that are designed for, that are
16 made generally available and actively marketed to and that enroll both
17 eligible or other individuals. A health care insurer that offers only one
18 policy form in the individual market complies with this section by
19 offering that form to eligible individuals. A health care insurer also
20 may comply with the requirements of this section by electing to offer at
21 least two different policy forms to eligible individuals as provided by
22 subsection C of this section.

23 C. A health care insurer shall meet the requirements prescribed in
24 subsection B of this section if:

25 1. The health care insurer offers at least two different policy
26 forms, both of which are designed for, are made generally available and
27 actively marketed to and enroll both eligible and other individuals.

28 2. The offer includes at least either:

29 (a) The policy forms with the largest and next to the largest
30 earned premium volume of all policy forms offered by the health care
31 insurer in this state in the individual market during a period not to
32 exceed the preceding two calendar years.

33 (b) A choice of two policy forms with representative coverage,
34 consisting of a lower level of coverage policy form and a higher level of
35 coverage policy form, each of which includes benefits that are
36 substantially similar to other individual health insurance coverage
37 offered by the health care insurer in this state and each of which is
38 covered by a method that provides for risk adjustment, risk spreading or a
39 risk spreading mechanism among the health care insurer's policies.

40 D. The health care insurer's election pursuant to subsection C of
41 this section is effective for policies offered during a period of at least
42 two years.

43 E. If a health care insurer offers individual health insurance
44 coverage in the individual market through a network plan, the health care
45 insurer may do both of the following:

1 1. Limit the individuals who may be enrolled under health insurance
2 coverage to those who live, reside or work within the service area for a
3 network plan.

4 2. Within the service area of a network plan, deny health insurance
5 coverage to individuals if the health care insurer has demonstrated, if
6 required, to the director that both:

7 (a) The health care insurer will not have the capacity to deliver
8 services adequately to additional individual enrollees because of the
9 health care insurer's obligations to existing group contract holders and
10 enrollees and individual enrollees.

11 (b) The health care insurer is applying this paragraph uniformly to
12 individuals without regard to any health status-related factor of the
13 individuals and without regard to whether the individuals are eligible
14 individuals.

15 F. A health care insurer may deny individual health insurance
16 coverage in the individual market to an eligible individual if the health
17 care insurer demonstrates to the director that the health care insurer:

18 1. Does not have the financial reserves necessary to underwrite
19 additional coverage.

20 2. Is denying coverage uniformly to all individuals in the
21 individual market in this state pursuant to state law and without regard
22 to any health status-related factor of the individuals and without regard
23 to whether the individuals are eligible individuals.

24 G. If a health care insurer denies health insurance coverage in
25 this state pursuant to subsection F of this section, the health care
26 insurer shall not offer that coverage in the individual market in this
27 state for one hundred eighty days after the date the coverage is denied or
28 until the health care insurer demonstrates to the director that the health
29 care insurer has sufficient financial reserves to underwrite additional
30 coverage, whichever is later.

31 H. An accountable health plan as defined in section 20-2301 that
32 offers conversion policies on an individual or group basis in connection
33 with a health benefits plan pursuant to this title is not a health care
34 insurer that offers individual health insurance coverage solely because of
35 the offer of a conversion policy.

36 I. Nothing in this section:

37 1. Creates additional restrictions on the amount of the premium
38 rates that a health care insurer may charge an individual for health
39 insurance coverage provided in the individual market.

40 2. Prevents a health care insurer that offers health insurance
41 coverage in the individual market from establishing premium rates or
42 modifying otherwise applicable copayments or deductibles in return for
43 adherence to programs of health promotion and disease prevention.

1 3. Requires a health care insurer that offers only short-term
2 limited duration insurance or limited benefit coverage to individuals and
3 no other coverage to individuals in the individual market to offer
4 individual health insurance coverage in the individual market.

5 4. Requires a health care insurer offering health care coverage
6 only on a group basis or through one or more bona fide associations, or
7 both, to offer health insurance coverage in the individual market.

8 J. A health care insurer shall provide, without charge, a written
9 certificate of creditable coverage as described in this section for
10 creditable coverage occurring after June 30, 1996 if the individual:

11 1. Ceases to be covered under a policy offered by a health care
12 insurer. An individual who is covered by a policy that is issued on a
13 group basis by a health care insurer, that is terminated or not renewed at
14 the choice of the sponsor of the group and where the replacement of the
15 coverage is without a break in coverage is not entitled to receive the
16 certification prescribed in this paragraph but is instead entitled to
17 receive the certification prescribed in paragraph 2 of this subsection.

18 2. Requests certification from the health care insurer within
19 twenty-four months after the coverage under a health insurance coverage
20 policy offered by a health care insurer ceases.

21 K. The certificate of creditable coverage provided by a health care
22 insurer is a written certification of the period of creditable coverage of
23 the individual under the health insurance coverage offered by the health
24 care insurer. The department may enforce and monitor the issuance and
25 delivery of the notices and certificates by health care insurers as
26 required by this section, section 20-1380, the health insurance
27 portability and accountability act of 1996 (P.L. 104-191; 110 Stat. 1936)
28 and any federal regulations adopted to implement the health insurance
29 portability and accountability act of 1996.

30 L. Any health care insurer, accountable health plan or other entity
31 that issues health care coverage in this state, as applicable, shall issue
32 and accept a certificate of creditable coverage of the individual that
33 contains at least the following information:

34 1. The date that the certificate is issued.

35 2. The name of the individual or dependent for whom the certificate
36 applies and any other information that is necessary to allow the issuer
37 providing the coverage specified in the certificate to identify the
38 individual, including the individual's identification number under the
39 policy and the name of the policyholder if the certificate is for or
40 includes a dependent.

41 3. The name, address and telephone number of the issuer providing
42 the certificate.

43 4. The telephone number to call for further information regarding
44 the certificate.

- 1 5. One of the following:
- 2 (a) A statement that the individual has at least eighteen months of
- 3 creditable coverage. For the purposes of this subdivision, "eighteen
- 4 months" means five hundred forty-six days.
- 5 (b) Both the date that the individual first sought coverage, as
- 6 evidenced by a substantially complete application, and the date that
- 7 creditable coverage began.
- 8 6. The date creditable coverage ended, unless the certificate
- 9 indicates that creditable coverage is continuing from the date of the
- 10 certificate.
- 11 7. The consumer assistance telephone number for the department.
- 12 8. The following statement in at least ~~fourteen-point~~
- 13 FOURTEEN-POINT type:

Important Notice!

14 Important Notice!

15 Keep this certificate with your important personal records to

16 protect your rights under the health insurance portability and

17 accountability act of 1996 ("HIPAA"). This certificate is

18 proof of your prior health insurance coverage. You may need

19 to show this certificate to have a guaranteed right to buy new

20 health insurance ("Guaranteed issue"). This certificate may

21 also help you avoid waiting periods or exclusions for

22 preexisting conditions. Under HIPAA, these rights are

23 guaranteed only for a very short time period. After your

24 group coverage ends, you must apply for new coverage within 63

25 days to be protected by HIPAA. If you have questions, call

26 the Arizona department of insurance **AND FINANCIAL**

27 **INSTITUTIONS.**

28 M. A health care insurer has satisfied the certification

29 requirement under this section if the insurer offering the health benefits

30 plan provides the certificate of creditable coverage in accordance with

31 this section within thirty days after the event that triggered the

32 issuance of the certificate.

33 N. Periods of creditable coverage for an individual are established

34 by the presentation of the certificate described in this section and

35 section 20-2310. In addition to the written certificate of creditable

36 coverage as described in this section, individuals may establish

37 creditable coverage through the presentation of documents or other means.

38 In order to make a determination that is based on the relevant facts and

39 circumstances of the amount of creditable coverage that an individual has,

40 a health care insurer shall take into account all information that the

41 insurer obtains or that is presented to the insurer on behalf of the

42 individual.

43 O. A health care insurer shall calculate creditable coverage

44 according to the following rules:

1 1. The health care insurer shall allow an individual credit for
2 each day the individual was covered by creditable coverage.

3 2. The health care insurer shall not count a period of creditable
4 coverage for an individual enrolled under any form of health insurance
5 coverage if after the period of coverage and before the enrollment date
6 there were sixty-three consecutive days during which the individual was
7 not covered by any creditable coverage.

8 3. The health care insurer shall not include any period that an
9 individual is in a waiting period or an affiliation period for any health
10 coverage or is awaiting action by a health care insurer on an application
11 for the issuance of health insurance coverage when the health care insurer
12 determines the continuous period pursuant to paragraph 1 of this
13 subsection.

14 4. The health care insurer shall not include any period that an
15 individual is waiting for approval of an application for health care
16 coverage, provided the individual submitted an application to the health
17 care insurer for health care coverage within sixty-three consecutive days
18 after the individual's most recent creditable coverage.

19 5. The health care insurer shall not count a period of creditable
20 coverage with respect to enrollment of an individual if, after the most
21 recent period of creditable coverage and before the enrollment date,
22 sixty-three consecutive days lapse during all of which the individual was
23 not covered under any creditable coverage. The health care insurer shall
24 not include in the determination of the period of continuous coverage
25 described in this section any period that an individual is in a waiting
26 period for health insurance coverage offered by a health care insurer, is
27 in a waiting period for benefits under a health benefits plan offered by
28 an accountable health plan or is in an affiliation period.

29 6. In determining the extent to which an individual has satisfied
30 any portion of any applicable preexisting condition period the health care
31 insurer shall count a period of creditable coverage without regard to the
32 specific benefits covered during that period.

33 P. An individual is an eligible individual if, on the date the
34 individual seeks coverage pursuant to this section, the individual has an
35 aggregate period of creditable coverage as defined and calculated pursuant
36 to this section of at least eighteen months and all of the following
37 apply:

38 1. The most recent creditable coverage for the individual was under
39 a plan offered by:

40 (a) An employee welfare benefit plan that provides medical care to
41 employees or the employees' dependents directly or through insurance,
42 reimbursement or otherwise pursuant to the employee retirement income
43 security act of 1974 (P.L. 93-406; 88 Stat. 829; 29 United States Code
44 sections 1001 through 1461).

1 (b) A church plan as defined in the employee retirement income
2 security act of 1974.

3 (c) A governmental plan as defined in the employee retirement
4 income security act of 1974, including a plan established or maintained
5 for its employees by the government of the United States or by any agency
6 or instrumentality of the United States.

7 (d) An accountable health plan as defined in section 20-2301.

8 2. The individual is not eligible for coverage under:

9 (a) An employee welfare benefit plan that provides medical care to
10 employees or the employees' dependents directly or through insurance,
11 reimbursement or otherwise pursuant to the employee retirement income
12 security act of 1974.

13 (b) A health benefits plan issued by an accountable health plan as
14 defined in section 20-2301.

15 (c) Part A or part B of title XVIII of the social security act.

16 (d) Title 36, chapter 29 or any other plan established under title
17 XIX of the social security act, and the individual does not have other
18 health insurance coverage.

19 3. The most recent coverage within the coverage period was not
20 terminated based on any factor described in section 20-2309, subsection B,
21 paragraph 1 or 2 relating to nonpayment of premiums or fraud.

22 4. The individual was offered and elected the option of
23 continuation coverage under a COBRA continuation provision pursuant to the
24 consolidated omnibus budget reconciliation act of 1985 (P.L. 99-272; 100
25 Stat. 82) or a similar state program.

26 5. The individual exhausted the continuation coverage pursuant to
27 the consolidated omnibus budget reconciliation act of 1985.

28 Q. Notwithstanding subsection P of this section, an individual is
29 an eligible individual if:

30 1. The individual is an individual enrollee in a health care
31 services organization that is domiciled in this state on the date that the
32 health care services organization is declared insolvent, including any
33 health care services organization that is not an accountable health plan
34 as defined in section 20-2301.

35 2. The individual's coverage terminates during the delinquency
36 proceeding, after the health care services organization is declared
37 insolvent.

38 3. The individual satisfies the requirements of an eligible
39 individual as prescribed in this section other than the required period of
40 creditable coverage.

41 R. Notwithstanding subsection P of this section, a newborn child,
42 adopted child or child placed for adoption is an eligible individual if
43 the child was timely enrolled and otherwise would have met the definition
44 of an eligible individual as prescribed in this section other than the
45 required period of creditable coverage and the child is not subject to any

1 preexisting condition exclusion or limitation if the child has been
2 continuously covered under health insurance coverage or a health benefits
3 plan offered by an accountable health plan since birth, adoption or
4 placement for adoption.

5 S. If a health care insurer imposes a waiting period for coverage
6 of preexisting conditions, within a reasonable period of time after
7 receiving an individual's proof of creditable coverage and not later than
8 the date by which the individual must select an insurance plan, the health
9 care insurer shall give the individual written disclosure of the insurer's
10 determination regarding any preexisting condition exclusion period that
11 applies to that individual. The disclosure shall include all of the
12 following information:

13 1. The period of creditable coverage allowed toward the waiting
14 period for coverage of preexisting conditions.

15 2. The basis for the insurer's determination and the source and
16 substance of any information on which the insurer has relied.

17 3. A statement of any right the individual may have to present
18 additional evidence of creditable coverage and to appeal the insurer's
19 determination, including an explanation of any procedures for submission
20 and appeal.

21 T. This section and section 20-1380 apply to all health insurance
22 coverage that is offered, sold, issued, renewed, in effect or operated in
23 the individual market after June 30, 1997, regardless of when a period of
24 creditable coverage occurs.

25 U. For the purposes of this section and section 20-1380 as
26 applicable:

27 1. "Affiliation period" has the same meaning prescribed in section
28 20-2301.

29 2. "Bona fide association" means, for health care coverage issued
30 by a health care insurer, an association that meets the requirements of
31 section 20-2324.

32 3. "Creditable coverage" means coverage solely for an individual,
33 other than limited benefits coverage, under any of the following:

34 (a) An employee welfare benefit plan that provides medical care to
35 employees or the employees' dependents directly or through insurance,
36 reimbursement or otherwise pursuant to the employee retirement income
37 security act of 1974.

38 (b) A church plan as defined in the employee retirement income
39 security act of 1974.

40 (c) A health benefits plan issued by an accountable health plan as
41 defined in section 20-2301.

42 (d) Part A or part B of title XVIII of the social security act.

43 (e) Title XIX of the social security act, other than coverage
44 consisting solely of benefits under section 1928.

45 (f) Title 10, chapter 55 of the United States Code.

1 (g) A medical care program of the Indian health service or of a
2 tribal organization.

3 (h) A health benefits risk pool operated by any state of the United
4 States.

5 (i) A health plan offered pursuant to title 5, chapter 89 of the
6 United States Code.

7 (j) A public health plan as defined by federal law.

8 (k) A health benefit plan pursuant to section 5(e) of the peace
9 corps act (P.L. 87-293; 75 Stat. 612; 22 United States Code sections 2501
10 through 2523).

11 (l) A policy or contract, including short-term limited duration
12 insurance, issued on an individual basis by an insurer, a health care
13 services organization, a hospital service corporation, a medical service
14 corporation or a hospital, medical, dental and optometric service
15 corporation.

16 (m) A policy or contract issued by a health care insurer or an
17 accountable health plan to a member of a bona fide association.

18 4. "Delinquency proceeding" has the same meaning prescribed in
19 section 20-611.

20 5. "Different policy forms" means variations between policy forms
21 offered by a health care insurer, including policy forms that have
22 different cost sharing arrangements or different riders.

23 6. "Genetic information" means information about genes, gene
24 products and inherited characteristics that may derive from the individual
25 or a family member, including information regarding carrier status and
26 information derived from laboratory tests that identify mutations in
27 specific genes or chromosomes, physical medical examinations, family
28 histories and direct analyses of genes or chromosomes.

29 7. "Health care insurer" means a disability insurer, group
30 disability insurer, blanket disability insurer, health care services
31 organization, hospital service corporation, medical service corporation or
32 hospital, medical, dental and optometric service corporation.

33 8. "Health status-related factor" means any factor in relation to
34 the health of the individual or a dependent of the individual enrolled or
35 to be enrolled in a health care services organization including:

36 (a) Health status.

37 (b) Medical condition, including physical and mental illness.

38 (c) Claims experience.

39 (d) Receipt of health care.

40 (e) Medical history.

41 (f) Genetic information.

42 (g) Evidence of insurability, including conditions arising out of
43 acts of domestic violence as defined in section 20-448.

44 (h) The existence of a physical or mental disability.

1 9. "Higher level of coverage" means a policy form for which the
2 actuarial value of the benefits under the health insurance coverage
3 offered by a health care insurer is at least fifteen percent more than the
4 actuarial value of the health insurance coverage offered by the health
5 care insurer as a lower level of coverage in this state but not more than
6 one hundred twenty percent of a policy form weighted average.

7 10. "Individual health insurance coverage" means health insurance
8 coverage offered by a health care insurer to individuals in the individual
9 market but does not include limited benefit coverage or short-term limited
10 duration insurance. A health care insurer that offers limited benefit
11 coverage or short-term limited duration insurance to individuals and no
12 other coverage to individuals in the individual market is not a health
13 care insurer that offers health insurance coverage in the individual
14 market.

15 11. "Limited benefit coverage" has the same meaning prescribed in
16 section 20-1137.

17 12. "Lower level of coverage" means a policy form offered by a
18 health care insurer for which the actuarial value of the benefits under
19 the health insurance coverage is at least eighty-five percent but not more
20 than one hundred percent of the policy form weighted average.

21 13. "Network plan" means a health care plan provided by a health
22 care insurer under which the financing and delivery of health care
23 services are provided, in whole or in part, through a defined set of
24 providers either under contract with a health care insurer licensed
25 pursuant to chapter 4, article 3 of this title or under contract with a
26 health care insurer in accordance with the determination made by the
27 director pursuant to section 20-1053 regarding the geographic or service
28 area in which a health care insurer may operate.

29 14. "Policy form weighted average" means the average actuarial
30 value of the benefits provided by a health care insurer that issues health
31 coverage in this state that is provided by either the health care insurer
32 or, if the data are available, by all health care insurers that issue
33 health coverage in this state in the individual health coverage market
34 during the previous calendar year, except coverage pursuant to this
35 section, weighted by the enrollment for all coverage forms.

36 15. "Preexisting condition" means a condition, regardless of the
37 cause of the condition, for which medical advice, diagnosis, care or
38 treatment was recommended or received within not more than six months
39 before the date of the enrollment of the individual under the health
40 insurance policy or other contract that provides health coverage benefits.
41 A genetic condition is not a preexisting condition in the absence of a
42 diagnosis of the condition related to the genetic information and shall
43 not result in a preexisting condition limitation or preexisting condition
44 exclusion.

1 16. "Preexisting condition limitation" or "preexisting condition
2 exclusion" means a limitation or exclusion of benefits for a preexisting
3 condition under a health insurance policy or other contract that provides
4 health coverage benefits.

5 17. "Short-term limited duration insurance" has the same meaning
6 prescribed in section 20-1384 and is not intended or marketed as health
7 insurance coverage subject to guaranteed issuance or guaranteed renewal
8 provisions of the laws of this state but ~~that~~ is creditable coverage
9 within the meaning of this section and section 20-2301.

10 Sec. 92. Section 20-1556, Arizona Revised Statutes, is amended to
11 read:

12 20-1556. Contingency reserve

13 A. In addition to the paid in capital and surplus provided in
14 section 20-1542 each mortgage guaranty insurer shall establish a
15 contingency reserve after ~~establishment of~~ ESTABLISHING the unearned
16 premium reserve. The mortgage guaranty insurer shall annually contribute
17 to the contingency reserve an amount ~~which~~ THAT in the aggregate is the
18 greater of either fifty ~~per cent~~ PERCENT of the net earned premium or the
19 minimum policyholder position required by section 20-1550 divided by ten.
20 The annual contributions to the contingency reserve made during each
21 calendar year shall be maintained for a period of one hundred twenty
22 months, except that THE INSURER MAY MAKE withdrawals ~~may be made by the~~
23 ~~insurer~~ in any year in which the actual incurred losses and loss expenses
24 exceed thirty-five ~~per cent~~ PERCENT of the corresponding net earned
25 premiums, and these releases shall not be made without prior approval by
26 the INSURANCE director ~~of insurance~~ OR COMMISSIONER of the insurer's state
27 of domicile.

28 B. In addition to withdrawals made pursuant to subsection A of this
29 section, with the prior approval of the INSURANCE director or commissioner
30 ~~of the department of insurance~~ of the insurer's state of domicile, the
31 mortgage guaranty insurer may withdraw from the contingency reserve an
32 amount that is not more than the amount by which the policyholder position
33 exceeds the minimum policyholder position prescribed in section 20-1550.
34 The mortgage guaranty insurer shall provide or identify any information,
35 analysis and other necessary documentation that supports the request
36 submitted to the director or commissioner.

37 Sec. 93. Section 20-1603, Arizona Revised Statutes, is amended to
38 read:

39 20-1603. Definitions

40 In this article, unless the context otherwise requires:

41 1. "Consumer credit insurance" means any one or a combination of
42 the following:

- 43 (a) Credit life insurance.
- 44 (b) Credit disability insurance.
- 45 (c) Credit unemployment insurance.

1 2. "Credit disability insurance" means insurance on a debtor to
2 provide indemnity for payments becoming due or outstanding on a specific
3 loan or other credit transaction while the debtor ~~is a person with~~ HAS a
4 disability as defined in the policy or certificate.

5 3. "Credit life insurance" means insurance on the life of a debtor
6 pursuant to or in connection with a specific loan or other credit
7 transaction that provides for the satisfaction of a debt, in whole or in
8 part, on the death of an insured debtor.

9 ~~4. "Credit property insurance" has the same meaning prescribed in~~
10 ~~section 20-1621.01.~~

11 ~~5.~~ 4. "Credit unemployment insurance" means casualty insurance on
12 a debtor to provide indemnity for payments or debt becoming due on a
13 specific loan or other credit transaction while the debtor is
14 involuntarily unemployed as defined in the policy.

15 ~~6.~~ 5. "Creditor" means the lender of money or vendor or lessor of
16 goods, services, property, rights or privileges, including a lessor under
17 a lease intended as a security, where payment is arranged through a credit
18 transaction. "Creditor" means also any successor to the right, title or
19 interest of any such lender, vendor or lessor or an affiliate, associate
20 or subsidiary of any of them or any director, officer or employee of any
21 of them or any other person in any way associated with any of them.

22 ~~7.~~ 6. "Debtor" means a borrower of money or a person possessing a
23 commitment for a loan of certain funds or a purchaser or lessee of goods,
24 services, property, rights or privileges for which payment is arranged
25 through a credit transaction.

26 ~~8. "Director" means the director of insurance.~~

27 ~~9.~~ 7. "Gross debt" means the sum of the remaining payments that a
28 debtor owes a creditor.

29 ~~10.~~ 8. "Identifiable charge" means a charge for a type of consumer
30 credit insurance that is made to debtors having that insurance and not
31 made to debtors not having the insurance, and that includes a charge for
32 insurance that is disclosed in the credit or other instrument furnished to
33 the debtor that states the financial elements of the credit transaction
34 and any difference in the finance, interest, service or other similar
35 charge made to debtors in like circumstances except for the insured or
36 noninsured status of the debtor or of the property used as security for
37 the credit transaction.

38 ~~11.~~ 9. "Loan" means an advance or commitment of certain funds
39 pursuant to a repayment agreement.

40 ~~12.~~ 10. "Net debt" means the amount necessary to liquidate a debt
41 in a single lump sum payment, excluding all unearned interest and other
42 unearned finance charges.

1 Sec. 94. Section 20-1634, Arizona Revised Statutes, is amended to
2 read:

3 20-1634. Immunity

4 The director ~~of insurance~~ or any person who in good faith furnishes
5 to the insured or insurer information as to reasons for cancellation or
6 ~~non-renewal~~ NONRENEWAL of a motor vehicle policy, shall not be liable to
7 any party for providing such information.

8 Sec. 95. Section 20-1652, Arizona Revised Statutes, is amended to
9 read:

10 20-1652. Grounds for valid notice of cancellation; inquiries;
11 definitions

12 A. After a policy has been in effect for sixty days or, if the
13 policy is a renewal, effective immediately, ~~no~~ A notice of cancellation
14 ~~may be~~ IS NOT effective unless it is based on the occurrence, after the
15 effective date of the policy, of one or more of the following:

16 1. Nonpayment of premium.

17 2. Conviction of the named insured of a crime arising out of acts
18 increasing the hazard insured against.

19 3. Acts or omissions by the insured or the insured's representative
20 constituting fraud or material misrepresentation in obtaining the policy,
21 continuing the policy or presenting a claim under the policy.

22 4. Discovery of grossly negligent acts or omissions by the insured
23 substantially increasing any of the hazards insured against.

24 5. Substantial change in the risk assumed by the insurer, since the
25 policy was issued, except to the extent that the insurer should reasonably
26 have ~~foreseen~~ FORESEEN the change or contemplated the risk in writing the
27 contract.

28 6. A determination by the director ~~of insurance~~ that the
29 continuation of the policy would place the insurer in violation of the
30 insurance laws of this state.

31 7. Failure of the insured to take reasonable steps to eliminate or
32 reduce any conditions in or on the insured premises that contributed to a
33 loss in the past or will increase the probability of future losses.

34 B. ~~In the event of~~ IF nonrenewal IS based on THE condition of the
35 premises, the insured shall be given thirty days' notice to remedy the
36 identified conditions. ~~In the event that~~ IF the identified conditions are
37 remedied, coverage shall be renewed. ~~In the event that~~ IF the identified
38 conditions are not satisfactorily remedied, the insured shall be given an
39 additional thirty days, ~~upon~~ ON payment of premium, to cure the defective
40 condition. Any insured who believes nonrenewal under this subsection is
41 arbitrary or capricious may ~~utilize~~ USE the appeal procedures set forth in
42 section 20-1633.

43 C. If an insurer uses for underwriting purposes information from a
44 report provided by, or database maintained by, an insurance support
45 organization or consumer reporting agency related to the premises that is

1 the subject of the application or to the person applying for insurance,
2 the insurer shall obtain that information as soon as practicable on
3 application by a person for insurance coverage and before the issuance of
4 a binder of insurance coverage. Failure of the insurer to timely obtain
5 the information required by this subsection precludes the insurer from
6 declining insurance coverage or terminating a binder of insurance coverage
7 based on the information. This subsection does not apply to a policy
8 renewal.

9 D. This section does not affect the provisions of section 20-1120.

10 E. After thirty days from the application by an insured for
11 insurance coverage, no declination of insurance coverage or termination of
12 a binder shall be based on information from a consumer report, including a
13 consumer report provided by, or database maintained by, an insurance
14 support organization or consumer reporting agency related to the premises
15 that is the subject of the application or to the person applying for
16 insurance. Notwithstanding any other law, an insurer may decline or
17 terminate insurance coverage based on the condition of the premises as
18 determined through a physical inspection of the premises.

19 F. An insurer shall not consider as a claim any inquiry by an
20 insured into whether a policy will cover a loss or about the type or level
21 of coverage. An insurer shall not use such an inquiry, regardless of the
22 source of the information that an inquiry was made, as a basis for
23 declining, nonrenewing or canceling insurance coverage or a binder of
24 insurance coverage. An insurer shall not submit to any insurance support
25 organization or consumer reporting agency that a mere inquiry was made to
26 the insurer as to the terms or coverage of a policy of insurance. An
27 inquiry into coverage on a property insurance policy is not a claim
28 activity unless an actual claim is filed by the insured that results in an
29 investigation of the claim by the insurer.

30 G. For the purposes of this section:

31 1. "Consumer reporting agency" has the same meaning prescribed in
32 section 20-2102.

33 2. "Insurance support organization" has the same meaning prescribed
34 in section 20-2102.

35 Sec. 96. Section 20-1673, Arizona Revised Statutes, is amended to
36 read:

37 20-1673. Grounds for valid cancellation

38 A. No insurer may cancel an insurance policy before the expiration
39 of the agreed term or one year from the effective date of the policy or
40 renewal, whichever is less, if one of the following is true:

41 1. The policy has been in effect for sixty days.

42 2. The policy is a renewal, effective immediately.

43 B. Notwithstanding subsection A **OF THIS SECTION**, an insurer may
44 cancel a policy for either of the following:

45 1. Nonpayment of a premium.

1 2. One of the following grounds, which must be stated in the
2 policy:

3 (a) Conviction of the named insured of a crime arising out of acts
4 increasing the hazard insured against.

5 (b) Acts or omissions by the insured or ~~his~~ THE INSURED'S
6 representative constituting fraud or material misrepresentation in
7 obtaining the policy, in continuing the policy or in presenting a claim
8 under the policy.

9 (c) A substantial change in the risk assumed, except to the extent
10 that the insurer should reasonably have foreseen the change or
11 contemplated the risk in writing the contract.

12 (d) A substantial breach of contractual duties or conditions.

13 (e) Loss of reinsurance applicable to the risk insured against, but
14 only if the absence of reinsurance has resulted from termination of treaty
15 or facultative reinsurance initiated or implemented by the reinsurer or
16 reinsurers of the company issuing the policy.

17 (f) A determination by the director ~~of insurance~~ that the
18 continuation of the policy would place the insurer in violation of the
19 insurance laws of this state or would jeopardize the solvency of the
20 insurer.

21 (g) Acts or omissions by the insured or ~~his~~ THE INSURED'S
22 representative ~~which~~ THAT materially increase the hazard insured against.

23 Sec. 97. Section 20-1691, Arizona Revised Statutes, is amended to
24 read:

25 20-1691. Definitions

26 In this article, unless the context otherwise requires:

27 1. "Applicant" means:

28 (a) In the case of an individual long-term care insurance policy,
29 the person who seeks to contract for such benefits.

30 (b) In the case of a group long-term care insurance policy, the
31 proposed certificate holder.

32 2. "Certificate" means a certificate issued under a group long-term
33 care insurance policy, which ~~group policy~~ has been delivered or issued for
34 delivery in this state.

35 3. "Chronically ill individual" means any individual who has been
36 certified by a licensed health care practitioner as meeting the definition
37 of illness established by title III of the health insurance portability
38 and accountability act of 1996 (P.L. 104-191; 110 STAT. 1936).

39 ~~4. "Director" means the director of the department of insurance.~~

40 ~~5.~~ 4. "Group" means any of the following:

41 (a) One or more employers or labor organizations, or a trust or the
42 trustees of a fund established by one or more employers or labor
43 organizations for employees or former employees or members or former
44 members of the labor organization.

1 (b) A professional, trade or occupational association for its
2 members or former or retired members if the association is composed of
3 individuals who were all actively engaged in the same profession, trade or
4 occupation and the association has been maintained in good faith for
5 purposes other than obtaining insurance.

6 (c) An association or a trust or the trustees of a fund
7 established, created or maintained for the benefit of members of one or
8 more associations, subject to compliance with the requirements of section
9 20-1691.04, subsection A.

10 (d) A group other than that described in subdivision (a), (b) or
11 (c) of this paragraph if a policy issued to the group satisfies the
12 criteria under section 20-1691.04, subsection C.

13 ~~6.~~ 5. "Group long-term care insurance" means a long-term care
14 insurance policy that is delivered or issued for delivery in this state to
15 a group.

16 ~~7.~~ 6. "Licensed health care practitioner" means any physician
17 licensed pursuant to title 32, chapter 13 or 17, any registered nurse or
18 registered nurse practitioner licensed pursuant to title 32, chapter 15 or
19 any other individual who meets the requirements prescribed by the United
20 States secretary of the treasury.

21 ~~8.~~ 7. "Long-term care insurance" means an individual or group
22 insurance policy or rider issued by insurers, fraternal benefit societies,
23 nonprofit health, hospital and medical service corporations, prepaid
24 health plans, health care services organizations or any similar
25 organization and advertised, marketed, offered or designed to provide
26 coverage for each covered person on an expense-incurred, indemnity,
27 prepaid or other basis for one or more necessary or medically necessary
28 diagnostic, preventive, therapeutic, rehabilitative, maintenance, personal
29 or custodial care services provided in a setting other than an acute care
30 unit of a hospital. Long-term care insurance includes group and
31 individual annuities, life insurance policies or riders that provide or
32 supplement long-term care insurance and qualified long-term care insurance
33 contracts. Long-term care insurance also includes a policy or rider that
34 provides for payment of benefits based on cognitive impairment or loss of
35 functional capacity. Long-term care insurance does not include any
36 insurance policy that is offered primarily to provide basic medicare
37 supplement coverage, basic hospital expense coverage, basic medical and
38 surgical expense coverage, major medical expense coverage, disability
39 income or related asset protection coverage, hospital confinement
40 indemnity coverage, accident only coverage, specified disease coverage,
41 specified accident coverage or limited benefit health coverage or riders
42 to the insurance policy or a life insurance policy that accelerates the
43 death benefit for terminal illness, medical conditions requiring
44 extraordinary medical intervention or permanent institutional confinement,
45 that provides the option of a lump sum payment for those benefits and in

1 which the benefits or the eligibility for the benefits is not conditioned
2 on the receipt of long-term care.

3 ~~9.~~ 8. "Long-term care partnership program" means a qualified state
4 long-term care insurance partnership as defined in section 1917(b) of the
5 social security act (42 United States Code section 1396p).

6 ~~10.~~ 9. "Maintenance or personal care services" means any care the
7 primary purpose of which is to provide assistance needed with any
8 disability that results in the individual being a chronically ill
9 individual, including the protection from threats to health and safety due
10 to severe cognitive impairment.

11 ~~11.~~ 10. "Policy" means an individual or group policy, contract,
12 subscriber agreement, rider or endorsement delivered or issued for
13 delivery in this state by an insurer, fraternal benefit society, nonprofit
14 health, hospital or medical service corporation, prepaid health plan or
15 health care services organization or any similar organization.

16 ~~12.~~ 11. "Preexisting condition" means a condition for which medical
17 advice or treatment was recommended by or received from a health care
18 services provider within six months before the effective date of coverage
19 of an insured person.

20 ~~13.~~ 12. "Qualified long-term care insurance contract" means:

21 (a) Any insurance policy that meets the requirements of section
22 7702B(b) of the internal revenue code of 1986, as amended.

23 (b) The portion of a life insurance policy that provides long-term
24 care insurance coverage by rider or as a part of the policy and that
25 satisfies the requirements of section 7702B(b) and (e) of the internal
26 revenue code of 1986, as amended.

27 ~~14.~~ 13. "Qualified long-term care services" means necessary
28 diagnostic, preventive, therapeutic, curing, treating, mitigating and
29 rehabilitative services and maintenance or personal care services to which
30 the insured is eligible under a qualified long-term care insurance
31 contract and that are provided pursuant to a plan of care prescribed by a
32 licensed health care practitioner.

33 ~~15.~~ 14. "Severe cognitive impairment" means an impairment
34 determined by a licensed health care practitioner as meeting the
35 definition of an impairment as established by title III of the health
36 insurance portability and accountability act of 1996 (P.L. 104-191; 110
37 STAT. 1936).

38 Sec. 98. Section 20-1691.04, Arizona Revised Statutes, is amended
39 to read:

40 20-1691.04. Requirements for certain group coverage

41 A. Before advertising, marketing or offering a policy within this
42 state issued to a group defined in section 20-1691, paragraph ~~5~~ 4,
43 subdivision (c), the association or the insurer of the association shall
44 file evidence with the director that the association meets all of the
45 following requirements:

- 1 1. Consists of at least one hundred persons.
- 2 2. Has been organized and maintained in good faith for purposes
- 3 other than obtaining insurance.
- 4 3. Has been in active existence for at least one year.
- 5 4. Has a constitution and bylaws that prescribe all of the
- 6 following:
- 7 (a) That the association holds regular meetings at least annually
- 8 to further the purposes of the members.
- 9 (b) Except for credit unions, that the association collects dues or
- 10 solicits contributions from members.
- 11 (c) That the members have voting privileges and representation on
- 12 the governing board and committees.
- 13 B. Thirty days after filing the evidence required by subsection A
- 14 of this section, an association is deemed to satisfy the organizational
- 15 requirements of subsection A of this section unless the director notifies
- 16 the association or its insurer in writing that the association does not
- 17 satisfy those organizational requirements.
- 18 C. An insurer may offer a group long-term care insurance policy to
- 19 a group defined in section 20-1691, paragraph ~~5- 4~~, subdivision (d) if the
- 20 director finds all of the following:
- 21 1. Issuance of the group policy is not contrary to the best
- 22 interest of the public.
- 23 2. Issuance of the group policy would result in economies of
- 24 acquisition or administration.
- 25 3. The benefits of the policy are reasonable in relation to the
- 26 premium charged.
- 27 D. A person shall not offer long-term care insurance coverage for a
- 28 resident of this state under a group policy issued in another state to a
- 29 group defined in section 20-1691, paragraph ~~5- 4~~, subdivision (d) unless
- 30 the state of issuance has statutory and regulatory long-term care
- 31 insurance requirements substantially similar to the requirements in this
- 32 state and either this state or the state of issuance has made a
- 33 determination that the requirements have been met.
- 34 E. The director may prohibit further offering to a resident of this
- 35 state a policy that was issued to a group as defined in section 20-1691,
- 36 paragraph ~~5- 4~~, subdivision (c) or (d) and that was initially authorized
- 37 for issuance, if the director finds that the insurer does not currently
- 38 meet the requirements of this article.
- 39 Sec. 99. Section 20-1691.06, Arizona Revised Statutes, is amended
- 40 to read:
- 41 20-1691.06. Outline of coverage; certificate
- 42 A. An outline of coverage shall be delivered to an applicant for a
- 43 long-term care insurance policy at the time of initial solicitation
- 44 through means that prominently direct the recipient's attention to the
- 45 document and its purpose. In the case of direct response solicitations,

1 the outline of coverage shall be presented in conjunction with an
2 application or enrollment form. In the case of insurance producer
3 solicitations, the insurance producer shall deliver the outline of
4 coverage before the presentation of an application or enrollment form.
5 The outline of coverage shall include all of the following:

6 1. A description of the principal benefits and coverage provided in
7 the policy.

8 2. A statement of the principal exclusions, reductions and
9 limitations contained in the policy.

10 3. A statement of the renewal provisions, including any reservation
11 in the policy of a right to change premiums, and any continuation or
12 conversion provisions of group coverage.

13 4. A statement that the outline of coverage is a summary of the
14 policy issued or applied for and that the policy should be consulted to
15 determine governing contractual provisions.

16 5. A description of the terms under which the policy or certificate
17 may be returned and the premium refunded.

18 6. A description of the relationship of cost of care and benefits.

19 7. A statement and description of whether the policy constitutes a
20 qualified long-term care insurance contract.

21 B. For a long-term care **INSURANCE** policy that is issued to a group
22 as defined in section 20-1691, paragraph ~~5~~ 4, subdivision (a), an outline
23 of coverage is not required to be delivered if the information listed in
24 subsection A of this section is contained in other materials related to
25 enrollment. On request, an insurer shall make the other materials
26 available to the director.

27 C. On delivery of an individual life insurance policy that provides
28 long-term care benefits within the policy or by rider, a policy summary
29 shall be delivered to the policyholder. In the case of direct response
30 solicitations, the insurer shall deliver the policy summary on the
31 applicant's request. If an applicant does not request the delivery of a
32 policy summary, the insurer shall deliver the policy summary no later than
33 at the time the policy is delivered. A policy summary shall include:

34 1. An explanation of how the long-term care benefits interact with
35 other components of the policy, including deductions from death benefits.

36 2. An explanation of the amount of benefits, the length of benefits
37 and the guaranteed lifetime benefits, if any, for each covered person.

38 3. Any exclusions, reductions or limitations on benefits of
39 long-term care.

40 4. A statement that any long-term care inflation protection option
41 required by state law is not available under the policy.

42 5. If applicable to the type of policy that is issued:

43 (a) A disclosure of the effects of exercising other rights under
44 the policy.

1 (b) A disclosure of guarantees that are related to long-term care
2 costs of insurance charges.

3 (c) Current and projected maximum lifetime benefits.

4 6. An explanation of the monthly reporting requirements for life
5 insurance policies with an accelerated death benefits option.

6 D. The provisions of the policy summary required under subsection C
7 of this section may be incorporated into any required life insurance
8 illustration or policy summary.

9 E. The insurer shall provide a monthly report to the insured any
10 time a long-term care benefit that is funded through a life insurance
11 vehicle by the acceleration of the death benefit is in benefit payment
12 status and the report shall include:

13 1. Any long-term care benefits paid out during the month.

14 2. An explanation of any changes in the policy, including death
15 benefits or cash values, due to long-term care benefits paid out.

16 3. The amount of long-term care benefits existing or remaining.

17 F. A certificate issued pursuant to a group long-term care
18 insurance policy that is delivered or issued for delivery in this state
19 shall include all of the following:

20 1. A description of the principal benefits and coverage provided in
21 the policy.

22 2. A statement of the principal exclusions, reductions and
23 limitations contained in the policy.

24 3. A statement that the group master policy should be consulted to
25 determine governing contractual provisions.

26 G. If an application for a long-term care insurance contract or
27 certificate is approved, the issuer shall deliver the contract or
28 certificate of insurance to the applicant within thirty days ~~of~~ AFTER
29 approval.

30 H. An insurer shall notify a claimant that a claim under a
31 long-term care insurance policy is accepted or denied within fifteen
32 working days ~~of~~ AFTER the insurer's receipt of a claim if the insurer has
33 received the documentation it reasonably requires to determine liability.
34 If the insurer requires longer than fifteen working days, the insurer,
35 within the fifteen days, shall notify the claimant of the need for
36 additional time and shall explain why additional time is required. In no
37 case shall the determination exceed sixty days.

38 I. If an insurer denies a claim under a long-term care insurance
39 policy, the insurer shall:

40 1. Provide the policyholder, certificate holder or designated
41 representative of the policyholder or certificate holder with a written
42 explanation of the reasons for the denial, including a reference to any
43 specific policy provision, condition or exclusion supporting the denial.

1 2. Make available all information directly related to the denial to
2 the policyholder, certificate holder or designated representative of the
3 policyholder or certificate holder.

4 Sec. 100. Section 20-1691.08, Arizona Revised Statutes, is amended
5 to read:

6 20-1691.08. Rate and form review; disapproval

7 A. A person shall not deliver or issue for delivery in this state
8 any long-term care insurance policy or rate unless the person has first
9 filed the form or rate with the director and the director has approved the
10 form or rate. Unless the director issues an order affirmatively approving
11 or disapproving the form or rate within ~~thirty~~ SIXTY days after filing,
12 the form or rate is deemed approved. On written notice given to the
13 insurer within the ~~thirty day~~ SIXTY-DAY period, the director may extend
14 the ~~thirty day~~ SIXTY-DAY review period for up to fifteen additional days.

15 B. The director shall disapprove a rate or form if either:

16 1. The rate ~~is~~ DOES not ~~in compliance~~ COMPLY with this article or
17 any rules adopted pursuant to this article.

18 2. The form contains provisions that are ambiguous, misleading or
19 deceptive, that encourage misrepresentation of the coverage or that are
20 contrary to this title or of any rule adopted pursuant to this title.

21 C. If the director disapproves a rate or form, the director shall
22 send the insurer a written notice specifying the reason for ~~THE~~
23 disapproval. The insurer may request a hearing pursuant to title 41,
24 chapter 6, article 10 to contest the disapproval. It is unlawful for the
25 insurer to issue or use a rate or form that has been disapproved.

26 D. At any time after notice and for cause shown, the director may
27 issue an order withdrawing approval of any form or rate for any reason
28 listed in subsection B ~~OF THIS SECTION~~. The insurer may request a hearing
29 pursuant to title 41, chapter 6, article 10 to contest the director's
30 order.

31 E. An insurer shall not issue or use a rate or form after the
32 effective date of an order withdrawing approval.

33 F. The director, by order, may exempt from the requirements of this
34 section for as long as the director deems proper any insurance rate or
35 form specified in the order, to which, in the director's opinion, this
36 section may not practicably be applied or the filing and approval of which
37 are, in the director's opinion, not desirable or necessary for the
38 protection of the public.

39 Sec. 101. Section 20-1691.11, Arizona Revised Statutes, is amended
40 to read:

41 20-1691.11. Nonforfeiture benefits

42 A. Except as provided in subsection B of this section, a person
43 shall not deliver or issue for delivery in this state a long-term care
44 insurance policy unless the policyholder or certificate holder has been
45 offered the option of purchasing a policy or certificate with a

1 nonforfeiture benefit. The offer of the nonforfeiture benefit may be in
2 the form of a rider that is attached to the policy. If the policyholder
3 or certificate holder declines the benefit, the insurer shall provide a
4 contingent benefit on lapse that shall be available for a specified period
5 of time following a substantial increase in premium rates.

6 B. If a group long-term care insurance policy is issued, a person
7 shall make the offer of the nonforfeiture benefit to the group
8 policyholder, except that if the policy is issued to a group as defined in
9 section 20-1691, paragraph ~~5~~ 4, subdivision (d), other than to a
10 continuing care retirement community or other similar entity, a person
11 shall make the offering to each proposed certificate holder.

12 Sec. 102. Section 20-1691.12, Arizona Revised Statutes, is amended
13 to read:

14 20-1691.12. Insurance producer training course requirements

15 A. An individual may not sell, solicit or negotiate long-term care
16 insurance unless the individual:

- 17 1. Is licensed as an insurance producer for accident and health or
18 sickness.
- 19 2. Has completed eight hours of initial long-term care training.
- 20 3. Has completed four hours of long-term care training in each
21 two-year period succeeding July 1, 2009, after the two-year period within
22 which the individual completed the initial long-term care training.

23 B. An individual may satisfy the training requirement prescribed in
24 subsection A of this section only by completing an approved continuing
25 education course that is offered by an approved provider pursuant to
26 chapter 18 of this title. The completion of such a course may also
27 satisfy the insurance continuing education requirement prescribed by
28 chapter 18 of this title.

29 C. The training courses required by subsection A of this section
30 consist of topics that are related to long-term care insurance, long-term
31 care services and, if applicable, qualified state long-term care insurance
32 partnership programs including, as consistent with the minimum standards
33 that apply to approved continuing education courses ~~developed by the~~
34 ~~continuing education review committee pursuant to section 20-2905:~~

- 35 1. State and federal rules and requirements and the relationship
36 between qualified state long-term care insurance partnership programs and
37 other public and private coverage of long-term care services, including
38 medicaid.
- 39 2. Available long-term care services and long-term care service
40 providers.
- 41 3. Changes or improvements in long-term care services or long-term
42 care service providers.
- 43 4. Alternatives to the purchase of private long-term care
44 insurance.

1 5. The effect of inflation on benefits and the importance of
2 inflation protection.

3 6. Consumer suitability standards and guidelines.

4 D. An insurer that is subject to this article shall obtain
5 verification that an insurance producer received training that is required
6 by subsection A of this section before the insurance producer is ~~permitted~~
7 ~~ALLOWED~~ to sell, solicit or negotiate the insurer's long-term care
8 products.

9 E. An insurer that is subject to this article shall maintain and
10 make available to the director on request sufficient records with respect
11 to the training of insurance producers who sell, solicit or negotiate the
12 insurer's long-term care insurance products to allow the department to
13 provide assurance to the Arizona health care cost containment system
14 administration that the insurance producers have received the training
15 prescribed by this section.

16 F. A nonresident insurance producer's satisfaction of a
17 substantially similar long-term care training requirement of any other
18 state satisfies the nonresident insurance producer's long-term care
19 training requirement as prescribed by this section.

20 Sec. 103. Section 20-1741, Arizona Revised Statutes, is amended to
21 read:

22 20-1741. Annual statement to include certain claims and
23 premium information

24 Each licensed insurer ~~THAT IS~~ authorized to transact casualty
25 insurance in this state and ~~which THAT~~ writes professional liability
26 insurance ~~shall~~, as part of the annual statement required by section
27 20-223, ~~SHALL~~ report ~~such~~ professional liability claims and premium data
28 as ~~shall be~~ prescribed by the director ~~of insurance~~.

29 Sec. 104. Section 20-1742, Arizona Revised Statutes, is amended to
30 read:

31 20-1742. Insurers to report malpractice claims and actions;
32 definition

33 A. Each health care insurer providing professional liability
34 insurance to a health professional as defined in section 32-3201 shall
35 report to the appropriate health profession regulatory board, except the
36 Arizona medical board, within thirty days of its receipt, any written or
37 oral claim or action for damages for personal injury claimed to have been
38 caused by:

39 1. An error, omission or negligence in the performance of an
40 insured's professional services.

41 2. The performance of professional services without adequate
42 informed consent.

43 3. An alleged breach of contract for professional services.

1 B. The reports required by subsection A of this section shall be
2 confidential, nondiscoverable and nonadmissible as evidence, shall be
3 filed on such forms as the health profession regulatory board, except the
4 Arizona medical board, may require and shall contain:

5 1. The name and address of the health professional involved in the
6 claim.

7 2. The name and address of the person on whose behalf the claim is
8 being filed.

9 3. The date of the occurrence that created the claim.

10 4. The date of the claim if a complaint is not simultaneously
11 filed.

12 5. The date the complaint is filed, if applicable.

13 6. A summary of the occurrence on which the claim is based as
14 stated by the claimant.

15 7. Such other reasonable information related to the claim as the
16 director may require.

17 C. Every health care insurer required to report to the health
18 profession regulatory board pursuant to this section is required to advise
19 the health profession regulatory board of any settlements or judgments
20 entered against a health professional as defined in section 32-3201 within
21 thirty days after the settlement was agreed to or the judgment was entered
22 in superior court.

23 D. There shall be no liability on the part of and no cause of
24 action shall arise against any health care insurer or its agents or
25 employees reporting as required by this section.

26 E. The health profession regulatory board shall notify each health
27 care insurer that is required to report pursuant to subsection A of this
28 section of its duty to report.

29 F. ~~Nothing in~~ This section ~~limits~~ DOES NOT LIMIT the director of
30 THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS from obtaining any
31 of the information required to be reported under this section.

32 G. For the purposes of this section, "health profession regulatory
33 board" means an agency, board or commission that licenses, certifies or
34 registers a health professional as defined by section 32-3201.

35 Sec. 105. Section 20-1801, Arizona Revised Statutes, is amended to
36 read:

37 20-1801. Definitions

38 In this chapter, unless the context otherwise requires:

39 1. "Assets of a life care facility" means those assets held in the
40 name of the life care facility only.

41 2. "Contract holder" means a person who enters into a life care
42 contract with a provider or who is designated, in a life care contract, to
43 be a person provided with services in the person's private residence with
44 the right to future access to services, board and lodging in a facility.

45 ~~3. "Department" means the department of insurance.~~

1 ~~4. "Director" means the director of the department of insurance.~~

2 ~~5.~~ 3. "Entrance fee" means an initial or deferred transfer to a
3 provider of a sum of money or property, made or promised to be made by a
4 person entering into a life care contract, which assures a resident or
5 contract holder of services pursuant to a life care contract.

6 ~~6.~~ 4. "Facility":
7 (a) Means a place or places in which a provider undertakes to
8 provide a resident with nursing services, medical services or
9 health-related services, in addition to board and lodging, for a term in
10 excess of one year or for life pursuant to a life care contract.

11 (b) Does not include a contract holder's private residence.

12 ~~7.~~ 5. "Life care contract" means a contract to provide to a person
13 for the duration of ~~such~~ THE person's life or for a term in excess of one
14 year nursing services, medical services or health-related services, as
15 defined in section 36-401, in addition to board and lodging for ~~such~~ THE
16 person in a facility or services in the person's private residence with
17 the right to future access to services, board and lodging in a facility,
18 conditioned ~~upon~~ ON the transfer of an entrance fee to the provider of
19 such services in addition to or in lieu of the payment of regular periodic
20 charges for the care and services involved.

21 ~~8.~~ 6. "Living unit" means an apartment, room or other area within
22 a facility set aside for the exclusive use of one or more identified
23 residents.

24 ~~9.~~ 7. "Manager" means a corporation, partnership, association,
25 joint stock company, trust, or any other unincorporated organization ~~which~~
26 THAT is contracted with to manage the residential section or ~~health~~
27 ~~related~~ HEALTH-RELATED section, or both, of a life care facility.

28 ~~10.~~ 8. "Permit" means a permit to enter into life care contracts
29 issued by the department ~~of insurance~~.

30 ~~11.~~ 9. "Promoter" means the primary person who is employed to
31 consult or to promote the establishment of a life care facility.

32 ~~12.~~ 10. "Provider" means a person who provides services pursuant to
33 a life care contract.

34 ~~13.~~ 11. "Resident" means a person who enters into a life care
35 contract with a provider or who is designated, in a life care contract, to
36 be a person provided with services, board and lodging in a living unit or
37 at a facility.

38 Sec. 106. Section 20-1808, Arizona Revised Statutes, is amended to
39 read:

40 20-1808. Ratio of assets to liabilities; report;
41 rehabilitation of provider

42 A. The provider shall possess assets in the first year of operation
43 equal to at least seventy-five ~~per cent~~ PERCENT of the unamortized
44 endowment fees plus all other liabilities including long-term debt. The
45 unamortized endowment fees shall be based on life expectancy of

1 purchasers. Thereafter, the provider shall at all times possess assets in
 2 an amount sufficient to assure full performance of the obligations of the
 3 provider pursuant to life care contracts including any reserve fund escrow
 4 required by the director pursuant to section 20-1806.

5 B. If revenues or funds including reserves are inadequate or
 6 projected to be inadequate pursuant to the annual report or an actuarial
 7 report or if the provider does not meet the requirements of subsection A
 8 of this section, the director may employ an independent management
 9 consultant experienced in the operation of life care facilities, at the
 10 expense of the provider, who shall examine the financial structure and
 11 operations of the provider and make recommendations on remedial action to
 12 the director. The director shall not be bound by such recommendations.

13 C. ~~IF~~ at any time the director receives notice from the escrow
 14 agent that section 20-1806 has not been complied with, ~~or~~ ~~IF~~ at any other
 15 time when the director has reason to believe that the provider is in a
 16 financially unsound or unsafe condition, ~~or~~ or that its condition is such
 17 that it may otherwise be unable to fully perform its obligations pursuant
 18 to life care contracts, ~~or when~~ ~~IF~~ the provider fails to implement the
 19 director's recommendations as a result of a management consultant's report
 20 or ~~when~~ ~~IF~~ it is obvious to the director that to obtain the services of a
 21 financial consultant under subsection B of this section would be futile,
 22 the director, through the attorney general, shall apply to the superior
 23 court in the county in which the provider's facility is located for an
 24 order directing ~~him~~ ~~THE DIRECTOR~~ to assume management and possession of
 25 the provider's facility and to rehabilitate the provider to enable it to
 26 fully perform its obligation pursuant to life care contracts. The court
 27 shall act ~~upon~~ ~~ON~~ the application ~~upon~~ ~~ON~~ notice to the provider, and any
 28 objection to the petition shall be filed with the court within the time
 29 prescribed by such notice.

30 D. If the court ~~upon~~ ~~ON~~ hearing finds that the provider is in a
 31 financially unsound or unsafe condition or that its condition is such that
 32 it may otherwise be unable to fully perform its obligations pursuant to
 33 life care contracts, the court shall issue an order directing the director
 34 to take possession of the property of the provider and to conduct the
 35 business thereof, and to take such steps toward removal of the causes and
 36 conditions ~~which~~ ~~THAT~~ have made rehabilitation necessary, as the court may
 37 direct. The order shall include a provision directing the issuance of a
 38 notice of the rehabilitation proceedings to the residents at such
 39 facility, to the provider's contract holders and to such other interested
 40 persons as the court shall direct.

41 E. Appointment of the director to rehabilitate a provider shall
 42 authorize the director to:

- 43 1. Take possession of and preserve, protect and recover any assets,
 44 books and records or property of the provider, including claims or causes
 45 of action ~~belonging~~ ~~THAT BELONG~~ to or ~~which~~ ~~THAT~~ may be asserted by the

1 provider, and to deal with such property in ~~his own~~ THE DIRECTOR'S name in
2 the capacity as director, and purchase at any sale any real estate or
3 other asset ~~upon~~ ON which the provider may hold any lien or encumbrance or
4 in which it may have an interest.

5 2. File, prosecute and defend or compromise any suit or suits ~~which~~
6 THAT have been filed or ~~which~~ THAT may thereafter be filed by or against
7 ~~such~~ THE provider ~~which~~ AND THAT are deemed by the director to be
8 necessary to protect the provider or the residents or contract holders or
9 any property affected thereby.

10 3. Take possession of and deposit and invest any of the provider's
11 available funds.

12 4. Pay all expenses of the rehabilitation.

13 5. Exercise such other powers and duties as may be provided by
14 order of the court.

15 6. Appoint managers, supervisors or employees necessary to properly
16 manage and operate the provider and the provider's facility.

17 7. Take possession of and, with the prior approval of the court,
18 sell, exchange, lease, mortgage or otherwise dispose of any property of
19 the provider by public sale, bidding or otherwise.

20 8. With the prior approval of the court, borrow money with or
21 without security for the purpose of facilitating the rehabilitation of the
22 provider.

23 9. Perform all duties of the provider.

24 10. Reject any executory contract to which the provider is a party.

25 11. Withdraw any sums remaining in the escrow account established
26 pursuant to section 20-1806 for the purpose of rehabilitating the
27 provider's facility.

28 F. The court may at any time during a rehabilitation proceeding
29 issue such other instructions or orders as are deemed necessary to aid the
30 director in the rehabilitation proceeding.

31 G. The director, or any interested person ~~upon~~ ON due notice to the
32 director, at any time may apply to the court for an order terminating the
33 rehabilitation proceedings and ~~permitting~~ ALLOWING the provider to resume
34 possession of its property and the conduct of its business, but no such
35 order shall be granted except when, after a full hearing, the court has
36 determined that the purposes of the proceeding have been fully
37 accomplished and that the facility can be returned to the provider's
38 management without further jeopardy to the residents of the facility,
39 creditors, owners of the facility, and ~~to~~ the public. An order
40 terminating the rehabilitation proceeding shall be based ~~upon~~ ON a full
41 report and accounting by the director of the conduct of the provider's
42 officers during the rehabilitation and of the provider's current financial
43 condition.

1 H. If at any time the director deems that further efforts to
 2 rehabilitate the provider would be useless, ~~he~~ THE DIRECTOR may report to
 3 the court and apply for an order of liquidation and dissolution pursuant
 4 to title 10, chapter 14, article 3, if a corporation, or may apply for
 5 other appropriate relief for dissolving the provider and winding up its
 6 affairs. An order directing the liquidation or dissolution of the
 7 provider shall act as a revocation of the provider's permit issued
 8 pursuant to section 20-1803.

9 I. In connection with the rehabilitation proceedings, the director
 10 may appoint one or more special deputy directors of THE DEPARTMENT OF
 11 insurance AND FINANCIAL INSTITUTIONS to act for ~~him~~ THE DIRECTOR and may
 12 employ such counsel, clerks or assistants as ~~he~~ THE DIRECTOR deems
 13 necessary. The compensation of the special deputies, counsel, clerks or
 14 assistants and any expenses of taking possession of the provider's
 15 facility and of conducting the proceedings shall be set by the director,
 16 subject to approval of the court, and shall be paid out of the funds or
 17 assets of the provider.

18 Sec. 107. Section 20-1812, Arizona Revised Statutes, is amended to
 19 read:

20 20-1812. Disclosure statement; contents

21 At the time of or ~~prior to~~ BEFORE the execution of a life care
 22 contract and the transfer of any money or other property to a provider
 23 pursuant thereto, the provider shall deliver to the person with whom the
 24 life care contract is entered into a disclosure statement ~~which~~ THAT
 25 contains a copy of the provider's certified financial statements and
 26 feasibility study prepared according to ~~the provisions of~~ section 20-1802
 27 and any other information required by the director. The cover of the
 28 disclosure statement shall contain the following statement in bold-faced
 29 print: "A permit for this life care facility has been issued by the
 30 Arizona department of insurance AND FINANCIAL INSTITUTIONS. This permit
 31 does not constitute approval, recommendation or endorsement of the life
 32 care facility by the department, nor does it evidence the accuracy or
 33 completeness of the information in this statement."

34 Sec. 108. Section 20-2202, Arizona Revised Statutes, is amended to
 35 read:

36 20-2202. Joint underwriting association; establishment

37 A. ~~There is established in the department of insurance~~ A joint
 38 underwriting association IS ESTABLISHED IN THE DEPARTMENT OF INSURANCE AND
 39 FINANCIAL INSTITUTIONS consisting of insurers authorized to write and
 40 engaged in writing in this state on a direct basis liability insurance,
 41 including the liability portion of multiperil policies, but not including
 42 ocean marine insurance. Every such insurer shall be a member of the
 43 association and shall remain a member as a condition of its authority to
 44 continue to transact insurance in this state.

1 B. If after a hearing conducted pursuant to section 20-2201, the
2 director determines that a voluntary plan would fail to provide coverage,
3 the association shall provide liability insurance coverages for a
4 designated class or classes of risks on a primary basis in this state.
5 The association shall not be required to provide coverage available
6 through an assigned risk plan or coverages for pollution liability,
7 hazardous waste liability or workers' compensation. The association may
8 operate only on a finding by the director after a public hearing pursuant
9 to section 20-161 that liability insurance is substantially unavailable
10 through private insurers for a particular line.

11 C. If the director determines, on application of any interested
12 party and after a public hearing, that liability insurance for a
13 particular line is no longer substantially unavailable through private
14 insurers, the association shall cease its underwriting operations.

15 D. ~~Nothing contained in~~ This chapter ~~prohibits~~ DOES NOT PROHIBIT an
16 insurer from issuing or renewing a policy of liability insurance in this
17 state. However, on a determination by the director, after a public
18 hearing pursuant to section 20-161, that substantial adverse selection
19 has, or will likely, result, the director may issue an order to insurers
20 that no original policies shall thereafter be issued or that renewal
21 policies shall be issued only if the insurer will offer the insurance to a
22 representative sample of rating classifications, or both.

23 Sec. 109. Repeal

24 Section 20-2305, Arizona Revised Statutes, is repealed.

25 Sec. 110. Section 20-2306, Arizona Revised Statutes, is amended to
26 read:

27 20-2306. Use of uniform employee health status questionnaire

28 A. An accountable health plan shall use the uniform employee health
29 status questionnaire prescribed ~~pursuant to section 20-2305~~ BY THE
30 DEPARTMENT for all small groups for which the accountable health plan
31 requires employees and their covered dependents to complete health status
32 questionnaires.

33 B. An accountable health plan may add to the questionnaire
34 additional questions ~~which~~ THAT pertain to eligibility for coverage and
35 for underwriting purposes and may ask the producer or the employees and
36 dependents follow-up questions about their responses to the uniform
37 employee health status questionnaire.

38 Sec. 111. Section 20-2310, Arizona Revised Statutes, is amended to
39 read:

40 20-2310. Discrimination prohibited; preexisting conditions;
41 wellness programs

42 A. Except as provided in subsection B of this section, a health
43 benefits plan may not deny, limit or condition the coverage or benefits
44 based on a person's health status-related factors or a lack of evidence of
45 insurability.

1 B. A health benefits plan shall not exclude coverage for
2 preexisting conditions, except that:

3 1. A health benefits plan may exclude coverage for preexisting
4 conditions for a period of not more than twelve months or, in the case of
5 a late enrollee, eighteen months. The exclusion of coverage does not
6 apply to services that are furnished to newborns who were otherwise
7 covered from the time of their birth or to persons who satisfy the
8 portability requirements under section 20-2308.

9 2. The accountable health plan shall reduce the period of any
10 applicable preexisting condition exclusion by the aggregate of the periods
11 of creditable coverage that apply to the individual.

12 C. A health benefits plan shall not include an affiliation period
13 in a policy unless the affiliation period satisfies the requirements
14 prescribed in 45 Code of Federal Regulations section 146.119(b).

15 D. On request of a health benefits plan, a person who provides
16 coverage during a period of continuous coverage with respect to a covered
17 individual shall promptly disclose the coverage provided to the covered
18 individual, the period of the coverage and the benefits provided under the
19 coverage.

20 E. The accountable health plan shall calculate creditable coverage
21 according to the following rules:

22 1. The accountable health plan shall give an individual credit for
23 each day the individual was covered by creditable coverage.

24 2. The accountable health plan shall not count a period of
25 creditable coverage for an individual enrolled in a health benefits plan
26 if after the period of coverage and before the enrollment date there were
27 sixty-three consecutive days during which the individual was not covered
28 under any creditable coverage.

29 3. The accountable health plan shall give credit in the calculation
30 of creditable coverage for any period that an individual is in a waiting
31 period or an affiliation period for any health coverage.

32 4. The accountable health plan shall not count a period of
33 creditable coverage with respect to enrollment of an individual if, after
34 the most recent period of creditable coverage and before the enrollment
35 date, sixty-three consecutive days lapse during all of which the
36 individual was not covered under any creditable coverage. The accountable
37 health plan shall not include in the determination of the period of
38 continuous coverage described in this section any period that an
39 individual is in a waiting period for health insurance coverage offered by
40 a health care insurer, is in a waiting period for benefits under a health
41 benefits plan offered by an accountable health plan or is in an
42 affiliation period.

43 5. In determining the extent to which an individual has satisfied
44 any portion of any applicable preexisting condition period the accountable

1 health plan shall count a period of creditable coverage without regard to
2 the specific benefits covered during that period.

3 6. An accountable health plan shall not impose any preexisting
4 condition exclusion in the case of an individual who is covered under
5 creditable coverage thirty-one days after the individual's date of birth.

6 7. An accountable health plan shall not impose any preexisting
7 condition exclusion in the case of a child who is adopted or placed for
8 adoption before age eighteen and who is covered under creditable coverage
9 thirty-one days after the adoption or placement for adoption.

10 F. An accountable health plan shall provide the certificate of
11 creditable coverage described in subsection G of this section without
12 charge for creditable coverage occurring after June 30, 1996 if the
13 individual:

14 1. Ceases to be covered under a health benefits plan offered by an
15 accountable health plan or otherwise becomes covered under a COBRA
16 continuation provision. An individual who is covered by a health benefits
17 plan that is offered by an accountable health plan, that is terminated or
18 not renewed at the choice of the employer and where the replacement of the
19 health benefits plan is without a break in coverage is not entitled to
20 receive the certification prescribed in this paragraph but is instead
21 entitled to receive the certifications prescribed in paragraphs 2 and 3 of
22 this subsection.

23 2. Who was covered under a COBRA continuation provision ceases to
24 be covered under the COBRA continuation provision.

25 3. Requests certification from the accountable health plan within
26 twenty-four months after the coverage under a health benefits plan offered
27 by an accountable health plan ceases.

28 G. The certificate of creditable coverage provided by an
29 accountable health plan is a written certification of:

30 1. The period of creditable coverage of the individual under the
31 accountable health plan and any applicable coverage under a COBRA
32 continuation provision.

33 2. Any applicable waiting period or affiliation period imposed on
34 an individual for any coverage under the accountable health plan.

35 H. Any accountable health plan that issues health benefits plans in
36 this state, as applicable, shall issue and accept a written certificate of
37 creditable coverage of the individual that contains at least the following
38 information:

39 1. The date that the certificate is issued.

40 2. The name of the individual or dependent for whom the certificate
41 applies and any other information that is necessary to allow the issuer
42 providing the coverage specified in the certificate to identify the
43 individual, including the individual's identification number under the
44 policy and the name of the policyholder if the certificate is for or
45 includes a dependent.

- 1 3. The name, address and telephone number of the issuer providing
- 2 the certificate.
- 3 4. The telephone number to call for further information regarding
- 4 the certificate.
- 5 5. One of the following:
- 6 (a) A statement that the individual has at least eighteen months of
- 7 creditable coverage. For the purposes of this subdivision, "eighteen
- 8 months" means five hundred forty-six days.
- 9 (b) Both the date that the individual first sought coverage, as
- 10 evidenced by a substantially complete application, and the date that
- 11 creditable coverage began.
- 12 6. The date creditable coverage ended, unless the certificate
- 13 indicates that creditable coverage is continuing from the date of the
- 14 certificate.
- 15 7. The consumer assistance telephone number for the department.
- 16 8. The following statement in at least ~~fourteen-point~~
- 17 **FOURTEEN-POINT** type:

Important notice!

19 Keep this certificate with your important personal records to

20 protect your rights under the health insurance portability and

21 accountability act of 1996 ("HIPAA"). This certificate is

22 proof of your prior health insurance coverage. You may need

23 to show this certificate to have a guaranteed right to buy new

24 health insurance ("Guaranteed issue"). This certificate may

25 also help you avoid waiting periods or exclusions for

26 preexisting conditions. Under HIPAA, these rights are

27 guaranteed only for a very short time period. After your

28 group coverage ends, you must apply for new coverage within 63

29 days to be protected by HIPAA. If you have questions, call the

30 Arizona department of insurance **AND FINANCIAL INSTITUTIONS.**

31 I. An accountable health plan may provide any certification

32 pursuant to subsection F, paragraph 1 of this section at the same time the

33 accountable health plan sends the notice required by the applicable COBRA

34 continuation provision.

35 J. An accountable health plan has satisfied the certification

36 requirement under this section if the accountable health plan offering the

37 health benefits plan provides the prescribed certificate in accordance

38 with this section within thirty days after the event that triggered the

39 issuance of the certification.

40 K. If an accountable health plan imposes a waiting period for

41 coverage of preexisting conditions, within a reasonable period of time

42 after receiving an individual's proof of creditable coverage and not later

43 than the date by which the individual must select an insurance plan, the

44 accountable health plan shall give the individual written disclosure of

45 the accountable health plan's determination regarding any preexisting

1 condition exclusion period that applies to that individual. The
2 disclosure shall include all of the following information:

3 1. The period of creditable coverage allowed toward the waiting
4 period for coverage of preexisting conditions.

5 2. The basis for the accountable health plan's determination and
6 the source and substance of any information on which the accountable
7 health plan has relied.

8 3. A statement of any right the individual may have to present
9 additional evidence of creditable coverage and to appeal the accountable
10 health plan's determination, including an explanation of any procedures
11 for submission and appeal.

12 L. Periods of creditable coverage for an individual are established
13 by presentation of the written certifications described in this section
14 and section 20-1379. In addition to written certification of the period
15 of creditable coverage as described in this section, individuals may
16 establish creditable coverage through the presentation of documents or
17 other means. In order to make a determination that is based on the
18 relevant facts and circumstances of the amount of creditable coverage that
19 an individual has, an accountable health plan shall take into account all
20 information that the plan obtains or that is presented to the plan on
21 behalf of the individual.

22 M. The department may enforce and monitor the issuance and delivery
23 of the notices and certificates by accountable health plans and insurers
24 as required by this section, the health insurance portability and
25 accountability act of 1996 (P.L. 104-191; 110 Stat. 1936) and any federal
26 regulations adopted to implement the health insurance portability and
27 accountability act of 1996.

28 N. This section does not prohibit any health benefits plan from
29 providing or offering to provide rewards or incentives under a wellness
30 program that satisfies the requirements for an exception from the general
31 prohibition against discrimination based on a health factor under the
32 health insurance portability and accountability act of 1996 (P.L. 104-191;
33 110 stat. 1936), including any federal regulations that are adopted
34 pursuant to that act.

35 Sec. 112. Section 20-2318, Arizona Revised Statutes, is amended to
36 read:

37 20-2318. Mandatory coverage prohibited

38 Notwithstanding any law to the contrary, the basic health benefit
39 plan is not subject to the requirements of section 20-461, subsection A,
40 paragraph ~~16~~ 17 and subsection B, section 20-826, subsections C, D, E, F,
41 H, I, J and K, sections 20-841, 20-841.01 and 20-841.02, section 20-1051,
42 paragraph ~~4~~ 3, section 20-1057, subsections B, C, I, J, K, L and M,
43 section 20-1402, subsection A, paragraphs 2, 4, 5, 6, 7 and 8, section
44 20-1404, subsections E, F, G, H, I and J and sections 20-1406, 20-1406.01,
45 20-1406.02 and 20-1408.

1 Sec. 113. Section 20-2402, Arizona Revised Statutes, is amended to
2 read:

3 20-2402. Risk retention groups chartered and licensed in this
4 state; definitions

5 A. A risk retention group, pursuant to this title, shall be
6 chartered and licensed to write only liability insurance pursuant to this
7 chapter and, except as provided in this chapter, must comply with this
8 title with respect to insurers that are chartered and licensed in this
9 state and with section 20-2403. Before it may offer insurance in any
10 state, each risk retention group shall also submit for approval to the
11 director of the department of insurance AND FINANCIAL INSTITUTIONS a plan
12 of operation or a feasibility study and revisions of the plan or study if
13 the group intends to offer any additional lines of liability insurance.
14 The group shall not offer any additional kinds of liability insurance in
15 this state or in any other state until a revision of the plan or study is
16 approved by the director of the department of insurance AND FINANCIAL
17 INSTITUTIONS.

18 B. Immediately on receipt of an application for a charter, this
19 state shall provide summary information concerning the filing to the
20 national association of insurance commissioners, including the name of the
21 risk retention group, the identity of the initial members of the group,
22 the identity of those individuals who organized the group or who will
23 provide administrative services or otherwise influence or control the
24 activities of the group, the amount and nature of initial capitalization,
25 the coverages to be afforded and the states in which the group intends to
26 operate.

27 C. A risk retention group that is licensed in this state shall
28 comply with all of the following:

29 1. The board of directors of the risk retention group shall have a
30 majority of independent board directors. If the risk retention group is a
31 reciprocal risk retention group, the attorney-in-fact shall be required to
32 adhere to the same standards regarding independence of operation and
33 governance as imposed on the risk retention group's board of directors or
34 subscribers' advisory committee, or both, under these standards, and, to
35 the extent permissible under this state's laws, service providers of a
36 reciprocal risk retention group shall contract with the risk retention
37 group and not the attorney-in-fact.

38 2. A board director does not qualify as independent unless the
39 board of directors affirmatively determines that the board director has no
40 material relationship with the risk retention group. Each risk retention
41 group shall disclose these determinations to its domestic regulator, at
42 least annually. Any person that is a direct or indirect owner of or
43 subscriber in the risk retention group or is an officer, board director or
44 employee, or all three, of an owner and insured, as contemplated by 15
45 United States Code section 3901(a)(4)(E)(ii), is considered to be

1 independent, unless some other position of that officer, board director or
2 employee constitutes a material relationship.

3 3. The term of any material service provider contract with the risk
4 retention group may not exceed five years. Any contract or its renewal
5 shall require the approval of the majority of the risk retention group's
6 independent board directors. The risk retention group's board of
7 directors shall have the right to terminate any service provider, audit or
8 actuarial contracts at any time for cause after providing adequate notice
9 as defined in the contract. The service provider contract is deemed
10 material if the amount to be paid for that contract is greater than or
11 equal to five percent of the risk retention group's annual gross written
12 premium or two percent of its surplus, whichever is greater. A service
13 provider contract that is a material relationship may not be entered into
14 unless the risk retention group has notified the director of the
15 department of insurance AND FINANCIAL INSTITUTIONS in writing of its
16 intention to enter into the transaction at least thirty days before and
17 the director of the department of insurance AND FINANCIAL INSTITUTIONS has
18 not disapproved the transaction within that period.

19 4. The board of directors of a risk retention group shall adopt a
20 written policy in the plan of operation as approved by the board that
21 requires the board of directors to do all of the following:

22 (a) Ensure that all owners or insureds, or both, of the risk
23 retention group receive evidence of ownership interest.

24 (b) Develop a set of governance standards applicable to the risk
25 retention group.

26 (c) Oversee the evaluation of the risk retention group's
27 management, including the performance of the captive manager, managing
28 general underwriter or other parties responsible for underwriting,
29 determination of rates, collection of premium, adjusting or settling
30 claims or the preparation of financial statements.

31 (d) Review and approve the amount to be paid for all material
32 service providers.

33 (e) Review and approve, at least annually, all of the following:

34 (i) The risk retention group's goals and objectives relevant to the
35 compensation of officers and service providers.

36 (ii) The officers' and service providers' performance in light of
37 those goals and objectives.

38 (iii) The continued engagement of the officers and material service
39 providers.

40 5. Each risk retention group shall have an audit committee composed
41 of at least three independent board members. A nonindependent board
42 member may participate in the activities of the audit committee, if
43 invited by the members, but cannot be a member of that committee. The
44 audit committee shall have a written charter that defines the committee's
45 purpose, which, at a minimum, shall be to do all of the following:

1 (a) Assist in board oversight of the integrity of the financial
2 statements, the compliance with legal and regulatory requirements and the
3 qualifications, independence and performance of the independent auditor
4 and actuary.

5 (b) Discuss the annual audited financial statements and quarterly
6 financial statements with management.

7 (c) Discuss the annual audited financial statements with its
8 independent auditor and, if advisable, discuss its quarterly financial
9 statements with its independent auditor.

10 (d) Discuss policies with respect to risk assessment and risk
11 management.

12 (e) Meet separately and periodically, either directly or through a
13 designated representative of the committee, with management and
14 independent auditors.

15 (f) Review with the independent auditor any audit problems or
16 difficulties and management's response.

17 (g) Set clear hiring policies of the risk retention group as to the
18 hiring of employees or former employees of the independent auditor.

19 (h) Require the external auditor to rotate the lead or coordinating
20 audit partner having primary responsibility for the risk retention group's
21 audit as well as the audit partner responsible for reviewing that audit,
22 so that neither individual performs audit services for more than five
23 consecutive fiscal years.

24 (i) Report regularly to the board of directors.

25 6. The director of the department of insurance AND FINANCIAL
26 INSTITUTIONS may waive the requirement to establish an audit committee
27 pursuant to paragraph 5 of this subsection if the risk retention group
28 demonstrates to the director that doing so is impracticable and the risk
29 retention group's board of directors is otherwise able to fulfill the
30 requirements of the audit committee as set forth in this section.

31 7. The board of directors shall adopt and disclose governance
32 standards by making the information available through electronic means,
33 such as posting the information on the risk retention group's website, or
34 other means, and providing that information to members and insureds on
35 request. The information shall include all of the following:

36 (a) A process by which the board directors are elected by the
37 owners or insureds, or both.

38 (b) Board director qualification standards.

39 (c) Board director responsibilities.

40 (d) Board director access to management and, as necessary and
41 appropriate, independent advisers.

42 (e) Board director compensation.

43 (f) Board director orientation and continuing education.

44 (g) The policies and procedures that are followed for management
45 succession.

1 (h) The policies and procedures that are followed for the annual
2 performance evaluation of the board.

3 8. The board of directors shall adopt and disclose a code of
4 business conduct and ethics for board directors, officers and employees
5 and promptly disclose to the board of directors any waivers of the code
6 for board directors or executive officers, including all of the following
7 topics:

8 (a) Conflicts of interest.

9 (b) Matters covered under the corporate opportunity doctrine under
10 the state of domicile.

11 (c) Confidentiality.

12 (d) Fair dealing.

13 (e) Protection and proper use of risk retention group assets.

14 (f) Compliance with all applicable laws, rules and regulations.

15 (g) Requiring the reporting of any illegal or unethical behavior
16 that affects the operation of the risk retention group.

17 9. The captive manager, president or chief executive officer of the
18 risk retention group shall promptly notify the domestic regulator, in
19 writing, if either becomes aware of any material noncompliance with any of
20 the risk retention group's governance standards.

21 D. For the purposes of this section:

22 1. "Board director" means a natural person designated in the
23 articles of the risk retention group, or designated, elected or appointed
24 by any other manner, name or title to act as a board director.

25 2. "Board of directors" or "board" means the governing body of the
26 risk retention group elected by the shareholders or members to establish
27 policy, elect or appoint officers and committees and make other governing
28 decisions.

29 3. "Material relationship" means a person's relationship with the
30 risk retention group, including any of the following:

31 (a) The receipt in any one twelve-month period of compensation or
32 payment of any other item of value by that person, a member of that
33 person's immediate family or any business with which that person is
34 affiliated from the risk retention group or a consultant or service
35 provider to the risk retention group that is greater than or equal to five
36 percent of the risk retention group's gross written premium for that
37 twelve-month period or two percent of its surplus, whichever is greater,
38 as measured at the end of any fiscal quarter falling in a twelve-month
39 period. The person or immediate family member of that person is not
40 independent until one year after the person's compensation from the risk
41 retention group falls below the threshold.

42 (b) A relationship with an auditor in which a board director or an
43 immediate family member of a board director who is affiliated with, or
44 employed in, a professional capacity by a present or former internal or
45 external auditor of the risk retention group is not independent until one

1 year after the end of the affiliation, employment or auditing relationship.

3 (c) A relationship with a related entity in which a board director
4 or immediate family member of a board director who is employed as an
5 executive officer of another company where any of the risk retention
6 group's present executives serve on that other company's board of
7 directors is not independent until one year after the end of that service
8 or the employment relationship.

9 4. "Service providers" includes captive managers, auditors,
10 accountants, actuaries, investment advisers, attorneys and managing
11 general underwriters or any other party responsible for underwriting,
12 determination of rates, collection of premium, adjusting and settling
13 claims or the preparation of financial statements. For the purposes of
14 this paragraph, attorney does not include defense counsel retained by the
15 risk retention group to defend claims, unless the amount of fees paid to
16 those attorneys create a material relationship.

17 Sec. 114. Section 20-2501, Arizona Revised Statutes, is amended to
18 read:

19 20-2501. Definitions; scope

20 A. In this chapter, unless the context otherwise requires:

21 1. "Adverse decision" means a utilization review determination by
22 the utilization review agent that a requested service or claim for service
23 is not a covered service or is not medically necessary under the plan if
24 that determination results in a documented denial or nonpayment of the
25 service or claim.

26 2. "Benefits based on the health status of the insured" means a
27 contract of insurance to pay a fixed benefit amount, without regard to the
28 specific services received, to a policyholder who meets certain
29 eligibility criteria based on health status including:

30 (a) A disability income insurance policy that pays a fixed daily,
31 weekly or monthly benefit amount to an insured who is deemed ~~a person with~~
32 **TO HAVE** a disability as defined by the policy terms.

33 (b) A hospital indemnity policy that pays a fixed daily benefit
34 during hospital confinement.

35 (c) A disability insurance policy that pays a fixed daily, weekly
36 or monthly benefit amount to an insured who is certified by a licensed
37 health care professional as chronically ill as defined by the policy
38 terms.

39 (d) A disability insurance policy that pays a fixed daily, weekly
40 or monthly benefit amount to an insured who suffers from a prolonged
41 physical illness, disability or cognitive disorder as defined by the
42 policy terms.

1 3. "Claim" means a request for payment for a service already
2 provided. Claim does not include:

3 (a) Claim adjustments for usual and customary charges for a service
4 or coordination of benefits between health care insurers.

5 (b) A request for payment under a policy or contract that pays
6 benefits based on the health status of the insured and that does not
7 reimburse the cost of or provide covered services.

8 4. "Covered service" means a service that is included in a policy,
9 evidence of coverage or similar document that specifies which services,
10 insurance or other benefits are included or covered.

11 5. "Denial" means a direct or indirect determination regarding all
12 or part of a request for any service or a direct determination regarding a
13 claim that may trigger a request for review or reconsideration. Denial
14 does not include:

15 (a) Enforcement of a health care insurer's deductibles, copayments
16 or coinsurance requirements or adjustments for usual and customary
17 charges, deductibles, copayments or coinsurance requirements for a service
18 or coordination of benefits between health care insurers.

19 (b) The rejection of a request for payment under a policy or
20 contract that pays benefits based on the health status of the insured and
21 that does not reimburse the cost of or provide covered services.

22 ~~6. "Department" means the department of insurance.~~

23 ~~7. "Director" means the director of the department of insurance.~~

24 ~~8.~~ 6. "Health care insurer" means a disability insurer, group
25 disability insurer, blanket disability insurer, health care services
26 organization, hospital service corporation, prepaid dental plan
27 organization, medical service corporation, dental service corporation or
28 optometric service corporation or a hospital, medical, dental and
29 optometric service corporation.

30 ~~9.~~ 7. "Indirect denial" means a failure to communicate
31 authorization or nonauthorization to the member by the utilization review
32 agent within ten business days after the utilization review agent receives
33 the request for a covered service.

34 ~~10.~~ 8. "Provider" means the physician or other licensed
35 practitioner identified to the utilization review agent as having primary
36 responsibility for providing care, treatment and services rendered to a
37 patient.

38 ~~11.~~ 9. "Service" means a diagnostic or therapeutic medical or
39 health care service, benefit or treatment.

40 ~~12.~~ 10. "Utilization review" means a system for reviewing the
41 appropriate and efficient allocation of inpatient hospital resources,
42 inpatient medical services and outpatient surgery services that are being
43 given or are proposed to be given to a patient, and of any medical,
44 surgical and health care services or claims for services that may be
45 covered by a health care insurer depending on determinable contingencies,

1 including without limitation outpatient services, in-office consultations
2 with medical specialists, specialized diagnostic testing, mental health
3 services, emergency care and inpatient and outpatient hospital services.
4 Utilization review does not include elective requests for the
5 clarification of coverage.

6 ~~13.~~ 11. "Utilization review agent" means a person or entity that
7 performs utilization review. For purposes of article 2 of this chapter,
8 utilization review agent has the same meaning prescribed in section
9 20-2530. For purposes of this chapter, utilization review agent does not
10 include:

- 11 (a) A governmental agency.
- 12 (b) An agent that acts on behalf of the governmental agency.
- 13 (c) An employee of a utilization review agent.

14 ~~14.~~ 12. "Utilization review plan" means a summary description of
15 the utilization review guidelines, protocols, procedures and written
16 standards and criteria of a utilization review agent.

17 B. For the purposes of this chapter, utilization review by an
18 optometric service corporation applies only to nonsurgical medical and
19 health care services.

20 Sec. 115. Section 20-2533, Arizona Revised Statutes, is amended to
21 read:

22 20-2533. Denial; levels of review; disclosure; additional
23 time after service by mail; review process

24 A. Any member who is denied a covered service or whose claim for a
25 service is denied may pursue the applicable review process prescribed in
26 this article. Except as provided in sections 20-2534 and 20-2535, health
27 care insurers shall provide at least the following levels of review, as
28 applicable:

- 29 1. An expedited medical review and expedited appeal pursuant to
30 section 20-2534.
- 31 2. An informal reconsideration pursuant to section 20-2535.
- 32 3. A formal appeal process pursuant to section 20-2536.
- 33 4. An external independent review pursuant to section 20-2537.

34 B. A health care insurer may offer additional levels of review
35 other than the levels prescribed in subsection A of this section as long
36 as the additional levels of review do not increase the time period
37 limitations prescribed by this article.

38 C. At the time coverage is initiated, each health care insurer that
39 operates in this state and whose utilization review system includes the
40 power to affect the direct or indirect denial of requested medical or
41 health care services or claims for medical or health care services shall
42 include a separate information packet that is approved by the director
43 with the member's policy, evidence of coverage or similar document. At
44 the time coverage is renewed, each health care insurer shall include a
45 separate statement with the member's policy, evidence of coverage or

1 similar document that informs the member that the member can obtain a
2 replacement packet that explains the appeal process by contacting a
3 specific department and telephone number. A health care insurer shall
4 also provide a copy of the information packet to the member or the
5 member's treating provider on request and to the member within five
6 business days after the date the appeal is initiated pursuant to section
7 20-2534, 20-2535 or 20-2536. The information packet provided by the
8 health care insurer shall include all of the following information:

9 1. A detailed description and explanation of each level of review
10 prescribed in subsection A of this section and notice of the member's
11 right to proceed to the next level of review if the prior review is
12 unsuccessful.

13 2. An explanation of the procedures that the member must follow,
14 including the applicable time periods, for each level of review prescribed
15 in subsection A of this section and an explanation of how the member may
16 obtain the member's medical records pursuant to title 12, chapter 13,
17 article 7.1.

18 3. The specific title and department of the person and the address,
19 telephone number and ~~teletext~~ FAX number of that person whom the
20 member must notify at each level of review prescribed in subsection A of
21 this section in order to pursue that level of review.

22 4. The specific title and department of the person and the address,
23 telephone number and ~~teletext~~ FAX number of the person who will be
24 responsible for processing that review.

25 5. A notice that if the member decides to pursue an appeal the
26 member must provide the person who will be responsible for processing the
27 appeal with any material justification or documentation for the appeal at
28 the time that the member files the written appeal.

29 6. A description of the utilization review agent's and health care
30 insurer's roles at each level of review prescribed by subsection A of this
31 section and an outline of the director's role during the external
32 independent review process, if not already described in response to
33 paragraph 1 of this subsection.

34 7. A notice that if the member participates in the process of
35 review pursuant to this article the member waives any privilege of
36 confidentiality of the member's medical records regarding any person who
37 examined or will examine the member's medical records in connection with
38 that review process for the medical condition under review.

39 8. A statement that the member is not responsible for the costs of
40 any external independent review.

41 9. Standardized forms that are prescribed by the department and
42 that a member may use to file and pursue an appeal.

43 10. The name and telephone number for the department of insurance
44 AND FINANCIAL INSTITUTIONS consumer assistance office with a statement
45 that the department of insurance AND FINANCIAL INSTITUTIONS consumer

1 assistance office can assist consumers with questions about the health
2 care appeals process.

3 D. At the time of issuing a denial, the health care insurer shall
4 notify the member of the right to appeal under this article. A health
5 care insurer that issues an explanation of benefits document shall satisfy
6 this obligation by prominently displaying in the document a statement
7 about the right to appeal. A health care insurer that does not issue an
8 explanation of benefits document shall satisfy this obligation through
9 some other reasonable means to assure that the member is apprised of the
10 right to appeal at the time of a denial. A reasonable means that includes
11 giving the member's treating provider a form statement about the right to
12 appeal shall require the treating provider to notify the member of the
13 member's right to appeal.

14 E. Any written notice, acknowledgment, request, decision or other
15 written document required to be mailed pursuant to this article is deemed
16 received by the person to whom the document is properly addressed on the
17 fifth business day after the request is mailed. For the purposes of this
18 subsection, "properly addressed" means the last known address.

19 F. The director shall require any member who files a complaint with
20 the department relating to an adverse decision to pursue the review
21 process prescribed in this article. This subsection does not limit the
22 director's authority pursuant to chapter 1, article 2 of this title.

23 G. If the member's complaint is an issue of medical necessity under
24 the coverage document and not whether the claim or service is covered, the
25 informal reconsideration shall be performed as prescribed by section
26 20-2535 by a licensed health care professional. If the member's complaint
27 is an issue of medical necessity under the coverage document and not
28 whether the claim or service is covered, the expedited review or formal
29 appeal shall be decided by a physician, provider or other health care
30 professional as prescribed by section 20-2534 or 20-2536. Any external
31 independent review shall be decided by a physician, provider or other
32 health care professional as prescribed by section 20-2537.

33 H. Any person given access to a member's medical records or other
34 medical information in connection with proceedings pursuant to this
35 article shall maintain the confidentiality of the records or information
36 in accordance with title 12, chapter 13, article 7.1.

37 Sec. 116. Section 20-2541, Arizona Revised Statutes, is amended to
38 read:

39 20-2541. Health care insurer fee

40 The director ~~of the department of insurance~~ may assess each health
41 care insurer that is authorized to transact insurance:

42 1. A single fee of not more than ~~two hundred dollars~~ \$200 per
43 insurer.

44 2. Up to ~~two hundred dollars~~ \$200 each year for the costs of
45 performing the responsibilities relating to the procurement of independent

1 review organizations as prescribed in sections 20-2537 and 20-2538 and for
2 implementing and maintaining the external independent review process,
3 including processing and paying claims through the health care appeals
4 fund established by section 20-2540. The department ~~of insurance~~ is
5 authorized one full-time equivalent position to perform these
6 responsibilities.

7 Sec. 117. Section 20-2802, Arizona Revised Statutes, is amended to
8 read:

9 20-2802. Scope of chapter

10 A. This chapter does not apply to:

11 1. A provider employed by or under contract with the enrollee's
12 health care services plan.

13 2. A health care services ~~plans~~ PLAN administered under title 36.

14 3. A health care services plan ~~which~~ THAT only covers health care
15 expenses incurred by an enrollee who is subsequently admitted to a
16 licensed hospital as part of the treatment.

17 B. ~~Nothing in~~ This chapter ~~is intended to~~ DOES NOT create any
18 private right or cause of action for or on behalf of any enrollee,
19 provider or other person, whether a resident or nonresident of this state.
20 This chapter provides solely an administrative remedy to the director ~~of~~
21 ~~the department of insurance~~ for any violation of this chapter or any
22 related rule.

23 Sec. 118. Section 20-2901, Arizona Revised Statutes, is amended to
24 read:

25 20-2901. Definitions

26 In this article, unless the context otherwise requires:

27 1. "Applicant" means a provider organization that submits an
28 application to the contractor to provide continuing education courses.

29 2. "Approved continuing education course" means any course that has
30 been approved by at least five other states or that is approved by a
31 contractor or automatically approved pursuant to section 20-2904.

32 3. "Approved provider" means an organization or individual that
33 offers an approved continuing education course and that is authorized by
34 the contractor to offer the course to a licensee for credit toward the
35 licensee's continuing education requirements.

36 ~~4. "Continuing education review committee" means the committee~~
37 ~~appointed by the director pursuant to section 20-2905 to establish minimum~~
38 ~~standards that apply to approved providers and approved continuing~~
39 ~~education courses and minimum performance standards that apply to~~
40 ~~contractors.~~

41 ~~5.~~ 4. "Continuously licensed" means that a licensee's license has
42 not terminated for any reason. For the purposes of this paragraph, a
43 license that expires under section 20-289, subsection E is not considered
44 to have terminated if the late fee is timely paid and the license is

1 renewed or the license is placed on inactive status pursuant to section
2 20-289.01.

3 ~~6.~~ 5. "Contractor" means the person who has a contract with the
4 department ~~of insurance~~ to approve continuing education providers and
5 courses and to administer the continuing education program and who is paid
6 through fees collected from approved providers when the approved providers
7 apply for continuing education course approval.

8 ~~7.~~ 6. "Credit hour" means the value assigned to an hour of
9 instruction in an approved continuing education course.

10 ~~8.~~ 7. "Ethics training" means continuing education course content
11 regarding the ethical responsibilities insurance producers owe to
12 insurers, applicants, policyholders, regulators, insurance professionals
13 and the public.

14 ~~9.~~ 8. "License period" means the period between the date an
15 Arizona insurance license is issued or last renewed and the expiration
16 date of the Arizona insurance license.

17 ~~10.~~ 9. "Licensee" means an individual insurance producer licensed
18 for major line insurance as defined in section 20-281. Licensee does not
19 include any business entity.

20 ~~11.~~ 10. "Nonresident licensee" means a licensee who is applying to
21 renew a nonresident license in this state.

22 ~~12.~~ 11. "Provider organization" means a person that provides
23 continuing education courses but that has not yet been accepted as an
24 approved provider pursuant to section 20-2904.

25 Sec. 119. Repeal

26 Section ~~20-2905~~, Arizona Revised Statutes, is repealed.

27 Sec. 120. Section 20-3251, Arizona Revised Statutes, is amended to
28 read:

29 ~~20-3251~~. Interstate insurance product regulation compact

30 The interstate insurance product regulation compact is enacted into
31 law as follows:

32 Article I

33 Purpose

34 Under the terms and conditions of this compact, this state seeks to
35 join with other states and establish the interstate insurance product
36 regulation compact and thus become a member of the interstate insurance
37 product regulation commission. The director is hereby designated to serve
38 as the representative of this state to the commission. The purposes of
39 the compact are, through means of joint and cooperative action among the
40 compacting states:

41 1. To promote and protect the interest of consumers of individual
42 and group annuity, life insurance, disability income and long-term care
43 insurance products.

44 2. To develop uniform standards for insurance products covered
45 under the compact.

1 3. To establish a central clearinghouse to receive and provide
2 prompt review of insurance products covered under the compact and, in
3 certain cases, related advertisements, submitted by insurers authorized to
4 do business in one or more compacting states.

5 4. To give appropriate regulatory approval to those product filings
6 and advertisements satisfying the applicable uniform standard.

7 5. To improve coordination of regulatory resources and expertise
8 between state insurance departments regarding the setting of uniform
9 standards and review of insurance products covered under the compact.

10 6. To create the interstate insurance product regulation
11 commission.

12 7. To perform these and other related functions as may be
13 consistent with the state regulation of the business of insurance.

14 Article II

15 Definitions

16 In this compact, unless the context otherwise requires:

17 1. "Advertisement" means any material designed to create public
18 interest in a product or induce the public to purchase, increase, modify,
19 reinstate, borrow on, surrender, replace or retain a policy, as more
20 specifically defined in the rules and operating procedures of the
21 commission.

22 2. "Bylaws" means those bylaws established by the commission for
23 its governance or for directing or controlling the commission's actions or
24 conduct.

25 3. "Commission" means the interstate insurance product regulation
26 commission established by this compact.

27 4. "Commissioner" means the **INSURANCE** director ~~of insurance~~ or the
28 chief insurance regulatory official of a state including commissioner,
29 superintendent, director or administrator.

30 5. "Compact" means the interstate insurance product regulation
31 compact.

32 6. "Compacting state" means any state that has enacted the compact
33 and that has not withdrawn or been terminated under article XIV of this
34 compact.

35 ~~7. "Domiciliary state" means the state in which an insurer is~~
36 ~~incorporated or organized or, in the case of an alien insurer, its state~~
37 ~~of entry.~~

38 ~~8.~~ 7. "Insurer" means any entity licensed by a state to issue
39 contracts of insurance for any of the lines of insurance covered by the
40 compact.

41 ~~9.~~ 8. "Member" means the person chosen by a compacting state as
42 its representative to the commission or the person's designee.

43 ~~10.~~ 9. "Noncompacting state" means any state that is not at the
44 time a compacting state.

1 ~~11~~ 10. "Operating procedures" means procedures adopted by the
2 commission implementing a rule, uniform standard or compact provision.
3 ~~12~~ 11. "Product" means the form of a policy or contract,
4 including any application, endorsement or related form that is attached to
5 and made a part of the policy or contract, and any evidence of coverage or
6 certificate, for an individual or group annuity, life insurance,
7 disability income or long-term care insurance product that an insurer is
8 authorized to issue.
9 ~~13~~ 12. "Rule" means a statement of general or particular
10 applicability and future effect that is adopted by the commission,
11 including a uniform standard developed pursuant to article VII of this
12 compact, and that is designed to implement, interpret or prescribe law or
13 policy or describes the organization, procedure or practice requirements
14 of the commission, which shall have the force and effect of law in the
15 compacting states.
16 ~~14~~ 13. "State" means any state, district or territory of the
17 United States.
18 ~~15~~ 14. "Third-party filer" means an entity that submits a product
19 filing to the commission on behalf of an insurer.
20 ~~16~~ 15. "Uniform standard" means a standard adopted by the
21 commission for a product line pursuant to article VII of this compact and
22 includes all of the product requirements in aggregate. Each uniform
23 standard shall be construed, whether express or implied, to prohibit the
24 use of any inconsistent, misleading or ambiguous provisions in a product
25 and the form of the product made available to the public shall not be
26 unfair, inequitable or against public policy as determined by the
27 commission.

28 Article III

29 Commission Establishment and Venue

30 A. The compacting states hereby create and establish a joint public
31 agency known as the interstate insurance product regulation commission.
32 Under article IV of this compact, the commission has the power to develop
33 uniform standards for product lines, receive and provide prompt review of
34 products filed with the commission and give approval to those product
35 filings satisfying applicable uniform standards. It is not intended for
36 the commission to be the exclusive entity for receipt and review of
37 insurance product filings. This section does not prohibit any insurer
38 from filing its product in any state wherein the insurer is licensed to
39 conduct the business of insurance. Any filing is subject to the laws of
40 the state where filed.
41 B. The commission is a body corporate and politic, and an
42 instrumentality of the compacting states.
43 C. The commission is solely responsible for its liabilities except
44 as otherwise specifically provided in this compact.

1 D. Venue is proper and judicial proceedings by or against the
2 commission shall be brought solely and exclusively in a court of competent
3 jurisdiction where the principal office of the commission is located.

4 Article IV

5 Commission Powers

6 The commission has the following powers:

7 1. To adopt rules pursuant to article VII of this compact that
8 shall have the force and effect of law and shall be binding in the
9 compacting states to the extent and in the manner provided in the compact.

10 2. To exercise its rulemaking authority and establish reasonable
11 uniform standards for products covered under the compact, and
12 advertisement related thereto, which shall have the force and effect of
13 law and shall be binding in the compacting states, but only for those
14 products filed with the commission. A compacting state shall have the
15 right to opt out of the uniform standard pursuant to article VII of this
16 compact, to the extent and in the manner provided in this compact. Any
17 uniform standard established by the commission for long-term care
18 insurance products may provide the same or greater protections for
19 consumers as, but shall not provide less than, those protections set forth
20 in the national association of insurance commissioners' long-term care
21 insurance model act and long-term care insurance model regulation,
22 respectively, adopted as of 2001. The commission shall consider whether
23 any subsequent amendments to the long-term care insurance model act or
24 long-term care insurance model regulation adopted by the national
25 association of insurance commissioners require amending of the uniform
26 standards established by the commission for long-term care insurance
27 products.

28 3. To receive and review in an expeditious manner products filed
29 with the commission, and rate filings for disability income and long-term
30 care insurance products, and give approval of those products and rate
31 filings that satisfy the applicable uniform standard, where such approval
32 shall have the force and effect of law and be binding on the compacting
33 states to the extent and in the manner provided in the compact.

34 4. To receive and review in an expeditious manner advertisement
35 relating to long-term care insurance products for which uniform standards
36 have been adopted by the commission, and give approval to all
37 advertisement that satisfies the applicable uniform standard. For any
38 product covered under this compact, other than long-term care insurance
39 products, the commission shall have the authority to require an insurer to
40 submit all or any part of its advertisement with respect to that product
41 for review or approval before use if the commission determines that the
42 nature of the product is such that an advertisement of the product could
43 have the capacity or tendency to mislead the public. The actions of the
44 commission as provided in this section shall have the force and effect of

1 law and shall be binding in the compacting states to the extent and in the
2 manner provided in the compact.

3 5. To exercise its rulemaking authority and designate products and
4 advertisement that may be subject to a self-certification process without
5 the need for prior approval by the commission.

6 6. To adopt operating procedures pursuant to article VII of this
7 compact that shall be binding in the compacting states to the extent and
8 in the manner provided in the compact.

9 7. To bring and prosecute legal proceedings or actions in its name
10 as the commission. The standing of any state insurance department to sue
11 or be sued under applicable law shall not be affected.

12 8. To issue subpoenas requiring the attendance and testimony of
13 witnesses and the production of evidence.

14 9. To establish and maintain offices.

15 10. To purchase and maintain insurance and bonds.

16 11. To borrow, accept or contract for services of personnel,
17 including employees of a compacting state.

18 12. To hire employees, professionals or specialists, and elect or
19 appoint officers, and to fix their compensation, define their duties and
20 give them appropriate authority to carry out the purposes of the compact,
21 and determine their qualifications and to establish the commission's
22 personnel policies and programs relating to, among other things, conflicts
23 of interest, rates of compensation and qualifications of personnel.

24 13. To accept any and all appropriate donations and grants of
25 money, equipment, supplies, materials and services, and to receive, use
26 and dispose of the same. The commission shall strive to avoid any
27 appearance of impropriety.

28 14. To lease, purchase, accept appropriate gifts or donations of,
29 or otherwise to own, hold, improve or use, any property, real, personal or
30 mixed. The commission shall strive to avoid any appearance of
31 impropriety.

32 15. To sell, convey, mortgage, pledge, lease, exchange, abandon or
33 otherwise dispose of any property, real, personal or mixed.

34 16. To remit filing fees to compacting states as may be set forth
35 in the bylaws, rules or operating procedures.

36 17. To enforce compliance by compacting states with rules, uniform
37 standards, operating procedures and bylaws.

38 18. To provide for dispute resolution among compacting states.

39 19. To advise compacting states on issues relating to insurers
40 domiciled or doing business in noncompacting jurisdictions, consistent
41 with the purposes of the compact.

42 20. To provide advice and training to those personnel in state
43 insurance departments responsible for product review, and to be a resource
44 for state insurance departments.

45 21. To establish a budget and make expenditures.

1 22. To borrow money.

2 23. To appoint committees, including advisory committees comprising
3 members, state insurance regulators, state legislators or their
4 representatives, insurance industry and consumer representatives and other
5 interested persons as may be designated in the bylaws.

6 24. To provide and receive information from, and to cooperate with,
7 law enforcement agencies.

8 25. To adopt and use a corporate seal.

9 26. To perform other functions as may be necessary or appropriate
10 to achieve the purposes of the compact consistent with the state
11 regulation of the business of insurance.

12 Article V

13 Commission Organization

14 A. Each compacting state shall have and be limited to one member.
15 Each member shall be qualified to serve in that capacity pursuant to
16 applicable law of the compacting state. Any member may be removed or
17 suspended from office as provided by the law of the state from which the
18 member shall be appointed. Any vacancy occurring in the commission shall
19 be filled in accordance with the laws of the compacting state wherein the
20 vacancy exists. This section does not affect the manner in which a
21 compacting state determines the election or appointment and qualification
22 of its own commissioner.

23 B. Each member shall be entitled to one vote and shall have an
24 opportunity to participate in the governance of the commission in
25 accordance with the bylaws. Notwithstanding any provision in this compact
26 to the contrary, no action of the commission with respect to the adoption
27 of a uniform standard shall be effective unless two-thirds of the members
28 vote in favor of the uniform standard.

29 C. The commission, by a majority of the members, shall prescribe
30 bylaws to govern its conduct as may be necessary or appropriate to carry
31 out the purposes, and exercise the powers, of the compact, including:

32 1. Establishing the fiscal year of the commission.

33 2. Providing reasonable procedures for appointing and electing
34 members, as well as holding meetings, of the management committee.

35 3. Providing reasonable standards and procedures for:

36 (a) The establishment and meetings of other committees.

37 (b) Governing any general or specific delegation of any authority
38 or function of the commission.

39 4. Providing reasonable procedures for calling and conducting
40 meetings of the commission that consist of a majority of commission
41 members, ensuring reasonable advance notice of each such meeting and
42 providing for the right of citizens to attend each such meeting with
43 enumerated exceptions designed to protect the public's interest, the
44 privacy of individuals and insurers' proprietary information, including
45 trade secrets. The commission may meet in camera only after a majority of

1 the entire membership votes to close a meeting. As soon as practicable,
2 the commission must make public a copy of the vote to close the meeting
3 revealing the vote of each member with no proxy votes allowed and the
4 votes taken during the meeting.

5 5. Establishing the titles, duties, authority and reasonable
6 procedures for the election of the officers of the commission.

7 6. Providing reasonable standards and procedures for the
8 establishment of the personnel policies and programs of the commission.
9 Notwithstanding any civil service or other similar laws of any compacting
10 state, the bylaws shall exclusively govern the personnel policies and
11 programs of the commission.

12 7. Adopting a code of ethics to address permissible and prohibited
13 activities of commission members and employees.

14 8. Providing a mechanism for winding up the operations of the
15 commission and the equitable disposition of any surplus funds that may
16 exist after the termination of the compact and after the payment or
17 reserving of all of its debts and obligations.

18 D. The commission shall publish its bylaws in a convenient form and
19 file a copy of the bylaws and any amendment to the bylaws with the
20 appropriate agency or officer in each of the compacting states.

21 E. A management committee comprising no more than fourteen members
22 shall be established as follows:

23 1. One member from each of the six compacting states with the
24 largest premium volume for individual and group annuities, life,
25 disability income, and long-term care insurance products, determined from
26 the records of the national association of insurance commissioners for the
27 prior year.

28 2. Four members from those compacting states with at least two ~~per~~
29 ~~cent~~ PERCENT of the market based on the premium volume described in
30 paragraph 1 of this subsection, other than the six compacting states with
31 the largest premium volume, selected on a rotating basis as provided in
32 the bylaws.

33 3. Four members from those compacting states with less than two ~~per~~
34 ~~cent~~ PERCENT of the market, based on the premium volume described in
35 paragraph 1 of this subsection, with one selected from each of the four
36 zone regions of the national association of insurance commissioners as
37 provided in the bylaws.

38 F. The management committee shall have such authority and duties as
39 may be set forth in the bylaws, including:

40 1. Managing the affairs of the commission in a manner consistent
41 with the bylaws and purposes of the commission.

42 2. Establishing and overseeing an organizational structure within,
43 and appropriate procedures for, the commission to provide for the creation
44 of uniform standards and other rules, THE receipt and review of product
45 filings, administrative and technical support functions, THE review of

1 decisions regarding the disapproval of a product filing and the review of
2 elections made by a compacting state to opt out of a uniform standard.
3 However, a uniform standard shall not be submitted to the compacting
4 states for adoption unless approved by two-thirds of the members of the
5 management committee.

6 3. Overseeing the offices of the commission.

7 4. Planning, implementing and coordinating communications and
8 activities with other state, federal and local government organizations in
9 order to advance the goals of the commission.

10 G. The commission shall elect annually officers from the management
11 committee, with each having such authority and duties, as may be specified
12 in the bylaws.

13 H. The management committee, subject to the approval of the
14 commission, may appoint or retain an executive director for such period,
15 on such terms and conditions and for such compensation as the commission
16 may deem appropriate. The executive director shall serve as secretary to
17 the commission, but shall not be a member of the commission. The
18 executive director shall hire and supervise other staff as may be
19 authorized by the commission.

20 I. A legislative committee comprising state legislators or their
21 designees shall be established to monitor the operations of, and make
22 recommendations to, the commission, including the management committee.
23 However, the manner of selection and term of any legislative committee
24 member shall be as set forth in the bylaws. Before the adoption by the
25 commission of any uniform standard, revision to the bylaws, annual budget
26 or other significant matter as may be provided in the bylaws, the
27 management committee shall consult with and report to the legislative
28 committee.

29 J. The commission shall establish two advisory committees, one of
30 which shall comprise consumer representatives independent of the insurance
31 industry, and the other comprising insurance industry representatives.

32 K. The commission may establish additional advisory committees as
33 its bylaws may provide for the carrying out of its functions.

34 L. The commission shall maintain its corporate books and records in
35 accordance with the bylaws.

36 M. The members, officers, executive director, employees and
37 representatives of the commission shall be immune from suit and liability,
38 either personally or in their official capacity, for any claim for damage
39 to or loss of property or personal injury or other civil liability caused
40 by or arising out of any actual or alleged act, error or omission that
41 occurred, or that the person against whom the claim is made had a
42 reasonable basis for believing occurred within the scope of commission
43 employment, duties or responsibilities. This subsection does not protect
44 any such person from suit or liability for any damage, loss, injury or

1 liability caused by the intentional or wilful and wanton misconduct of
2 that person.

3 N. The commission shall defend any member, officer, executive
4 director, employee or representative of the commission in any civil action
5 seeking to impose liability arising out of any actual or alleged act,
6 error or omission that occurred within the scope of commission employment,
7 duties or responsibilities, or that the person against whom the claim is
8 made had a reasonable basis for believing occurred within the scope of
9 commission employment, duties or responsibilities. This subsection does
10 not prohibit that person from retaining the person's own counsel. Also,
11 the actual or alleged act, error or omission may not have resulted from
12 that person's intentional or wilful and wanton misconduct.

13 O. The commission shall indemnify and hold harmless any member,
14 officer, executive director, employee or representative of the commission
15 for the amount of any settlement or judgment obtained against that person
16 arising out of any actual or alleged act, error or omission that occurred
17 within the scope of commission employment, duties or responsibilities, or
18 that such person had a reasonable basis for believing occurred within the
19 scope of commission employment, duties or responsibilities. However, the
20 actual or alleged act, error or omission may not have resulted from the
21 intentional or wilful and wanton misconduct of that person.

22 Article VI

23 Commission Meeting and Acts

24 A. The commission shall meet and take such actions as are
25 consistent with the provisions of this compact and the bylaws.

26 B. Each member of the commission shall have the right and power to
27 cast a vote to which that compacting state is entitled and to participate
28 in the business and affairs of the commission. A member shall vote in
29 person or by such other means as provided in the bylaws. The bylaws may
30 provide for members' participation in meetings by telephone or other means
31 of communication.

32 C. The commission shall meet at least once during each calendar
33 year. Additional meetings shall be held as set forth in the bylaws.

34 Article VII

35 Rules and Operating Procedures, Rulemaking Functions
36 and Opting Out of Uniform Standards

37 A. The commission shall adopt reasonable rules, including uniform
38 standards, and operating procedures in order to effectively and
39 efficiently achieve the purposes of this compact. If the commission
40 exercises its rulemaking authority in a manner that is beyond the scope of
41 the purposes of this compact, the action by the commission shall be
42 invalid and have no force and effect.

43 B. Rules and operating procedures shall be made pursuant to a
44 rulemaking process that conforms to the model state administrative
45 procedure act of 1981 as amended, as may be appropriate to the operations

1 of the commission. Before the commission adopts a uniform standard, the
 2 commission shall give written notice to the relevant state legislative
 3 committees in each compacting state responsible for insurance issues of
 4 its intention to adopt the uniform standard. The commission in adopting a
 5 uniform standard shall consider fully all submitted materials and issue a
 6 concise explanation of its decision.

7 C. A uniform standard shall become effective ninety days after its
 8 adoption by the commission or such later date as the commission may
 9 determine. A compacting state may opt out of a uniform standard as
 10 provided in this article. "Opt out" means any action by a compacting
 11 state to decline to adopt or participate in an adopted uniform standard.
 12 All other rules and operating procedures, and amendments thereto, shall
 13 become effective as of the date specified in each rule, operating
 14 procedure or amendment.

15 D. A compacting state may opt out of a uniform standard, either by
 16 legislation or rule adopted by the insurance department under the
 17 compacting state's administrative procedure act. If a compacting state
 18 elects to opt out of a uniform standard by rule, it must:

19 1. Give written notice to the commission no later than ten business
 20 days after the uniform standard is adopted, or at the time the state
 21 becomes a compacting state.

22 2. Find that the uniform standard does not provide reasonable
 23 protections to the citizens of the state, given the conditions in the
 24 state.

25 E. The commissioner shall make specific findings of fact and
 26 conclusions of law, based on a preponderance of the evidence, detailing
 27 the conditions in the state that warrant a departure from the uniform
 28 standard and determining that the uniform standard would not reasonably
 29 protect the citizens of the state. The commissioner must consider and
 30 balance the following factors and find that the conditions in the state
 31 and needs of the citizens of the state outweigh both:

32 1. The intent of the legislature to participate in, and the
 33 benefits of, an interstate agreement to establish national uniform
 34 consumer protections for the products subject to this compact.

35 2. The presumption that a uniform standard adopted by the
 36 commission provides reasonable protections to consumers of the relevant
 37 product.

38 F. A compacting state, at the time of its enactment of the compact,
 39 may prospectively opt out of all uniform standards involving long-term
 40 care insurance products by expressly providing for such opt out in the
 41 enacted compact, and such an opt out shall not be treated as a material
 42 variance in the offer or acceptance of any state to participate in the
 43 compact. Such an opt out shall be effective at the time of enactment of
 44 the compact by the compacting state and shall apply to all existing
 45 uniform standards involving long-term care insurance products and those

1 subsequently adopted. Pursuant to this subsection, this state opts out of
2 all uniform standards involving long-term care insurance products.

3 G. If a compacting state elects to opt out of a uniform standard,
4 the uniform standard shall remain applicable in the compacting state
5 electing to opt out until the opt out legislation is enacted into law or
6 the regulation opting out becomes effective. Once the opt out of a
7 uniform standard by a compacting state becomes effective as provided under
8 the laws of that state, the uniform standard shall have no further force
9 and effect in that state unless and until the legislation or regulation
10 implementing the opt out is repealed or otherwise becomes ineffective
11 under the laws of that state. If a compacting state opts out of a uniform
12 standard after the uniform standard has been made effective in that state,
13 the opt out shall have the same prospective effect as provided under
14 article XIV of this compact for withdrawals.

15 H. If a compacting state has formally initiated the process of
16 opting out of a uniform standard by regulation, and while the regulatory
17 opt out is pending, the compacting state may petition the commission, at
18 least fifteen days before the effective date of the uniform standard, to
19 stay the effectiveness of the uniform standard in that state. The
20 commission may grant a stay if it determines the regulatory opt out is
21 being pursued in a reasonable manner and there is a likelihood of success.
22 If a stay is granted or extended by the commission, the stay or extension
23 thereof may postpone the effective date by up to ninety days, unless
24 affirmatively extended by the commission. However, a stay may not be
25 permitted to remain in effect for more than one year unless the compacting
26 state can show extraordinary circumstances that warrant a continuance of
27 the stay, including, the existence of a legal challenge that prevents the
28 compacting state from opting out. A stay may be terminated by the
29 commission on notice that the rulemaking process has been terminated.

30 I. Not later than thirty days after a rule or operating procedure
31 is adopted, any person may file a petition for judicial review of the rule
32 or operating procedure. However, the filing of such a petition shall not
33 stay or otherwise prevent the rule or operating procedure from becoming
34 effective unless the court finds that the petitioner has a substantial
35 likelihood of success. The court shall give deference to the actions of
36 the commission consistent with applicable law and shall not find the rule
37 or operating procedure to be unlawful if the rule or operating procedure
38 represents a reasonable exercise of the commission's authority.

39 Article VIII

40 Commission Records and Enforcement

41 A. The commission shall adopt rules establishing conditions and
42 procedures for public inspection and copying of its information and
43 official records, except information and records involving the privacy of
44 individuals and insurers' trade secrets. The commission may adopt
45 additional rules under which it may make available to federal and state

1 agencies, including law enforcement agencies, records and information
2 otherwise exempt from disclosure, and may enter into agreements with such
3 agencies to receive or exchange information or records subject to
4 nondisclosure and confidentiality provisions.

5 B. Except as to privileged records, data and information, the laws
6 of any compacting state pertaining to confidentiality or nondisclosure
7 shall not relieve any compacting state commissioner of the duty to
8 disclose any relevant records, data or information to the commission.
9 Disclosure to the commission does not waive or otherwise affect any
10 confidentiality requirement. Except as otherwise expressly provided in
11 this compact, the commission shall not be subject to the compacting
12 state's laws pertaining to confidentiality and nondisclosure with respect
13 to records, data and information in its possession. Confidential
14 information of the commission shall remain confidential after the
15 information is provided to any commissioner.

16 C. The commission shall monitor compacting states for compliance
17 with duly adopted bylaws, rules, including uniform standards, and
18 operating procedures. The commission shall notify any noncomplying
19 compacting state in writing of its noncompliance with commission bylaws,
20 rules or operating procedures. If a noncomplying compacting state fails
21 to remedy its noncompliance within the time specified in the notice of
22 noncompliance, the compacting state shall be deemed to be in default as
23 set forth in article XIV of this compact.

24 D. The commissioner of any state in which an insurer is authorized
25 to do business, or is conducting the business of insurance, shall continue
26 to exercise the commissioner's authority to oversee the market regulation
27 of the activities of the insurer in accordance with the provisions of the
28 state's law. The commissioner's enforcement of compliance with the
29 compact is governed by the following provisions:

30 1. With respect to the commissioner's market regulation of a
31 product or advertisement that is approved or certified to the commission,
32 the content of the product or advertisement shall not constitute a
33 violation of the provisions, standards or requirements of the compact
34 except on a final order of the commission, issued at the request of a
35 commissioner after prior notice to the insurer and an opportunity for
36 hearing before the commission.

37 2. Before a commissioner may bring an action for violation of any
38 provision, standard or requirement of the compact relating to the content
39 of an advertisement not approved or certified to the commission, the
40 commission, or an authorized commission officer or employee, must
41 authorize the action. Authorization under this paragraph does not require
42 notice to the insurer, opportunity for hearing or disclosure of requests
43 for authorization or records of the commission's action on such requests.

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Article IX
Dispute Resolution

On the request of a member, the commission shall attempt to resolve any disputes or other issues that are subject to this compact and that may arise between two or more compacting states, or between compacting states and noncompacting states, and the commission shall adopt an operating procedure providing for resolution of such disputes.

Article X
Product Filing and Approval

A. Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. This compact does not restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

B. The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. The commission shall adopt rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

C. Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

Article XI
Review of Commission Decisions Regarding Filings

A. Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing the review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with article III, subsection D of this compact.

B. The commission shall have authority to monitor, review and reconsider products and advertisement subsequent to their filing or approval on a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its

1 approval after proper notice and hearing, subject to the appeal process in
2 subsection A of this article.

3 Article XII

4 Finance

5 A. The commission shall pay or provide for the payment of the
6 reasonable expenses of its establishment and organization. To fund the
7 cost of its initial operations, the commission may accept contributions
8 and other forms of funding from the national association of insurance
9 commissioners, compacting states and other sources. Contributions and
10 other forms of funding from other sources shall be of such a nature that
11 the independence of the commission concerning the performance of its
12 duties shall not be compromised.

13 B. The commission shall collect a filing fee from each insurer and
14 third-party filer filing a product with the commission to cover the cost
15 of the operations and activities of the commission and its staff in a
16 total amount sufficient to cover the commission's annual budget.

17 C. The commission's budget for a fiscal year shall not be approved
18 until it has been subject to notice and comment as set forth in article
19 VII of this compact.

20 D. The commission shall be exempt from all taxation in and by the
21 compacting states.

22 E. The commission shall not pledge the credit of any compacting
23 state, except by and with the appropriate legal authority of that
24 compacting state.

25 F. The commission shall keep complete and accurate accounts of all
26 its internal receipts, including grants and donations, and disbursements
27 of all funds under its control. The internal financial accounts of the
28 commission shall be subject to the accounting procedures established under
29 its bylaws. The financial accounts and reports including the system of
30 internal controls and procedures of the commission shall be audited
31 annually by an independent certified public accountant. On the
32 determination of the commission, but no less frequently than every three
33 years, the review of the independent auditor shall include a management
34 and performance audit of the commission. The commission shall make an
35 annual report to the governor and legislature of the compacting states,
36 which shall include a report of the independent audit. The commission's
37 internal accounts shall not be confidential and such materials may be
38 shared with the commissioner of any compacting state on request. Any work
39 papers related to any internal or independent audit and any information
40 regarding the privacy of individuals and insurers' proprietary
41 information, including trade secrets, shall remain confidential.

42 G. A compacting state does not have any claim to or ownership of
43 any property held by or vested in the commission or to any commission
44 funds held under this compact.

Article XIII

Compacting States, Effective Date and Amendment

A. Any state is eligible to become a compacting state.

B. The compact shall become effective and binding on legislative enactment of the compact into law by two compacting states. The commission shall become effective for purposes of adopting uniform standards for, reviewing and giving approval or disapproval of products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty ~~percent~~ PERCENT of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state on enactment of the compact into law by that state.

C. Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment does not become effective and binding on the commission and the compacting states unless and until all compacting states enact the amendment into law.

Article XIV

Withdrawal, Default and Termination

A. Once effective, the compact shall continue in force and remain binding on each and every compacting state. A compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law.

B. The effective date of withdrawal is the effective date of the repealing statute. The withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in subsection E of this article.

C. The commissioner of the withdrawing state shall immediately notify the management committee in writing on the introduction of legislation repealing the compact in the withdrawing state.

D. The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.

E. The withdrawing state is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement before the effective date of withdrawal shall continue to be

1 effective and be given full force and effect in the withdrawing state,
2 unless formally rescinded by the withdrawing state in the same manner as
3 provided by the laws of the withdrawing state for the prospective
4 disapproval of products or advertisement previously approved under state
5 law.

6 F. Reinstatement following withdrawal of any compacting state shall
7 occur on the effective date of the withdrawing state reenacting the
8 compact.

9 G. If the commission determines that any compacting state has at
10 any time defaulted in the performance of any of its obligations or
11 responsibilities under the compact, the bylaws or adopted rules or
12 operating procedures, after notice and hearing as set forth in the bylaws,
13 all rights, privileges and benefits conferred by the compact on the
14 defaulting state shall be suspended from the effective date of default as
15 fixed by the commission. The grounds for default include failure of a
16 compacting state to perform its obligations or responsibilities and any
17 other grounds designated in commission rules. The commission shall
18 immediately notify the defaulting state in writing of the defaulting
19 state's suspension pending a cure of the default. The commission shall
20 stipulate the conditions and the time period within which the defaulting
21 state must cure its default. If the defaulting state fails to cure the
22 default within the time period specified by the commission, the defaulting
23 state shall be terminated from the compact and all rights, privileges and
24 benefits conferred by the compact shall be terminated from the effective
25 date of termination.

26 H. Product approvals by the commission or product
27 self-certifications, or any advertisement in connection with such product,
28 that are in force on the effective date of termination shall remain in
29 force in the defaulting state in the same manner as if the defaulting
30 state had withdrawn voluntarily under this article.

31 I. Reinstatement following termination of any compacting state
32 requires a reenactment of the compact.

33 J. The compact dissolves effective on the date of the withdrawal or
34 default of the compacting state that reduces membership in the compact to
35 one compacting state. On the dissolution of the compact, the compact
36 becomes null and void and shall be of no further force or effect, and the
37 business and affairs of the commission shall be wound up and any surplus
38 funds shall be distributed in accordance with the bylaws.

39 Article XV

40 Binding Effect of Compact and Other Laws

41 A. The compact does not prevent the enforcement of any other law of
42 a compacting state, except as provided in subsection B of this article.

43 B. For any product approved or certified to the commission, the
44 rules, uniform standards and any other requirements of the commission
45 shall constitute the exclusive provisions applicable to the content,

1 approval and certification of such products. For advertisement that is
2 subject to the commission's authority, any rule, uniform standard or other
3 requirement of the commission that governs the content of the
4 advertisement shall constitute the exclusive provision that a commissioner
5 may apply to the content of the advertisement. No action taken by the
6 commission shall abrogate or restrict any of the following:

7 1. The access of any person to state courts.

8 2. Remedies available under state law related to breach of
9 contract, tort or other laws not specifically directed to the content of
10 the product.

11 3. State law relating to the construction of insurance contracts.

12 4. The authority of the attorney general of the state, including
13 maintaining any actions or proceedings, as authorized by law.

14 C. All insurance products filed with individual states shall be
15 subject to the laws of those states.

16 D. All lawful actions of the commission, including all rules and
17 operating procedures adopted by the commission, are binding on the
18 compacting states.

19 E. All agreements between the commission and the compacting states
20 are binding in accordance with their terms.

21 F. On the request of a party to a conflict over the meaning or
22 interpretation of commission actions, and on a majority vote of the
23 compacting states, the commission may issue advisory opinions regarding
24 the meaning or interpretation in dispute.

25 G. If any provision of the compact exceeds the constitutional
26 limits imposed on the legislature of any compacting state, the
27 obligations, duties, powers or jurisdiction sought to be conferred by that
28 provision on the commission shall be ineffective as to that compacting
29 state, and those obligations, duties, powers or jurisdiction shall remain
30 in the compacting state and shall be exercised by the agency thereof to
31 which those obligations, duties, powers or jurisdiction are delegated by
32 law in effect at the time the compact becomes effective.

33 Article XVI

34 Severability and Construction

35 A. If any provision of this compact or its application to any
36 person or circumstance is held invalid, the remainder of the compact or
37 the application of the provision to other persons or circumstances is not
38 affected.

39 B. This compact shall be liberally construed to effectuate its
40 purposes.

41 Sec. 121. Section 20-3302, Arizona Revised Statutes, is amended to
42 read:

43 20-3302. Insurance compliance audit privilege; requirements

44 A. Except as provided in subsections E and F of this section, an
45 insurance compliance audit document is privileged information and is not

1 discoverable or admissible as evidence in any legal action in any civil or
2 administrative proceeding other than a regulatory or legal action brought
3 as part of the director's duties. This privilege is a matter of
4 substantive law of this state and is not merely a procedural matter
5 governing civil proceedings in the courts of this state. The following
6 provisions apply to the privilege:

7 1. If any company, person or entity performs or directs the
8 performance of an insurance compliance audit, an officer, employee or
9 agent involved with the insurance compliance audit or any consultant who
10 is hired for the purpose of performing the insurance compliance audit may
11 not be examined in any civil or administrative proceeding as to the
12 insurance compliance audit or any insurance compliance audit document.

13 2. In connection with examinations conducted under this title, an
14 insurer may submit an insurance compliance audit document to the director
15 or the director's designee as a confidential document without waiving the
16 privilege set forth under this subsection to which the insurer would
17 otherwise be entitled. Any insurance compliance audit document furnished
18 to the director may not be provided by the director to any other person or
19 entity and shall be accorded the same privilege provided under this
20 subsection.

21 3. If an insurer submits an insurance compliance audit document to
22 the director, the document remains confidential and privileged and:

23 (a) Is subject to all applicable statutory or common law
24 privileges, including the insurance compliance audit privilege, the work
25 product doctrine, the attorney-client privilege or the subsequent remedial
26 measures exclusion.

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

28 (c) Is not subject to title 39, chapter 1, article 2, not subject
29 to subpoena and not subject to discovery or admissible in a private
30 administrative proceeding or in a private civil action, other than in an
31 administrative proceeding conducted by the director.

32 4. Disclosure of an insurance compliance audit document to a
33 governmental agency, whether voluntary or pursuant to compulsion of law,
34 does not constitute a waiver of the privilege set forth under this
35 subsection with respect to any other person or governmental agency.

36 5. The director may obtain insurance compliance audit documents at
37 any time. The director may use the insurance compliance audit documents
38 in the furtherance of any regulatory or legal action brought as part of
39 the director's duties. The insurer shall comply with any compliance dates
40 set by the director with respect to the insurance compliance audit.
41 NOTWITHSTANDING ANY OTHER LAW, THE DIRECTOR SHALL PROVIDE AN INSURER WITH
42 COPIES OF ALL DOCUMENTS THAT THE DIRECTOR BELIEVES SUPPORT A VIOLATION OF
43 THIS TITLE OR THAT JUSTIFY ANY REGULATORY OR OTHER ACTION AGAINST THE
44 INSURER. A DISCLOSURE PURSUANT TO THIS PARAGRAPH IS NOT A WAIVER OF ANY

1 APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DISCLOSED
2 DOCUMENTS.

3 6. In order to facilitate identification, audit documents produced
4 as a result of an insurance compliance audit shall be labeled "compliance
5 report: privileged document".

6 7. A person who conducts or participates in the preparation of an
7 insurance compliance audit and who has observed physical events may
8 testify regarding those events, but may not be compelled to testify or
9 produce documents related to any privileged part of the insurance
10 compliance audit or any insurance compliance audit document.

11 8. The insurance compliance audit does not prevent the discovery of
12 a document or other evidence, otherwise discoverable, that is maintained
13 by an insurer and that was not developed for the insurance compliance
14 audit pursuant to this article.

15 B. The privilege described in this article does not apply to:

16 1. A document, communication, data or report or other information
17 required by the department or other regulatory agency to be collected,
18 developed, maintained or reported under applicable law.

19 2. Information obtained by observation, sampling or monitoring by
20 the department or other regulatory agency.

21 3. Information obtained from a source not involved in the
22 preparation of the insurance compliance audit report.

23 4. Documents, communications, data, spreadsheets, reports,
24 memoranda, drawings, photographs, exhibits, computer records, maps,
25 charts, graphs, recordings and surveys kept or prepared in the ordinary
26 course of business.

27 C. If an insurance compliance audit document is obtained, reviewed
28 or used in a criminal proceeding, the privilege described in this article
29 is not waived or eliminated for any other purpose.

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

32 E. The privilege set forth under subsection A of this section does
33 not apply under the following circumstances:

34 1. To the extent that it is expressly waived by the insurer that
35 prepared or caused to be prepared the insurance compliance audit document.

36 2. If, after an in camera review, a court of record in a civil or
37 administrative proceeding other than in a regulatory or legal action
38 brought as part of the director's duties determines one of the following:

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

40 (b) The document is not subject to the privilege.

41 (c) The privileged document shows evidence of noncompliance with
42 applicable state or federal laws, rules, regulations or orders of the
43 department and the insurer, person or entity fails to undertake corrective
44 action or eliminate the noncompliance within the compliance date set by
45 the director.

1 F. Within sixty days after an insurer is served a written request
2 by certified mail for disclosure of an insurance compliance audit
3 document, the insurer may file with the appropriate court a petition
4 requesting a hearing on whether the insurance compliance audit document or
5 portions of the document are privileged under this section or subject to
6 disclosure. The court shall conduct an in camera review of the insurance
7 compliance audit document and shall determine whether all or a portion of
8 the insurance compliance audit document is privileged or subject to
9 disclosure. The insurer's failure to file a petition for a hearing does
10 not waive the privilege in connection with any other request for
11 disclosure of the insurance compliance audit document. If an insurer
12 files a petition for an in camera hearing pursuant to this subsection, the
13 following apply:

14 1. The petition shall include all of the information set forth in
15 paragraph 3 of this subsection.

16 2. After conducting an in camera review, the court may require
17 disclosure of all or a portion of the insurance compliance audit document
18 if the court determines, based on its in camera review, that any one of
19 the conditions set forth in subsection E, paragraph 2 of this section
20 applies. On making this determination, the court may only compel the
21 disclosure of those portions of an insurance compliance audit document
22 that are relevant to issues in dispute in the underlying proceeding. Any
23 compelled disclosure will not be considered to be a public document or be
24 deemed to be a waiver of the privilege for any other civil or
25 administrative proceeding. An insurer unsuccessfully opposing disclosure
26 may apply to the court for an appropriate order protecting the document
27 from further disclosure.

28 3. At the time of filing a request for a hearing, the insurer shall
29 provide all of the following information:

30 (a) The date of the insurance compliance audit document.

31 (b) The identity of the entity conducting the insurance compliance
32 audit.

33 (c) The general nature of the activities covered by the insurance
34 compliance audit.

35 (d) An identification of the portions of the insurance compliance
36 audit document for which the privilege is being asserted.

37 G. An insurer asserting the insurance compliance privilege set
38 forth under subsection A of this section has the burden of demonstrating
39 the applicability of the privilege. Once an insurer has established the
40 applicability of the privilege, the party seeking disclosure has the
41 burden of proving the inapplicability of the privilege.

42 H. At any time, the parties to a civil or administrative proceeding
43 other than a regulatory or legal action brought as a part of the
44 director's duties may stipulate to entry of an order directing that
45 specific information contained in an insurance compliance audit document

1 is or is not subject to the privilege provided under subsection A of this
2 section. The stipulation may be limited to the instant proceeding and,
3 absent specific language to the contrary, is not applicable to any other
4 proceeding.

5 I. This section or the release of any insurance compliance audit
6 document under this section does not limit, waive or abrogate the scope or
7 nature of any statutory or common law privilege including the work product
8 doctrine, the attorney-client privilege or the subsequent remedial
9 measures exclusion.

10 J. This article does not limit the director's authority under
11 sections 20-156, 20-157, 20-157.01, 20-160 and 20-466.

12 Sec. 122. Section 20-3459, Arizona Revised Statutes, is amended to
13 read:

14 20-3459. Civil immunity; enforcement; civil penalty

15 A. A health insurer that complies in good faith with the
16 requirements of this chapter is immune from civil liability for the
17 purposes of reviewing and approving a credentialing application.

18 B. The director ~~of insurance~~ shall enforce this chapter. A health
19 insurer that fails to comply with this chapter or with any rules adopted
20 pursuant to this chapter is subject to the civil penalties prescribed in
21 section 20-456.

22 C. On receipt of multiple complaints of violations of this chapter
23 by a health insurer from applicants or participating providers, the
24 director ~~of insurance~~ shall conduct an examination of the health insurer
25 pursuant to section 20-156, 20-831 or 20-1058, as applicable to the
26 specific insurer.

27 Sec. 123. Section 23-722.04, Arizona Revised Statutes, is amended
28 to read:

29 23-722.04. Unemployment insurance information; disclosure;
30 violation; classification

31 A. The department or the office of economic opportunity may
32 disclose unemployment insurance information to the following entities:

33 1. Any federal, state or local governmental agency in the
34 investigation of fraud relating to public programs or the misuse of public
35 monies.

36 2. Divisions of the department, including the employment and
37 rehabilitation services administrations, for program and research
38 purposes.

39 3. The workforce Arizona council for program performance, regional
40 planning and other program and research purposes.

41 4. The department of education to evaluate adult education program
42 performance and for other primary and adult education program and research
43 purposes.

1 5. The Arizona board of regents, universities under the
2 jurisdiction of the Arizona board of regents and community college
3 districts to evaluate program performance and for other program and
4 research purposes.

5 6. The United States department of labor, or its agents, or the
6 United States census bureau, or its agents, as required by law or in
7 connection with the requirements imposed as a result of receiving federal
8 funding.

9 7. Department contractors or subcontractors, or their agents, for
10 the sole purpose of providing for the processing, storage and transmission
11 of information. This disclosure must be consistent with this section.

12 8. The industrial commission of Arizona, department of insurance
13 AND FINANCIAL INSTITUTIONS or attorney general for use by those agencies,
14 or their agents or contractors, in the prevention, investigation and
15 prosecution of workers' compensation fraud.

16 B. On the request of one of the entities specified in subsection A
17 of this section to the department or the office of economic opportunity,
18 the department or the office of economic opportunity shall disclose
19 unemployment insurance information to the entity pursuant to guidelines
20 established by the workforce data task force established by section
21 41-5404 and pursuant to a written data sharing agreement with the
22 requesting entity in a form determined by the workforce data task force
23 pursuant to the laws of this state and applicable federal regulations.
24 The department or the office of economic opportunity may disclose the
25 unemployment insurance information only after the requesting entity has
26 demonstrated that the information will be kept confidential, except for
27 those purposes for which the information was provided to the requesting
28 entity, and that the requesting entity has security safeguards in place to
29 prevent the unauthorized disclosure of the information.

30 C. Except as otherwise allowed by law or as otherwise authorized by
31 agreement between the department of economic security and the United
32 States department of labor, the department of economic security or the
33 office of economic opportunity may not use federal unemployment insurance
34 grant monies to pay for any costs incurred in processing and handling
35 requests for disclosure of unemployment insurance information. The
36 department of economic security and the office of economic opportunity, in
37 consultation with the workforce data task force, shall establish a rate
38 structure that complies with 20 Code of Federal Regulations section 603.8
39 for costs incurred in processing requests for disclosure of unemployment
40 insurance information.

41 D. The requesting entity may not make public any unemployment
42 insurance information that identifies an individual or the individual's
43 employer. Any unauthorized disclosure, including security breaches, shall
44 be reported to the department and the office of economic opportunity
45 immediately. Any person who knowingly discloses confidential unemployment

1 insurance information in violation of this section without prior written
2 authorization from the department or the office of economic opportunity or
3 authorization as otherwise provided by law is guilty of a class 3
4 misdemeanor.

5 E. The office of economic opportunity may use unemployment
6 insurance information to perform economic analyses, for the development of
7 labor market information and a state workforce evaluation data system and
8 for other program and research purposes.

9 F. This section does not prohibit disclosure that is required or
10 allowed by federal law.

11 Sec. 124. Section 23-901, Arizona Revised Statutes, is amended to
12 read:

13 23-901. Definitions

14 In this chapter, unless the context otherwise requires:

15 1. "Award" means the finding or decision of an administrative law
16 judge or the commission as to the amount of compensation or benefit due an
17 injured employee or the dependents of a deceased employee.

18 2. "Client" means an individual, association, company, firm,
19 partnership, corporation or any other legally recognized entity that is
20 subject to this chapter and that enters into a professional employer
21 agreement with a professional employer organization.

22 3. "Co-employee" means every person employed by an injured
23 employee's employer.

24 4. "Commission" means the industrial commission of Arizona.

25 5. "Compensation" means the compensation and benefits provided by
26 this chapter.

27 6. "Employee", "workman", "worker" and "operative" means:

28 (a) Every person in the service of this state or a county, city,
29 town, municipal corporation or school district, including regular members
30 of lawfully constituted police and fire departments of cities and towns,
31 whether by election, appointment or contract of hire.

32 (b) Every person in the service of any employer subject to this
33 chapter, including aliens and minors legally or illegally ~~permitted~~
34 ~~ALLOWED~~ to work for hire, but not including a person whose employment is
35 both:

36 (i) Casual.

37 (ii) Not in the usual course of the trade, business or occupation
38 of the employer.

39 (c) Lessees of mining property and the lessees' employees and
40 contractors engaged in the performance of work that is a part of the
41 business conducted by the lessor and over which the lessor retains
42 supervision or control are within the meaning of this paragraph employees
43 of the lessor, and are deemed to be drawing wages as are usually paid
44 employees for similar work. The lessor may deduct from the proceeds of

1 ores mined by the lessees the premium required by this chapter to be paid
2 for such employees.

3 (d) Regular members of volunteer fire departments organized
4 pursuant to title 48, chapter 5, article 1, regular firefighters of any
5 volunteer fire department, including private fire protection service
6 organizations, organized pursuant to title 10, chapters 24 through 40,
7 volunteer firefighters serving as members of a fire department of any
8 incorporated city or town or an unincorporated area without pay or without
9 full pay and on a part-time basis, and voluntary policemen and volunteer
10 firefighters serving in any incorporated city, town or unincorporated area
11 without pay or without full pay and on a part-time basis, are deemed to be
12 employees, but for the purposes of this chapter, the basis for computing
13 wages for premium payments and compensation benefits for regular members
14 of volunteer fire departments organized pursuant to title 48, chapter 5,
15 article 1, or organized pursuant to title 10, chapters 24 through 40,
16 regular members of any private fire protection service organization,
17 volunteer firefighters and volunteer policemen of these departments or
18 organizations shall be the salary equal to the beginning salary of the
19 same rank or grade in the full-time service with the city, town, volunteer
20 fire department or private fire protection service organization, provided
21 if there is no full-time equivalent then the salary equivalent shall be as
22 determined by resolution of the governing body of the city, town or
23 volunteer fire department or corporation.

24 (e) Members of the department of public safety reserve, organized
25 pursuant to section 41-1715, are deemed to be employees. For the purposes
26 of this chapter, the basis for computing wages for premium payments and
27 compensation benefits for a member of the department of public safety
28 reserve who is a peace officer shall be the salary received by officers of
29 the department of public safety for the officers' first month of regular
30 duty as an officer. For members of the department of public safety
31 reserve who are not peace officers, the basis for computing premiums and
32 compensation benefits is ~~four hundred dollars~~ \$400 a month.

33 (f) Any person placed in on-the-job evaluation or in on-the-job
34 training under the department of economic security's temporary assistance
35 for needy families program or vocational rehabilitation program shall be
36 deemed to be an employee of the department for the purpose of coverage
37 under the state workers' compensation laws only. The basis for computing
38 premium payments and compensation benefits shall be ~~two hundred dollars~~
39 \$200 per month. Any person receiving vocational rehabilitation services
40 under the department of economic security's vocational rehabilitation
41 program whose major evaluation or training activity is academic, whether
42 as an enrolled attending student or by correspondence, or who is confined
43 to a hospital or penal institution, shall not be deemed to be an employee
44 of the department for any purpose.

1 (g) Regular members of a volunteer sheriff's reserve, which may be
2 established by resolution of the county board of supervisors, to assist
3 the sheriff in the performance of the sheriff's official duties. A roster
4 of the current members shall monthly be certified to the clerk of the
5 board of supervisors by the sheriff and shall not exceed the maximum
6 number authorized by the board of supervisors. Certified members of an
7 authorized volunteer sheriff's reserve shall be deemed to be employees of
8 the county for the purpose of coverage under the Arizona workers'
9 compensation laws and occupational disease disability laws and shall be
10 entitled to receive the benefits of these laws for any compensable
11 injuries or disabling conditions that arise out of and occur in the course
12 of the performance of duties authorized and directed by the sheriff.
13 Compensation benefits and premium payments shall be based on the salary
14 received by a regular full-time deputy sheriff of the county involved for
15 the first month of regular patrol duty as an officer for each certified
16 member of a volunteer sheriff's reserve. This subdivision does not
17 provide compensation coverage for any member of a sheriff's posse who is
18 not a certified member of an authorized volunteer sheriff's reserve except
19 as a participant in a search and rescue mission or a search and rescue
20 training mission.

21 (h) A working member of a partnership may be deemed to be an
22 employee entitled to the benefits provided by this chapter on written
23 acceptance, by endorsement, at the discretion of the insurance carrier for
24 the partnership of an application for coverage by the working partner.
25 The basis for computing premium payments and compensation benefits for the
26 working partner shall be an assumed average monthly wage of not less than
27 ~~six hundred dollars~~ \$600 nor more than the maximum wage provided in
28 section 23-1041 and is subject to the discretionary approval of the
29 insurance carrier. Any compensation for permanent partial or permanent
30 total disability payable to the partner is computed on the lesser of the
31 assumed monthly wage agreed to by the insurance carrier on the acceptance
32 of the application for coverage or the actual average monthly wage
33 received by the partner at the time of injury.

34 (i) The sole proprietor of a business subject to this chapter may
35 be deemed to be an employee entitled to the benefits provided by this
36 chapter on written acceptance, by endorsement, at the discretion of the
37 insurance carrier of an application for coverage by the sole proprietor.
38 The basis for computing premium payments and compensation benefits for the
39 sole proprietor is an assumed average monthly wage of not less than ~~six~~
40 ~~hundred dollars~~ \$600 nor more than the maximum wage provided by section
41 23-1041 and is subject to the discretionary approval of the insurance
42 carrier. Any compensation for permanent partial or permanent total
43 disability payable to the sole proprietor shall be computed on the lesser
44 of the assumed monthly wage agreed to by the insurance carrier on the

1 acceptance of the application for coverage or the actual average monthly
2 wage received by the sole proprietor at the time of injury.

3 (j) A member of the Arizona national guard, Arizona state guard or
4 unorganized militia shall be deemed a state employee and entitled to
5 coverage under the Arizona workers' compensation law at all times while
6 the member is receiving the payment of the member's military salary from
7 this state under competent military orders or on order of the governor.
8 Compensation benefits shall be based on the monthly military pay rate to
9 which the member is entitled at the time of injury, but not less than a
10 salary of ~~four hundred dollars~~ \$400 per month, nor more than the maximum
11 provided by the workers' compensation law. Arizona compensation benefits
12 shall not inure to a member compensable under federal law.

13 (k) Certified ambulance drivers and attendants who serve without
14 pay or without full pay on a part-time basis are deemed to be employees
15 and entitled to the benefits provided by this chapter and the basis for
16 computing wages for premium payments and compensation benefits for
17 certified ambulance personnel shall be ~~four hundred dollars~~ \$400 per
18 month.

19 (l) Volunteer workers of a licensed health care institution may be
20 deemed to be employees and entitled to the benefits provided by this
21 chapter on written acceptance by the insurance carrier of an application
22 by the health care institution for coverage of such volunteers. The basis
23 for computing wages for premium payments and compensation benefits for
24 volunteers shall be ~~four hundred dollars~~ \$400 per month.

25 (m) Personnel who participate in a search or rescue operation or a
26 search or rescue training operation that carries a mission identifier
27 assigned by the division of emergency management as provided in section
28 35-192.01 and who serve without compensation as volunteer state employees.
29 The basis for computation of wages for premium purposes and compensation
30 benefits is the total volunteer man-hours recorded by the division of
31 emergency management in a given quarter multiplied by the amount
32 determined by the appropriate risk management formula.

33 (n) Personnel who participate in emergency management training,
34 exercises or drills that are duly enrolled or registered with the division
35 of emergency management or any political subdivision as provided in
36 section 26-314, subsection C and who serve without compensation as
37 volunteer state employees. The basis for computation of wages for premium
38 purposes and compensation benefits is the total volunteer man-hours
39 recorded by the division of emergency management or political subdivision
40 during a given training session, exercise or drill multiplied by the
41 amount determined by the appropriate risk management formula.

42 (o) Regular members of the Arizona game and fish department
43 reserve, organized pursuant to section 17-214. The basis for computing
44 wages for premium payments and compensation benefits for a member of the
45 reserve is the salary received by game rangers and wildlife managers of

1 the Arizona game and fish department for the game rangers' and wildlife
2 managers' first month of regular duty.

3 (p) Every person employed pursuant to a professional employer
4 agreement.

5 (q) A working member of a limited liability company who owns less
6 than fifty percent of the membership interest in the limited liability
7 company.

8 (r) A working member of a limited liability company who owns fifty
9 percent or more of the membership interest in the limited liability
10 company may be deemed to be an employee entitled to the benefits provided
11 by this chapter on the written acceptance, by endorsement, of an
12 application for coverage by the working member at the discretion of the
13 insurance carrier for the limited liability company. The basis for
14 computing wages for premium payments and compensation benefits for the
15 working member is an assumed average monthly wage of ~~six hundred dollars~~
16 \$600 or more but not more than the maximum wage provided in section
17 23-1041 and is subject to the discretionary approval of the insurance
18 carrier. Any compensation for permanent partial or permanent total
19 disability payable to the working member is computed on the lesser of the
20 assumed monthly wage agreed to by the insurance carrier on the acceptance
21 of the application for coverage or the actual average monthly wage
22 received by the working member at the time of injury.

23 (s) A working shareholder of a corporation who owns less than fifty
24 percent of the beneficial interest in the corporation.

25 (t) A working shareholder of a corporation who owns fifty percent
26 or more of the beneficial interest in the corporation may be deemed to be
27 an employee entitled to the benefits provided by this chapter on the
28 written acceptance, by endorsement, of an application for coverage by the
29 working shareholder at the discretion of the insurance carrier for the
30 corporation. The basis for computing wages for premium payments and
31 compensation benefits for the working shareholder is an assumed average
32 monthly wage of ~~six hundred dollars~~ \$600 or more but not more than the
33 maximum wage provided in section 23-1041 and is subject to the
34 discretionary approval of the insurance carrier. Any compensation for
35 permanent partial or permanent total disability payable to the working
36 shareholder is computed on the lesser of the assumed monthly wage agreed
37 to by the insurance carrier on the acceptance of the application for
38 coverage or the actual average monthly wage received by the working
39 shareholder at the time of injury.

40 7. "General order" means an order applied generally throughout this
41 state to all persons under jurisdiction of the commission.

42 8. "Heart-related or perivascular injury, illness or death" means
43 myocardial infarction, coronary thrombosis or any other similar sudden,
44 violent or acute process involving the heart or perivascular system, or
45 any death resulting therefrom, and any weakness, disease or other

1 condition of the heart or perivascular system, or any death resulting
2 therefrom.

3 9. "Insurance carrier" means every insurance carrier duly
4 authorized by the director of THE DEPARTMENT OF insurance AND FINANCIAL
5 INSTITUTIONS to write workers' compensation or occupational disease
6 compensation insurance in this state.

7 10. "Interested party" means the employer, the employee, or if the
8 employee is deceased, the employee's estate, the surviving spouse or
9 dependents, the commission, the insurance carrier or their representative.

10 11. "Mental injury, illness or condition" means any mental,
11 emotional, psychotic or neurotic injury, illness or condition.

12 12. "Order" means and includes any rule, direction, requirement,
13 standard, determination or decision other than an award or a directive by
14 the commission or an administrative law judge relative to any entitlement
15 to compensation benefits, or to the amount of compensation benefits, and
16 any procedural ruling relative to the processing or adjudicating of a
17 compensation matter.

18 13. "Personal injury by accident arising out of and in the course
19 of employment" means any of the following:

20 (a) Personal injury by accident arising out of and in the course of
21 employment.

22 (b) An injury caused by the wilful act of a third person directed
23 against an employee because of the employee's employment, but does not
24 include a disease unless resulting from the injury.

25 (c) An occupational disease that is due to causes and conditions
26 characteristic of and peculiar to a particular trade, occupation, process
27 or employment, and not the ordinary diseases to which the general public
28 is exposed, and subject to section 23-901.01 or, for heart-related,
29 perivascular or pulmonary cases, section 23-1105.

30 14. "Professional employer agreement" means a written contract
31 between a client and a professional employer organization:

32 (a) In which the professional employer organization expressly
33 agrees to co-employ all or a majority of the employees providing services
34 for the client. In determining whether the professional employer
35 organization employs all or a majority of the employees of a client, any
36 person employed pursuant to the terms of the professional employer
37 agreement after the initial placement of client employees on the payroll
38 of the professional employer organization shall be included.

39 (b) That is intended to be ongoing rather than temporary in nature.

40 (c) In which employer responsibilities for worksite employees,
41 including hiring, firing and disciplining, are expressly allocated between
42 the professional employer organization and the client in the agreement.

43 15. "Professional employer organization" means any person engaged
44 in the business of providing professional employer services. Professional

1 employer organization does not include a temporary help firm or an
2 employment agency.

3 16. "Professional employer services" means the service of entering
4 into co-employment relationships under this chapter to which all or a
5 majority of the employees providing services to a client or to a division
6 or work unit of a client are covered employees.

7 17. "Special order" means an order other than a general order.

8 18. "Weakness, disease or other condition of the heart or
9 perivascular system" means arteriosclerotic heart disease, cerebral
10 vascular disease, peripheral vascular disease, cardiovascular disease,
11 angina pectoris, congestive heart trouble, coronary insufficiency,
12 ischemia and all other similar weaknesses, diseases and conditions, and
13 also previous episodes or instances of myocardial infarction, coronary
14 thrombosis or any similar sudden, violent or acute process involving the
15 heart or perivascular system.

16 19. "Workers' compensation" means workmen's compensation as used in
17 article XVIII, section 8, Constitution of Arizona.

18 Sec. 125. Section 23-904, Arizona Revised Statutes, is amended to
19 read:

20 23-904. Arizona worker injuries in other state; injury to
21 foreign worker in this state; evidence of
22 insurance; judicial notice of other state's laws

23 A. If a worker who has been hired or is regularly employed in this
24 state receives a personal injury by accident arising out of and in the
25 course of the worker's employment, the worker is entitled to compensation
26 according to the laws of this state even if the injury was received
27 outside this state.

28 B. If a worker who is employed in this state and is subject to this
29 chapter temporarily leaves this state incidental to that employment and
30 receives an injury arising out of and in the course of employment, the
31 worker, or beneficiaries of the worker if the injury results in death, is
32 entitled to the benefits of this chapter as though the worker were injured
33 in this state.

34 C. A worker from another state and the employer of the worker in
35 that other state are exempt from this chapter while that worker is
36 temporarily in this state doing work for an employer if all of the
37 following are true:

38 1. The employer has furnished workers' compensation insurance
39 coverage under the workers' compensation insurance or similar laws of a
40 state other than Arizona so as to cover that worker's employment while in
41 this state.

42 2. The extraterritorial provisions of this chapter are recognized
43 in that other state.

1 3. Employers and workers who are covered in this state are likewise
2 ~~exempted~~ EXEMPT from the application of the workers' compensation
3 insurance act or similar laws of the other state.

4 4. The benefits under the workers' compensation insurance act or
5 similar laws of the other state, or other remedies under a similar act or
6 laws, are the exclusive remedy against the employer for any injury,
7 whether resulting in death or not, received by the worker while
8 temporarily working for that employer in this state.

9 D. A certificate from a duly authorized officer of the commission,
10 the department of insurance AND FINANCIAL INSTITUTIONS or a similar
11 department of another state certifying that the employer in the other
12 state is insured in that state is prima facie evidence that the employer
13 carries that workers' compensation insurance.

14 E. If in any appeal or other litigation the construction of the
15 laws of another state is required, the courts shall take judicial notice
16 of the laws of the other state.

17 F. For THE purposes of this section, a worker is deemed to be
18 temporarily in a state doing work for an employer if, during the three
19 hundred sixty-five days immediately preceding either the worker's date of
20 injury or, in the case of an occupational disease or cumulative trauma
21 claim, the worker's last date of injurious exposure, the worker performs
22 fewer than ninety continuous days of required services in the state under
23 the direction and control of the employer.

24 G. If a worker has a claim under the workers' compensation laws of
25 another state, territory, province or foreign nation for the same injury
26 or occupational disease as the claim filed in this state, the total amount
27 of compensation paid or awarded under the other state's workers'
28 compensation laws shall be credited against the compensation due under the
29 workers' compensation laws of this state. The worker is entitled to the
30 full amount of compensation due under the laws of this state. If
31 compensation under the laws of this state is more than the compensation
32 under the laws of the other state, or compensation paid the worker under
33 the laws of the other state is recovered from the worker, the insurer
34 shall pay any unpaid compensation to the worker up to the amount required
35 by the claim under the laws of this state.

36 H. Claims made after ~~the effective date of this section~~ SEPTEMBER
37 13, 2013 are subject to this section regardless of the date of injury.

38 Sec. 126. Section 23-930, Arizona Revised Statutes, is amended to
39 read:

40 23-930. Unfair claim processing practices; bad faith; civil
41 penalties

42 A. The commission has exclusive jurisdiction as prescribed in this
43 section over complaints involving alleged unfair claim processing
44 practices or bad faith by an employer, self-insured employer, insurance
45 carrier or claims processing representative relating to any aspect of this

1 chapter. The commission shall investigate allegations of unfair claim
2 processing or bad faith either on receiving a complaint or on its own
3 motion.

4 B. If the commission finds that unfair claim processing or bad
5 faith has occurred in the handling of a particular claim, it shall award
6 the claimant, in addition to any benefits it finds are due and owing, a
7 benefit penalty of twenty-five ~~per cent~~ PERCENT of the benefit amount
8 ordered to be paid or ~~five hundred dollars~~ \$500, whichever is more.

9 C. If the commission finds that an employer, self-insured employer,
10 insurance carrier or claim processing representative has a history or
11 pattern of repeated unfair claim processing practices or bad faith, it may
12 impose a civil penalty of up to ~~one thousand dollars~~ \$1,000 for each
13 violation found. The civil penalty shall be deposited, pursuant to
14 sections 35-146 and 35-147, in the state general fund.

15 D. Any party aggrieved by an order of the commission under this
16 section may request a hearing pursuant to section 23-947. The hearing and
17 decision shall be conducted pursuant to ~~the provisions of~~ section 23-941.

18 E. The commission shall adopt by rule a definition of unfair claim
19 processing practices and bad faith. In adopting a rule under this
20 subsection, the commission shall consider, among other factors, recognized
21 and approved claim processing practices within the insurance industry, the
22 commission's own experience in processing workers' compensation claims and
23 the workers' compensation and insurance laws of this state.

24 F. This section ~~shall not be construed as limiting~~ DOES NOT LIMIT
25 or ~~interfering~~ INTERFERE with the authority of the department of insurance
26 AND FINANCIAL INSTITUTIONS as provided by law to regulate any insurance
27 carriers, including the jurisdiction of the department of insurance AND
28 FINANCIAL INSTITUTIONS over unfair claim settlement practices as provided
29 in section 20-461.

30 Sec. 127. Section 23-950, Arizona Revised Statutes, is amended to
31 read:

32 23-950. Priority of actions

33 Actions and proceedings under this chapter and actions or
34 proceedings to which the commission, the ~~insurance~~ department, OF
35 INSURANCE AND FINANCIAL INSTITUTIONS or the state is a party in which any
36 question arises under this chapter or concerning an award of the
37 commission, or an order of the commission or ~~insurance~~ THE department OF
38 INSURANCE AND FINANCIAL INSTITUTIONS shall be advanced for trial or
39 hearing over civil actions, except election contests and actions affecting
40 the corporation commission.

1 Sec. 128. Section 23-961, Arizona Revised Statutes, is amended to
2 read:

3 23-961. Methods of securing compensation by employers;
4 deficit premium; civil penalty

5 A. Employers shall secure workers' compensation to their employees
6 in one of the following ways:

7 1. By insuring and keeping insured the payment of such compensation
8 with an insurance carrier authorized by the director of THE DEPARTMENT OF
9 insurance AND FINANCIAL INSTITUTIONS to write workers' compensation
10 insurance in this state.

11 2. By furnishing to the commission satisfactory proof of financial
12 ability to pay the compensation directly or through a workers'
13 compensation pool approved by the commission in the amount and manner and
14 when due as provided in this chapter. The requirements of this paragraph
15 may be satisfied by furnishing to the commission satisfactory proof that
16 the employer is a member of a workers' compensation pool approved by the
17 commission pursuant to section 23-961.01. The commission may require a
18 deposit or any other security from the employer for the payment of
19 compensation liabilities in an amount fixed by the commission, but not
20 less than ~~one hundred thousand~~ \$100,000 dollars for workers' compensation
21 liabilities. If the employer does not fully comply with the provisions of
22 this chapter relating to the payment of compensation, the commission may
23 revoke the authority of the employer to pay compensation directly.

24 B. An employer may not secure compensation to comply with this
25 chapter by any mechanism other than as provided in this section. No
26 insurance, combination or other program may be marketed, offered or sold
27 as workers' compensation that does not comply with this section. An
28 employer violates this chapter if the employer purchases or secures its
29 obligations under this chapter through a substitute for workers'
30 compensation that does not comply with this section.

31 C. Insurance carriers that transact the business of workers'
32 compensation insurance in this state are subject to the rules of the
33 director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS.

34 D. On application of an insurance carrier, the director of THE
35 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS may order the release
36 to the insurance carrier of all or part of the cash or securities that the
37 insurance carrier deposited before ~~the effective date of this amendment to~~
38 ~~this section~~ JULY 1, 2015 with the state treasurer pursuant to this
39 section. In determining whether to order the release of all or part of
40 the deposit, the director of THE DEPARTMENT OF insurance AND FINANCIAL
41 INSTITUTIONS shall consider all of the following:

42 1. The financial condition of the insurance carrier.

43 2. The insurance carrier's liabilities for workers' compensation
44 loss and loss expenses in this state.

1 3. Whether the insurance carrier is subject to a finding of
2 hazardous condition, an order of supervision, a delinquency proceeding or
3 any other regulatory action in this state, the insurance carrier's state
4 of domicile or any other state in which the insurance carrier transacted
5 the business of insurance.

6 4. Any other factors the director of THE DEPARTMENT OF insurance
7 AND FINANCIAL INSTITUTIONS determines are relevant to the application for
8 release of the deposit.

9 E. Except in the event of nonpayment of premiums, each insurance
10 carrier shall carry a risk to the conclusion of the policy period unless
11 the policy is cancelled by the employer or unless one or both of the
12 parties to a professional employer agreement terminate the agreement. The
13 policy period shall be agreed upon ON by the insurance carrier and the
14 employer.

15 F. At least thirty days' notice shall be given by the insurance
16 carrier to the employer and to the commission of any cancellation or
17 nonrenewal of a policy if the cancellation or nonrenewal is at the
18 election of the insurance carrier. The insurance carrier shall promptly
19 notify the commission of any cancellation by the employer or failure of
20 the employer to renew the policy. The failure to give notice of
21 nonrenewal if the nonrenewal is at the election of the insurance carrier
22 shall not extend coverage beyond the policy period. An insurance carrier
23 shall notify the commission on a form prescribed by the commission that it
24 has insured an employer for workers' compensation promptly after
25 undertaking to insure the employer.

26 G. Every insurance carrier on or before March 1 of each year shall
27 pay to the state treasurer for the credit of the administrative fund, in
28 lieu of all other taxes on workers' compensation insurance, a tax of not
29 more than three ~~per cent~~ PERCENT on all premiums collected or contracted
30 for during the year ending December 31 next preceding, less the deductions
31 from such total direct premiums for applicable cancellations, returned
32 premiums and all policy dividends or refunds paid or credited to
33 policyholders within this state and not reapplied as premiums for new,
34 additional or extended insurance. Every self-insured employer, including
35 workers' compensation pools, on or before March 31 of each year shall pay
36 a tax of not more than three ~~per cent~~ PERCENT of the premiums that would
37 have been paid by the employer if the employer had been fully insured by
38 an insurance carrier authorized to transact workers' compensation
39 insurance in this state during the preceding calendar year. The
40 commission shall adopt rules that shall specify the premium plans and
41 methods to be used for the calculation of rates and premiums and that
42 shall be the basis for the taxes assessed to self-insured employers. The
43 tax shall be not less than ~~two hundred fifty dollars~~ \$250 per annum and
44 shall be computed and collected by the commission and paid to the state
45 treasurer for the credit of the administrative fund at a rate not

1 exceeding three ~~per cent~~ PERCENT to be fixed annually by the industrial
2 commission OF ARIZONA. The rate shall be no more than is necessary to
3 cover the actual expenses of the industrial commission OF ARIZONA in
4 carrying out its powers and duties under this title. Any quarterly
5 payments of tax pursuant to subsection I of this section shall be deducted
6 from the tax payable pursuant to this subsection.

7 H. An insurance carrier may reduce the amount of premiums paid by
8 an employer by up to five ~~per cent~~ PERCENT if all of the following apply:

9 1. The insured employer complies with the drug testing policy
10 requirements prescribed in section 23-493.04.

11 2. The insured employer conducts drug testing of prospective
12 employees.

13 3. The insured employer conducts drug testing of an employee after
14 the employee has been injured.

15 4. The insured employer allows the employer's insurance carrier to
16 have access to the drug testing results under paragraphs 2 and 3 of this
17 subsection.

18 I. Any insurer that, pursuant to this section, paid or is required
19 to pay a tax of ~~two thousand dollars~~ \$2,000 or more for the preceding
20 calendar year shall file a quarterly report, in a form prescribed by the
21 commission, accompanied by a payment in an amount equal to the tax due at
22 the rates prescribed in subsection G of this section for premiums
23 determined pursuant to subsection G of this section or an amount equal to
24 twenty-five ~~per cent~~ PERCENT of the tax paid or required to be paid
25 pursuant to subsection G of this section for the preceding calendar year.
26 The quarterly payments shall be due and payable on or before the last day
27 of the month following the close of the quarter and shall be made to the
28 state treasurer.

29 J. If an overpayment of taxes results from the method prescribed in
30 subsection I of this section the industrial commission OF ARIZONA may
31 refund the overpayment without interest.

32 K. An insurer who fails to pay the tax prescribed by subsection G
33 or I of this section or the amount prescribed by section 23-1065,
34 subsection A is subject to a civil penalty equal to the greater of
35 ~~twenty-five dollars~~ \$25 or five ~~per cent~~ PERCENT of the tax or amount due
36 plus interest at the rate of one ~~per cent~~ PERCENT per month from the date
37 the tax or amount was due.

38 L. An insurance carrier authorized to write workers' compensation
39 insurance may not assess an employer premiums for services provided by a
40 contractor alleged to be an employee under section 23-902, subsection B or
41 C, unless the carrier has done both of the following:

42 1. Prepared written audit or field investigation findings
43 establishing that all applicable factors for determining employment status
44 under section 23-902 have been met.

1 2. Provided a copy of such findings to the employer in advance of
2 assessing a premium.

3 M. Notwithstanding section 23-901, paragraph 6, subdivision (i), a
4 sole proprietor may waive the sole proprietor's rights to workers'
5 compensation coverage and benefits if both the sole proprietor and the
6 insurance carrier of the employer subject to this chapter for which the
7 sole proprietor performs services sign and date a waiver that is
8 substantially in the following form:

9 I am a sole proprietor, and I am doing business
10 as (name of sole proprietor). I am performing work as
11 an independent contractor for (name of employer). I am
12 not the employee of (name of employer) for workers'
13 compensation purposes, and, therefore, I am not entitled to
14 workers' compensation benefits from (name of employer). I
15 understand that if I have any employees working for me, I must
16 maintain workers' compensation insurance on them.

17 _____
18 Sole proprietor Date

19 _____
20 Insurance carrier Date

21 Sec. 129. Section 23-1091, Arizona Revised Statutes, is amended to
22 read:

23 23-1091. Assigned risk plan

24 A. An insurer may decline to issue a workers' compensation or
25 occupational disease policy to an employer. An employer who is refused
26 coverage by two or more insurers shall be placed in the assigned risk plan
27 established by this section.

28 B. There shall be only one workers' compensation assigned risk plan
29 in this state. The director of the department of insurance **AND FINANCIAL**
30 **INSTITUTIONS** shall contract with a qualified party to be the assigned risk
31 plan administrator.

32 C. The administrator may charge all insurers transacting workers'
33 compensation insurance in this state a reasonable fee to administer the
34 assigned risk plan. Each insurer shall pay a share of the fee based on
35 the insurer's share of the preceding calendar year's total net direct
36 workers' compensation and occupational disease compensation insurance
37 premiums written in this state.

38 D. The assigned risk plan administrator shall develop a plan of
39 operation and, on approval by the director of the department of insurance
40 **AND FINANCIAL INSTITUTIONS**, shall issue a directive for the equitable
41 apportioning of assigned risks among all the insurers. At any time, the
42 director of the department of insurance **AND FINANCIAL INSTITUTIONS** may
43 require the assigned risk plan administrator to amend the plan of
44 operation. The plan shall include at least the following:

1 1. A method for the administrator to select one or more insurers
2 transacting workers' compensation insurance in this state to act as
3 servicing carriers. An administrator that is an insurer may act as its
4 own servicing carrier. The administrator shall monitor the performance of
5 the servicing carriers and shall measure performance against the
6 administrator's established standards. A servicing carrier shall:

7 (a) Provide coverage for the risks placed in the assigned risk
8 plan.

9 (b) Pay claims.

10 (c) Provide safety management services.

11 (d) Perform other activities that are related to the preliminary
12 and subsequent effectuation of the contract and that arise out of the
13 contract, including paying commissions to any licensed property and
14 casualty agent or broker in this state.

15 2. A method for apportioning the workers' compensation assigned
16 risks among all insurers.

17 E. Unless the director decides to use another method, the rates
18 used to determine the premiums of risks in the assigned risk plan are the
19 rates annually filed with the director of the department of insurance **AND**
20 **FINANCIAL INSTITUTIONS** by the designated rating organization pursuant to
21 section 20-357, subsection B, unless the director requires the use of
22 rates from another rating organization, plus a uniform percentage increase
23 that applies to all classifications, that is determined by the designated
24 rating organization or, if the director directs, another rating
25 organization and that is subject to approval by the director. The
26 expected loss rates, ballast factors and other factors for use with the
27 uniform experience rating plan as described in title 20, chapter 2,
28 article 4 and filed with the director also apply to experience rated risks
29 in the assigned risk plan.

30 F. Rating classifications used in the assigned risk plan shall
31 conform to the uniform classification plan. Subclassifications and rating
32 rule deviations shall not be used in the assigned risk plan.

33 G. All insurers participating in workers' compensation or
34 occupational disease compensation insurance shall participate in the
35 assigned risk plan.

36 H. Distribution of assignments among insurers shall be made in
37 proportion to each insurer's share of the preceding calendar year's total
38 net direct workers' compensation and occupational disease compensation
39 insurance premium written in this state, as far as practicable.

40 I. An insurer that refuses to participate in the assigned risk plan
41 shall not be authorized to write workers' compensation coverage in this
42 state. If an insurer refuses to participate in the assigned risk plan
43 after being authorized to write workers' compensation coverage in this
44 state, the insurer's authorization shall be revoked. If an insurer
45 withdraws from or is terminated from writing workers' compensation

1 coverage in this state, the insurer remains responsible for all injuries
2 sustained during the period of coverage stated in the policies of that
3 insurer.

4 Sec. 130. Section 25-529, Arizona Revised Statutes, is amended to
5 read:

6 25-529. Title IV-D cases; alternative medical insurance
7 coverage

8 The director of the department of economic security may disseminate
9 information provided by the department of insurance AND FINANCIAL
10 INSTITUTIONS regarding individual medical insurance plans and may enter
11 into agreements with a consortium of other states to offer medical
12 insurance coverage to children in title IV-D cases.

13 Sec. 131. Section 28-667, Arizona Revised Statutes, is amended to
14 read:

15 28-667. Written accident report; definition

16 A. A law enforcement officer or public employee who, in the regular
17 course of duty, investigates a motor vehicle accident resulting in bodily
18 injury, death or damage to the property of any person in excess of \$2,000
19 or the issuance of a citation shall complete a written report of the
20 accident as follows:

- 21 1. Either at the time of and at the scene of the accident or after
22 the accident by interviewing participants or witnesses.
- 23 2. Within twenty-four hours after completing the investigation.

24 B. Every law enforcement officer or public employee who, in the
25 regular course of duty, investigates a motor vehicle accident that results
26 in damage to the property of any person in an amount of \$2,000 or less,
27 but that does not result in the issuance of a citation or bodily injury or
28 death, shall complete a portion of the written report of the accident.
29 The portion of the written report shall:

- 30 1. Be completed either at the time of and at the scene of the
31 accident or after the accident by interviewing participants or witnesses.
- 32 2. Be completed within twenty-four hours after completing the
33 investigation.
- 34 3. Include the following minimum information:
 - 35 (a) The time, day, month and year of the accident.
 - 36 (b) Information adequate to identify the location of the accident.
 - 37 (c) Identifying information for all involved parties and witnesses,
38 including name, age, sex, address, telephone number, vehicle ownership and
39 registration and proof of insurance.
 - 40 (d) A narrative description of the facts of the accident, a simple
41 diagram of the scene of the accident and the investigating officer's name,
42 agency and identification number.

43 C. The agency employing the officer or public employee:

- 44 1. Shall not allow a person to examine the accident report or any
45 related investigation report or a reproduction of the accident report or a

1 related investigation report if the request is for a commercial
2 solicitation purpose.

3 2. May require a person requesting the accident or related
4 investigative report to state under penalty of perjury that the report is
5 not examined or copied for a commercial solicitation purpose.

6 3. May retain the original report.

7 4. Shall maintain an electronic copy of the original report if the
8 agency elects not to retain the original report pursuant to paragraph 3 of
9 this subsection.

10 5. Shall immediately forward a copy of the report to the department
11 of transportation for its use.

12 6. Except as otherwise provided by law, on request shall provide a
13 copy of the unredacted report to the following:

14 (a) A person who is involved in the accident or the owner of a
15 vehicle involved in the accident or a representative of the person or
16 owner.

17 (b) Any insurer licensed pursuant to title 20 if the report is
18 related to an investigation into fraudulent claims, or any insurer that
19 writes automobile liability or motor vehicle liability policies and that
20 is both of the following:

21 (i) Under the jurisdiction of the department of insurance **AND**
22 **FINANCIAL INSTITUTIONS** or a self-insured entity or its agents, employees
23 or contractors in connection with claims investigation activities,
24 antifraud activities, rating or underwriting.

25 (ii) An insurer of a person or vehicle involved in the accident.

26 (c) An attorney licensed to practice law or to a licensed private
27 investigator representing a person involved in the accident in connection
28 with any civil, administrative or arbitration proceeding in any court or
29 government agency or before any self-regulatory body, including the
30 service of process, investigation in anticipation of litigation and the
31 execution or enforcement of judgments and orders, or pursuant to a court
32 order.

33 (d) An insurance support organization as defined in section 20-2102
34 that provides services in connection with claims investigation activities,
35 antifraud activities, rating or underwriting.

36 D. If a request is made pursuant to subsection C, paragraph 6,
37 subdivision (a) or (c) of this section and the accident report indicates
38 that a criminal complaint has been issued, before the report is released
39 the personal identifying information regarding any victim shall be
40 redacted from the accident report pursuant to section 13-4434.

41 E. A law enforcement agency may deny a request for a copy of an
42 unredacted accident report if the agency determines that release of the
43 report would be harmful to a criminal investigation.

44 F. The department may place notes, date stamps, identifying
45 numbers, marks or other information on the copies as needed, if they do

1 not alter the original information reported by the investigating officer
2 or public employee.

3 G. Any law restricting the distribution of personal identifying
4 information by a business entity described in subsection C, paragraph 6,
5 subdivisions (b) and (d) of this section applies to personal identifying
6 information contained in an accident report. If a person who receives
7 information under this section is not otherwise subject to distribution
8 restrictions for information contained in accident reports, the person
9 shall not release the report or any information contained in the report
10 except to those persons designated in subsection C, paragraph 6 of this
11 section.

12 H. For the purposes of this section, "commercial solicitation
13 purpose" means a request for an accident report if there is neither:

14 1. A relationship between the person or the principal of the person
15 requesting the accident report and any party involved in the accident.

16 2. A reason for the person to request the report other than for the
17 purposes of soliciting a business or commercial relationship.

18 Sec. 132. Section 28-2166, Arizona Revised Statutes, is amended to
19 read:

20 28-2166. Registration of vehicle rented without a driver;
21 liability insurance; joint liability; violation;
22 classification; definition

23 A. The department of transportation shall not allow an owner who is
24 engaged in the business of renting or who intends to rent a motor vehicle
25 in this state without a driver to register or to rent the motor vehicle
26 until either:

27 1. The owner has procured public liability insurance with an
28 insurance company approved by the department of insurance AND FINANCIAL
29 INSTITUTIONS.

30 2. The owner has furnished to the department of transportation
31 satisfactory proof of the owner's ability to respond in damages in the
32 amount of ~~fifteen thousand dollars~~ \$15,000 if one motor vehicle is
33 registered and ~~ten thousand dollars~~ \$10,000 for each additional motor
34 vehicle. Proof of the ability to respond in damages in the amount of ~~one~~
35 ~~hundred thousand dollars~~ \$100,000 is sufficient for any number of motor
36 vehicles.

37 B. The policy of insurance required by subsection A OF THIS SECTION
38 shall:

39 1. Insure the renter against:

40 (a) Liability arising from the renter's negligence in the operation
41 of the rented motor vehicle in an amount of at least ~~fifteen thousand~~
42 ~~dollars~~ \$15,000 for any one person injured or killed and ~~thirty~~
43 ~~thousand dollars~~ \$30,000 for any number more than one PERSON injured or
44 killed in any one accident.

1 (b) Liability of the renter for property damage in the amount of at
2 least ~~ten thousand dollars~~ \$10,000 for any one accident.

3 2. Cover the liability of the renter to a passenger in the rented
4 motor vehicle unless the owner gives the renter a written notice that the
5 policy does not cover the liability.

6 C. Subject to ~~the provisions of~~ subsection D of this section, the
7 public liability insurance or the obligation of a self-insured owner
8 pursuant to this section is primary coverage to any other available
9 liability insurance coverage that is available and applicable for any
10 damages and injury caused by a renter unless one of the following ~~apply~~
11 **APPLIES**:

12 1. It is disclosed in the rental agreement to the renter the
13 following:

14 "The owner does not extend any of its motor vehicle financial
15 responsibility or provide public liability insurance coverage to the
16 renter, authorized drivers or any other driver."

17 This disclosure shall be by one of the following methods:

18 (a) In at least ~~ten point~~ **TEN-POINT** bold type in the rental or
19 lease agreement and affirmatively acknowledged by the renter.

20 (b) In the terms of the master agreement maintained with the
21 renter.

22 (c) At the time a reservation is made by a renter online, the
23 disclosure is made in a conspicuous manner.

24 2. The renter purchased public liability insurance from the owner
25 that provides coverage that complies with subsection B of this section to
26 renters and authorized drivers of rental motor vehicles for liability that
27 arises from the operation of the rental motor vehicle. Any liability
28 insurance purchased from the owner pursuant to this subsection shall apply
29 and be exhausted prior to any other applicable and available liability
30 insurance coverage.

31 D. The owner regulated by this section:

32 1. Shall respond to the ~~third party~~ **THIRD-PARTY** claim, provide
33 financial responsibility as prescribed in subsection B of this section and
34 provide a defense for all claims for damages or liability arising out of
35 the ownership, maintenance or use of a motor vehicle if there is an
36 accident, there are damages or injuries that are caused by the renter and
37 one of the following **APPLIES**:

38 (a) The renter does not have any other liability coverage ~~which~~
39 **THAT** is available and applicable to the loss.

40 (b) The owner has not fully and accurately provided to the claimant
41 the contact information regarding the renter, including the name, **THE**
42 address, **THE** applicable insurance company and the policy number or the
43 insurance company's claim number, within twenty days after the owner is
44 notified of the claim.

1 2. After the owner has assumed defense of the claim under this
2 subsection, cannot tender the claim to the excess insurer without the
3 written agreement from the excess insurer and the excess insurer is not
4 responsible for any costs incurred by the owner before the tender is
5 accepted.

6 3. Has no obligation to provide a defense after the owner has paid
7 its coverage limits, if the renter does not have any other liability
8 coverage that is available and applicable to the loss.

9 4. In any situation in which damages or injuries are caused by a
10 person who is operating a motor vehicle and who is not authorized by the
11 written rental agreement to do so, has a right of subrogation against the
12 person who rented the motor vehicle for damages that are caused to the
13 owner and that arose out of the unauthorized operation of the owner's
14 motor vehicle.

15 5. Except as provided in paragraph 4 of this subsection, has no
16 other right of subrogation against the person who rented the motor
17 vehicle.

18 E. In a situation where the owner does not provide primary
19 coverage, the public liability insurance or the obligation of the
20 self-insured owner pursuant to this section shall provide excess coverage
21 up to the limits prescribed in subsection B of this section.

22 F. The department of transportation shall cancel the registration
23 of a motor vehicle rented without a driver if the owner has failed to
24 comply with this section.

25 G. The owner of a motor vehicle who rents it to another without a
26 driver, other than as a bona fide transaction involving the sale of the
27 motor vehicle, without having procured the required public liability
28 insurance or without qualifying as a self-insurer pursuant to section
29 28-4007 with at least the minimum limits prescribed in subsection A of
30 this section is jointly and severally liable with the renter for damage
31 caused by the negligence of the renter operating the motor vehicle.

32 H. The owner of a motor vehicle who rents a motor vehicle without a
33 driver, other than as a bona fide transaction involving the sale of the
34 motor vehicle, without first complying with this section is guilty of a
35 class 2 misdemeanor.

36 I. As used in this section, an owner who is engaged in the business
37 of renting or who intends to rent a motor vehicle without a driver does
38 not include a person who operates a golf course that rents golf carts that
39 are intended to be used primarily for playing a round of golf and that are
40 only incidentally operated or moved on a highway.

41 J. ~~As used in~~ FOR THE PURPOSES OF this section, "renter" includes
42 any person operating a motor vehicle with permission of the person who has
43 rented it.

1 Sec. 133. Section 28-4007, Arizona Revised Statutes, is amended to
2 read:

3 28-4007. Self-insurers

4 A. Except as provided in subsection E of this section, a person in
5 whose name more than ten motor vehicles are registered or who is required
6 to comply with the financial responsibility requirements prescribed in
7 article 2 of this chapter may qualify as a self-insurer or partial
8 self-insurer by obtaining a certificate of self-insurance or partial
9 self-insurance issued by the director as provided in this section.

10 B. After determining that the person is financially able and will
11 continue to be able to pay judgments obtained against the person, the
12 director may issue a certificate of self-insurance or partial
13 self-insurance.

14 C. On not less than five days' notice and after a hearing, the
15 director may cancel a certificate of self-insurance or a certificate of
16 partial self-insurance on reasonable grounds. For the purposes of this
17 subsection, "reasonable grounds" includes any of the following
18 circumstances:

19 1. Failure to pay a judgment within thirty days after the judgment
20 becomes final.

21 2. Determination by the director that the person has not complied
22 with the financial responsibility requirements of this chapter.

23 3. Determination by the director that the person knowingly
24 submitted false information that is required by this chapter to this
25 state, a political subdivision of this state, a court or a law enforcement
26 agency.

27 4. Determination by the director that the person knowingly failed
28 to respond within thirty days to a claim for damages for liability arising
29 out of the ownership, maintenance or use of a motor vehicle.

30 5. Determination by the director that the person does not meet the
31 bond requirements prescribed in section 28-4011.

32 D. A person who is required to comply with the financial
33 responsibility requirements prescribed in article 2 of this chapter may
34 file an application with the department for partial self-insurance to
35 cover any portion of the financial responsibility requirements.

36 E. A person may also qualify as a self-insurer if the person is
37 insured by a captive insurer that is domiciled and authorized by the
38 department of insurance **AND FINANCIAL INSTITUTIONS** to transact business in
39 this state and that provides coverage in an amount of at least that
40 required by section 28-4033.

41 F. A person applying for self-insurance or partial self-insurance
42 pursuant to this section shall comply with both of the following at the
43 time of application:

44 1. The person shall submit evidence in a form prescribed by the
45 director that the person is financially able and will continue to be able

1 to pay the entire amount of self-insurance or partial self-insurance
2 allowed by the director for judgments obtained against the person for
3 liability arising out of the ownership, maintenance or use of a motor
4 vehicle.

5 2. If applicable, the person shall submit evidence in a form
6 prescribed by the director that the person has a valid insurance policy
7 that meets the requirements prescribed in section 28-4033 and that is
8 issued by an insurer that holds a valid certificate of authority or that
9 is ~~permitted~~ ALLOWED to transact surplus lines insurance in this state.

10 G. The director may adopt rules to implement this section,
11 including rules requiring additional evidence that the person meets the
12 financial responsibility requirements of this chapter and rules providing
13 for the periodic submission of evidence demonstrating that the person
14 meets the standards required by the department to qualify as a
15 self-insurer, a captive insurer or partial self-insurer.

16 H. The director of the department of transportation, in
17 consultation with the director of the department of insurance AND
18 FINANCIAL INSTITUTIONS, may establish procedures that allow a person to
19 apply for and file a certificate of either partial self-insurance or
20 self-insurance.

21 I. The director of the department of transportation, in
22 consultation with the director of the department of insurance AND
23 FINANCIAL INSTITUTIONS, shall establish procedures to exchange information
24 regarding changes in the self-insurance status of persons who are subject
25 to this section.

26 Sec. 134. Section 28-4008, Arizona Revised Statutes, is amended to
27 read:

28 28-4008. Assigned risk plans

29 A. After consultation with insurance companies authorized to issue
30 motor vehicle liability policies in this state, the director of the
31 department of insurance AND FINANCIAL INSTITUTIONS shall approve a
32 reasonable plan for the equitable apportionment among the companies of
33 applicants for policies and for motor vehicle liability policies who are
34 in good faith entitled to but are unable to procure the policies through
35 ordinary methods.

36 B. After a plan has been approved, all insurance companies
37 authorized to issue motor vehicle liability policies in this state shall
38 subscribe to and participate in the plan.

39 C. An applicant for a policy under this section, a person insured
40 under an assigned risk plan and an insurance company affected may appeal
41 to the director of the department of insurance AND FINANCIAL INSTITUTIONS
42 from any ruling or decision of the manager or committee designated to
43 operate the plan. Within ten days after notice of an order or act of the
44 director of the department of insurance AND FINANCIAL INSTITUTIONS, a
45 person aggrieved under this section by the order or act may file a

1 petition in the superior court in the county in which the director of the
2 department of insurance AND FINANCIAL INSTITUTIONS is domiciled against
3 the director of the department of insurance AND FINANCIAL INSTITUTIONS for
4 a review of the order or act. The court shall summarily hear the petition
5 and may make any appropriate order or decree.

6 Sec. 135. Section 28-4038, Arizona Revised Statutes, is amended to
7 read:

8 28-4038. Transportation network services; financial
9 responsibility requirements; survey

10 A. For a transportation network company that requires a
11 transportation network company driver to accept rides that are booked and
12 paid for exclusively through the transportation network company's digital
13 network or software application and during the time in which the
14 transportation network company driver is logged in to the transportation
15 network company's digital network or software application to be a driver,
16 but is not in the act of providing transportation network services, the
17 ~~following insurance coverage shall be maintained:~~

18 ~~1. Before March 1, 2016, the transportation network company driver~~
19 ~~shall maintain a motor vehicle liability insurance policy that meets at~~
20 ~~least the requirements of section 28-4009. A transportation network~~
21 ~~company shall provide motor vehicle liability insurance coverage in the~~
22 ~~amount of twenty-five thousand dollars because of bodily injury to or~~
23 ~~death of one person in any one accident, subject to the limit for one~~
24 ~~person, fifty thousand dollars because of bodily injury to or death of two~~
25 ~~or more persons in any one accident and twenty thousand dollars because of~~
26 ~~injury to or destruction of property of others in any one accident in the~~
27 ~~event a transportation network company driver's policy excludes coverage~~
28 ~~according to the policy's terms.~~

29 ~~2. From and after February 29, 2016, the~~ transportation network
30 company driver or the transportation network company, or both, shall
31 provide primary motor vehicle liability insurance coverage in the amount
32 of ~~twenty-five thousand dollars~~ \$25,000 because of bodily injury to or
33 death of one person in any one accident, subject to the limit for one
34 person, ~~fifty thousand dollars~~ \$50,000 because of bodily injury to or
35 death of two or more persons in any one accident and ~~twenty thousand~~
36 ~~dollars~~ \$20,000 because of injury to or destruction of property of others
37 in any one accident. Coverage shall be maintained through any of the
38 following:

39 ~~(a)~~ 1. A private passenger motor vehicle policy maintained by the
40 transportation network company driver that expressly provides liability
41 coverage while the driver is logged in to the transportation network
42 company's digital network or software application to be a driver.

43 ~~(b)~~ 2. A motor vehicle liability policy maintained by the
44 transportation network company.

45 ~~(c)~~ 3. A commercial motor vehicle liability policy.

1 B. For a transportation network company that requires a
2 transportation network company driver to accept rides that are booked and
3 paid for exclusively through the transportation network company's digital
4 network or software application and during the time in which the
5 transportation network company driver is providing transportation network
6 services, the transportation network company driver or the transportation
7 network company, or both, shall maintain the following insurance
8 coverages:

9 1. Primary commercial motor vehicle liability insurance that covers
10 the transportation network company driver's provision of transportation
11 network services in a minimum amount of ~~two hundred fifty thousand dollars~~
12 **\$250,000** per incident.

13 2. Commercial uninsured motorist coverage in a minimum amount of
14 ~~two hundred fifty thousand dollars~~ **\$250,000** per incident.

15 C. ~~From and after February 29, 2016,~~ Unless an insurance policy
16 expressly provides coverage or contains an amendment or endorsement that
17 expressly provides coverage, the transportation network company driver's
18 insurance policy and the motor vehicle owner's personal motor vehicle
19 insurance policy shall not be required to provide coverage for the
20 transportation network company vehicle, the transportation network company
21 driver, the motor vehicle owner or any third party while a transportation
22 network company driver is logged in to a transportation network company's
23 digital network or software application to be a driver or is providing
24 transportation network services.

25 D. Notwithstanding subsection C of this section, an insurer may
26 offer, for the period during which a transportation network company driver
27 is logged in to a transportation network company's digital network or
28 software application to be a driver or is providing transportation network
29 services, one of the following:

30 1. A motor vehicle liability insurance policy expressly providing
31 such coverage.

32 2. An amendment or endorsement to an existing motor vehicle
33 liability insurance policy specifically providing such coverage.

34 E. An insurance policy required by this section is deemed to
35 satisfy the financial responsibility requirements for a motor vehicle
36 insurance policy under this title.

37 F. A transportation network company driver shall carry proof of
38 insurance in the transportation network company vehicle at all times while
39 logged in to a transportation network company's digital network or
40 software application to be a driver or is providing transportation network
41 services. If an accident occurs involving a transportation network
42 company vehicle, the transportation network company driver shall provide
43 proof of insurance to the parties involved in the accident at the time of
44 the accident. The transportation network company driver shall also notify
45 the transportation network company of the accident.

1 G. In a claims coverage investigation, transportation network
2 companies and any insurer providing coverage as prescribed in this section
3 shall fully cooperate in the exchange of information, including the
4 precise times that a transportation network company driver logged on and
5 off of the transportation network company's digital network or software
6 application in the twenty-four-hour period immediately preceding the
7 accident, and shall disclose to each other a clear description of the
8 coverage, exclusions and limits provided under any insurance policy each
9 party issued or maintained.

10 H. ~~From and after February 29, 2016,~~ This section and section
11 28-4009 do not create an obligation for an insurer that issues coverage to
12 which section 20-1631 applies to offer, provide or issue a motor vehicle
13 liability insurance policy or an endorsement or amendment that includes
14 coverage for any liability arising while a transportation network company
15 driver is logged in to the transportation network company's digital
16 network or software application to be a driver or is providing
17 transportation network services.

18 I. An insurance policy required by this section may be placed with
19 an insurer authorized to transact insurance in this state pursuant to
20 title 20, chapter 2, article 1 or a surplus lines insurer pursuant to
21 title 20, chapter 2, article 5.

22 J. The department of insurance AND FINANCIAL INSTITUTIONS, as part
23 of its annual survey of insurance companies, may request information from
24 any property and casualty insurer authorized to write private passenger
25 motor vehicle coverage in this state, including information regarding:

26 1. Whether the insurer offers for purchase a policy or an
27 endorsement or amendment that covers transportation network company
28 drivers while the driver is logged in to a transportation network
29 company's digital network or software application to be a driver or is
30 providing transportation network services.

31 2. The number of those policies, endorsements or amendments that
32 have been purchased during the reporting period.

33 3. The number of those policies, endorsements or amendments that
34 have been canceled during the reporting period.

35 Sec. 136. Section 28-4133, Arizona Revised Statutes, is amended to
36 read:

37 28-4133. Insurance identification cards; documentary
38 evidence; exception

39 A. An authorized insurer shall issue at least two motor vehicle
40 insurance identification cards for a motor vehicle or automobile liability
41 policy that meets the requirements of section 28-4009 or section 28-4033,
42 subsection A, paragraph 2, subdivision (c).

43 B. The card shall include the number that the department assigns to
44 the insurer and shall state that:

1 1. A person is required to possess evidence of financial
2 responsibility within the motor vehicle.

3 2. The card or an image of the card that is displayed on a wireless
4 communication device meets the requirement prescribed in paragraph 1 of
5 this subsection.

6 3. The card or an image of the card that is displayed on a wireless
7 communication device is satisfactory evidence if the person is asked by
8 the department of transportation to verify financial responsibility on the
9 motor vehicle.

10 C. All documentary evidence issued by an insurer or an authorized
11 agent of the insurer shall indicate:

12 1. The name of the insurer as listed with the department of
13 insurance **AND FINANCIAL INSTITUTIONS**.

14 2. For the purpose of verifying insurance coverage, the mailing
15 address and telephone number of the insurer or an authorized agent of the
16 insurer.

17 3. In order to accurately verify insurance coverage, other
18 information as required by the department of transportation.

19 4. If a binder is issued by an authorized agent of an insurer, the
20 name, address and telephone number of the agent.

21 D. This section does not apply to a commercial vehicle policy that
22 provides automatic coverage for additional or newly acquired vehicles
23 until the policy's expiration date.

24 Sec. 137. Section 28-6923, Arizona Revised Statutes, is amended to
25 read:

26 **28-6923. Bid requirements; procedure; bond**

27 A. All items of construction or reconstruction of department
28 facilities involving an expenditure of ~~one hundred eighty-nine thousand~~
29 ~~dollars~~ **\$189,000** or more shall be called for by advertising in a newspaper
30 of general circulation published in this state for either:

31 1. Two consecutive publications if it is a weekly newspaper.

32 2. Two publications at least six but not more than ten days apart
33 if it is a daily newspaper.

34 B. ~~In fiscal year 2008-2009 and~~ Each fiscal year ~~thereafter~~, the
35 amount provided in subsection A of this section shall be adjusted by the
36 annual percentage change in the GDP price deflator as defined in section
37 41-563.

38 C. The advertisement shall state specifically the character of the
39 work to be done and where a person may obtain copies of the plans,
40 specifications and complete information as to the proposed work.

41 D. The bidding information provided shall state specifically the
42 character of the work to be performed and the kind, quantity and quality
43 of materials or supplies to be furnished. The plans and specifications:

44 1. Shall be sufficiently complete, definite and explicit to ~~permit~~
45 **ALLOW** informed, free, open and competitive bidding on a common basis.

1 2. May require performance on the basis of either means and methods
2 specifications or end result specifications.

3 3. If end result specifications are used, shall provide an
4 objective or standard to be achieved with the successful bidder expected
5 to exercise the bidder's skill and ingenuity in achieving that objective
6 or standard of performance by selecting the means and manner of
7 performance and by assuming a corresponding responsibility for that
8 selection.

9 E. If contractor insurance is required for construction or
10 reconstruction pursuant to this section, the insurance shall be placed
11 with an insurer authorized to transact insurance in this state pursuant to
12 title 20, chapter 2, article 1 or a surplus lines insurer approved and
13 identified by the director of the department of insurance AND FINANCIAL
14 INSTITUTIONS pursuant to title 20, chapter 2, article 5.

15 F. A bid shall be accompanied by a certified check, cashier's check
16 or surety bond for ten ~~per cent~~ PERCENT of the amount of the bid included
17 in the proposal as a guarantee that the contractor will enter into a
18 contract to perform the proposal pursuant to the plans and specifications.

19 G. The certified check, cashier's check or surety bond shall be
20 returned to the contractors whose proposals are not accepted and to the
21 successful contractor on the execution of a satisfactory bond and contract
22 as provided in this article.

23 H. The surety bond provided pursuant to subsection F of this
24 section shall be executed and furnished as required by title 34, chapter
25 2, and the conditions and provisions of the surety bid bond regarding the
26 surety's obligations shall follow the form required under section 34-201,
27 subsection A, paragraph 3.

28 I. If a bid that is satisfactory to the board is received, it shall
29 let a contract to the lowest responsible bidder, on the contractor giving
30 performance and payment bonds that follow the form and include the
31 provisions required by title 34, chapter 2, article 2.

32 J. If the bids received for construction or reconstruction are not
33 satisfactory to the board, a second call shall be made. If they are again
34 rejected by the board, it may authorize the state engineer to construct or
35 reconstruct the item as it deems most advantageous.

36 K. In determining the lowest responsible bidder under this section,
37 the department and the board may consider the time of completion proposed
38 by the bidder if the department and the board determine that this
39 procedure will serve the public interest by providing a substantial fiscal
40 benefit or that the use of the traditional awarding of contracts is not
41 practicable for meeting desired construction standards or delivery
42 schedules and if the formula for considering the time of completion is
43 specifically stated in the bidding information.

1 L. This section does not prohibit a change to a construction
2 contract that either:

3 1. Does not alter the scope of the work under a contract and the
4 cost of the change does not exceed ten ~~per cent~~ PERCENT of the contract
5 amount or ~~fifty thousand dollars~~ \$50,000, whichever is greater.

6 2. Does alter the scope of the work if the cost of the change does
7 not exceed ten ~~per cent~~ PERCENT of the contract amount or ~~fifty thousand~~
8 ~~dollars~~ \$50,000, whichever is greater, and the changed work is within
9 twenty ~~per cent~~ PERCENT of the total project length.

10 M. If a project is funded completely with private monies, the
11 private entity is not required to comply with subsections A through L of
12 this section if the private entity complies with all of the following:

13 1. Before advertising for bids, submits to the department a bond
14 that is issued by a surety insurer authorized to do business in this state
15 and that is in an amount equal to one hundred twenty-five ~~per cent~~ PERCENT
16 of the anticipated construction cost of the project, including
17 construction management and contractor costs.

18 2. Solicits sealed bids from at least four contractors who are
19 prequalified by the department to perform a contract of the anticipated
20 dollar amount of the construction.

21 3. Awards the contract to the best bidder taking into account price
22 and other criteria as provided in the bid documents.

23 4. Obtains bonds from the selected contractor that provide the same
24 coverage as performance and payment bonds issued under title 34, chapter
25 2, article 2.

26 5. Uses department construction standards.

27 6. Pays all costs of department reviews of the contract and
28 inspections of the project.

29 N. For the purposes of this section, a project is funded completely
30 with private monies if all of the following apply:

31 1. The contractor is paid entirely with monies from private
32 entities.

33 2. The private entities hire a competent construction manager and
34 contractor who do not have an affiliation with each other.

35 3. The private entities either pay all costs of design or reimburse
36 the department for all costs of design.

37 Sec. 138. Section 28-7369, Arizona Revised Statutes, is amended to
38 read:

39 28-7369. Insurance requirements in procurements

40 If contractor insurance is required for services procured pursuant
41 to this article, the insurance shall be placed with an insurer authorized
42 to transact insurance in this state pursuant to title 20, chapter 2,
43 article 1 or a surplus lines insurer approved and identified by the
44 director of the department of insurance AND FINANCIAL INSTITUTIONS
45 pursuant to title 20, chapter 2, article 5.

1 Sec. 139. Section 28-7704, Arizona Revised Statutes, is amended to
2 read:

3 28-7704. Procurements

4 A. The department:

5 1. May procure services under this chapter using any of the
6 following:

7 (a) Requests for project proposals in which the department
8 describes a class of transportation facilities or a geographic area in
9 which private entities are invited to submit proposals to develop
10 transportation facilities.

11 (b) Solicitations using requests for qualifications, short-listing
12 of qualified proposers, requests for proposals, negotiations, best and
13 final offers or other procurement procedures.

14 (c) Procurements seeking from the private sector development and
15 finance plans most suitable for the project.

16 (d) Best value selection procurements based on price or financial
17 proposals, or both, or other factors.

18 (e) Other procedures that the department determines may further the
19 implementation of this chapter.

20 2. Shall procure services under this chapter using unsolicited
21 proposals if the department determines that there is sufficient merit to
22 pursue any unsolicited proposal and a reasonable opportunity for other
23 entities to submit competing proposals for consideration and a possible
24 contract award as appropriate.

25 B. For any procurement in which the department issues a request for
26 qualifications, request for proposals or similar solicitation document,
27 the request shall generally set forth the factors that will be evaluated
28 and the manner in which responses will be evaluated. If contractor
29 insurance is required for services procured pursuant to this section the
30 insurance shall be placed with an insurer authorized to transact insurance
31 in this state pursuant to title 20, chapter 2, article 1 or a surplus
32 lines insurer approved and identified by the director of the department of
33 insurance AND FINANCIAL INSTITUTIONS pursuant to title 20, chapter 2,
34 article 5.

35 C. In evaluating proposals, the department may accord such relative
36 weight to factors such as cost, financial commitment, innovative
37 financing, technical, scientific, technological or socioeconomic merit and
38 other factors as the department deems appropriate to obtain the best value
39 for this state.

40 D. The department may pay a stipend to a proposer based on the
41 department's estimate, in its sole discretion, of the value of the work
42 product received, but only if the department has determined that the
43 proposal submitted was responsive to the department's request for
44 proposals and met all requirements established by the department for the
45 project. In exchange for the stipend, the department may require the

1 recipient to grant to the department the right to use any work product
2 contained in the recipient's proposal, including technologies, techniques,
3 methods, processes and information contained in the recipient's project
4 design.

5 E. The department may charge and retain an administrative fee for
6 the evaluation of an unsolicited project proposal.

7 F. The department may procure services, award agreements and
8 administer revenues as authorized in this section notwithstanding any
9 requirements of any other state or local statute, regulation or law
10 relating to public bidding or other procurement procedures or other
11 provisions otherwise applicable to public works, services or utilities.

12 G. The department may retain financial, legal and other consultants
13 and experts inside or outside the public sector to assist in the
14 evaluation, negotiation and development of eligible facilities under this
15 chapter with a minimum of five years' experience working in that capacity
16 with public-private partnerships.

17 H. The department may spend monies that are reasonably necessary
18 for the development of procurements, evaluation of concepts or proposals,
19 negotiation of agreements and implementation of agreements for development
20 or operation of eligible facilities under this chapter.

21 I. Before the department begins the process for procuring services
22 as prescribed in subsection A of this section, the department shall hold
23 at least one public hearing to receive comments on user charges, tolls,
24 fares or similar charges.

25 Sec. 140. Section 29-609, Arizona Revised Statutes, is amended to
26 read:

27 29-609. Purpose; insurance business

28 A. Except as provided in subsection B of this section, a limited
29 liability company may be organized under this chapter and may conduct or
30 promote business and other activities for any lawful purpose, except
31 banking.

32 B. A limited liability company shall not be an insurer as defined
33 in section 20-104 unless as a title insurance agent as defined in section
34 20-1562 or as a pure captive insurer as defined in section 20-1098 who is
35 expressly authorized by the director of the department of insurance **AND**
36 **FINANCIAL INSTITUTIONS** pursuant to title 20. For the purposes of title
37 insurance transactions or pure captive insurance business, the members of
38 the limited liability company are individually responsible, equally and
39 ratably, and not one for another, for all contracts, debts and engagements
40 of the limited liability company, to the extent of the amount of each
41 member's initial investment in the limited liability company.

1 Sec. 143. Section 33-1003, Arizona Revised Statutes, is amended to
2 read:

3 33-1003. Payment bond in lieu of lien right; bond purposes
4 and conditions; recording

5 A. Every owner of land, including any person who has a legal or
6 equitable interest ~~therein~~ **IN THE LAND**, who enters a contract requiring
7 any person to perform labor or professional services or to furnish
8 materials, machinery, fixtures or tools in the construction, alteration or
9 repair of any building, ~~or~~ other structure or improvement on such land,
10 may avoid the lien provisions of section 33-981 pertaining to agents by
11 requiring the person with whom ~~he~~ **THE OWNER** contracts to furnish a payment
12 bond. ~~Upon~~ **ON** recordation of the payment bond together with a copy of
13 such contract in the office of the county recorder, in the county in which
14 the land is located, no lien shall thereafter be allowed or recorded by
15 the person claiming a lien against the land on which the labor or
16 professional services are performed or the materials, machinery, fixtures
17 or tools furnished, as provided in this article, except by the person who
18 contracts, in writing, directly with the owner.

19 B. A payment bond furnished pursuant to subsection A of this
20 section shall be in the amount and form prescribed by title 34, chapter 2,
21 article 2. The contract recorded with the bond shall contain a legal
22 description of the land on which the work is being or is to be performed.

23 C. The bond provided for in this section shall be executed solely
24 by one or more surety companies holding a certificate of authority to
25 transact surety business in this state issued by the director of the
26 department of insurance **AND FINANCIAL INSTITUTIONS** pursuant to title 20,
27 chapter 2, article 1 and shall be accompanied by a power of attorney
28 disclosing the authority of the person executing the same on behalf of the
29 surety. Notwithstanding any other statute, the bond shall not be executed
30 by an individual surety or sureties, even if the requirements of section
31 7-101 are satisfied.

32 D. The county recorder of the county in which the bond and contract
33 are recorded shall index the bond and contract under the index
34 classification in which mechanics' and materialmen's liens are recorded.

35 Sec. 144. Section 33-1004, Arizona Revised Statutes, is amended to
36 read:

37 33-1004. Discharge of mechanic's liens; bond; limitations of
38 actions; discharge of surety; judgment

39 A. After perfection of a lien pursuant to this article, an owner,
40 including any person who has a legal or equitable interest in the land
41 ~~which~~ **THAT** is subject to the lien, a contractor, subcontractor, mortgagee
42 or other lien creditor, ~~may~~, either before or after the commencement of an
43 action to foreclose such lien, **MAY** cause to be recorded in the office of
44 the county recorder, in the county in which the land is located, a surety
45 bond in the form described in subsection B of this section, together with

1 a power of attorney disclosing the authority of the person executing the
2 same on behalf of the surety. ~~upon~~ ON the recordation of ~~such~~ THE bond,
3 the property shall be discharged of such lien whether or not a copy of the
4 bond is served ~~upon~~ ON the claimant or ~~he~~ THE CLAIMANT perfects ~~his~~ THE
5 CLAIMANT'S rights against the bond.

6 B. A surety bond to discharge a lien perfected under this section
7 shall be executed by the person seeking to discharge such lien, as
8 principal, and by a surety company or companies holding a certificate of
9 authority to transact surety business in this state, issued by the
10 director of the department of insurance AND FINANCIAL INSTITUTIONS
11 pursuant to title 20, chapter 2, article 1. The bond shall be for the
12 sole protection of the claimant who perfected such lien. Notwithstanding
13 any other statute, the surety bond shall not be executed by AN individual
14 surety or sureties, even if the requirements of section 7-101 are
15 satisfied. The bond shall be in an amount equal to one hundred fifty ~~per~~
16 ~~cent~~ PERCENT of the demand set forth in and secured by the notice and
17 claim of lien and shall be conditioned for the payment of the judgment
18 ~~which~~ THAT would have been rendered against the property for the
19 enforcement of the lien. The legal description of the property and the
20 docket and page of the lien sought to be discharged shall be set forth in
21 the bond.

22 C. The principal on such bond, ~~upon recordation thereof~~ ON
23 RECORDING THE BOND with the county recorder, shall cause a copy of the
24 bond to be served within a reasonable time ~~upon~~ ON the lien claimant, and
25 if a suit is then pending to foreclose the lien, the claimant, within
26 ninety days after receipt thereof, shall cause proceedings to be
27 instituted to add the surety and the principal as parties to the lien
28 foreclosure suit. In addition, on recording and service of the surety
29 bond, any monies withheld in response to a stop notice or bonded stop
30 notice that is served by the lien claimant pursuant to article 9 of this
31 chapter with respect to the same labor and material described in the
32 notice and claim of lien shall be released promptly.

33 D. The bond shall be discharged and the principal and sureties
34 released ~~upon~~ ON any of the following:

35 1. The failure of the lien claimant to commence a suit within the
36 time allowed pursuant to section 33-998.

37 2. THE failure of the lien claimant to name the principal and
38 sureties as parties to the action seeking foreclosure of the lien if a
39 copy of the bond has been served ~~upon~~ ON THE claimant. If the bond is
40 served ~~upon~~ ON the claimant within less than ninety days ~~from~~ AFTER the
41 date THE claimant would be required to commence ~~his~~ THE CLAIMANT'S action
42 pursuant to section 33-998, the claimant shall have ninety days ~~from~~ AFTER
43 the date ~~he~~ THE CLAIMANT receives a copy of such bond to add the principal
44 and the sureties as parties to the lien foreclosure suit.

1 3. The dismissal of the foreclosure suit with prejudice as to the
2 claimant or the entry of judgment in such suit against claimant.

3 E. In an action to foreclose a lien under this article, where a
4 bond has been filed and served as provided herein, a judgment for the
5 claimant on the bond shall be against the principal and ~~his~~ THE
6 PRINCIPAL'S sureties for the reasonable value of the labor and material
7 furnished and shall not be against the property. A judgment for the
8 claimant on the bond, including any recovery for interest, expenses, costs
9 and attorney fees awarded by the court, shall not exceed the penal sum of
10 the bond. If the amount the claimant recovers exceeds the penal sum of
11 the bond, the claimant shall also be entitled to judgment against the
12 principal for the excess amount.

13 F. ~~In the event~~ IF a copy of the bond is not served ~~upon~~ ON the
14 claimant as provided in subsection C of this section, the claimant shall
15 have six months after the discovery of ~~such~~ THE bond to commence an action
16 thereon, except that no action may be commenced on ~~such~~ THE bond after two
17 years from the date it was recorded as provided in this section.

18 G. The county recorder of the county in which the bond and contract
19 are recorded shall index the bond and contract under the index
20 classification in which mechanics' and materialmen's liens are recorded.

21 Sec. 145. Section 33-1062, Arizona Revised Statutes, is amended to
22 read:

23 33-1062. Release of stop notice or bonded stop notice; surety
24 bond

25 A. An owner, a construction lender or any original contractor or
26 subcontractor who disputes any stop notice or bonded stop notice may file
27 with the person on whom notice was served a release bond. The release
28 bond shall be executed in an amount equal to one hundred fifty ~~per cent~~
29 PERCENT of the amount claimed in the notice, conditioned for the payment
30 of any amount that does not exceed the penal obligation of the bond and
31 that the claimant may recover on the claim. A copy of the release bond
32 shall be served on the stop notice claimant in the same manner required
33 for the delivery of a stop notice. On the filing and service of the
34 release bond, the monies withheld in response to the stop notice or bonded
35 stop notice shall be released promptly. A bond to release a stop notice
36 or bonded stop notice under this section shall be executed by a surety
37 company or companies holding a certificate of authority to transact surety
38 business in this state, issued by the director of the department of
39 insurance AND FINANCIAL INSTITUTIONS pursuant to title 20, chapter 2,
40 article 1. The bond shall be for the sole protection of the claimant who
41 perfected such notice.

42 B. If an owner, a construction lender or any original contractor or
43 subcontractor causes to be recorded a surety bond to discharge a lien
44 perfected by the stop notice claimant pursuant to section 33-1004 with
45 respect to the same labor and material described in the stop notice or

1 bonded stop notice, the surety bond shall also serve as a release bond
2 pursuant to this section, and the monies withheld in response to the stop
3 notice or bonded stop notice shall be released promptly on the recording
4 and service of the surety bond on the stop notice claimant as prescribed
5 in section 33-1004.

6 C. In an action to enforce payment of a claim stated in a stop
7 notice or bonded stop notice, ~~where~~ IF a bond has been filed and served as
8 provided in this section, a judgment for the claimant on the bond shall be
9 against the person seeking to release ~~such~~ THE stop notice or bonded stop
10 notice as principal and the surety for the amount the claimant recovers on
11 the stop notice or bonded stop notice claim, including any recovery for
12 interest, expenses, costs and attorney fees awarded by the court, that
13 does not exceed the penal sum of the bond. If the amount the claimant
14 recovers on the stop notice or bonded stop notice claim exceeds the penal
15 sum of the bond, the claimant shall also be entitled to judgment against
16 the principal for the excess amount.

17 Sec. 146. Section 33-1076, Arizona Revised Statutes, is amended to
18 read:

19 33-1076. Discharge of commercial real estate broker's liens;
20 bond; limitations of actions; discharge of surety;
21 judgment

22 A. After perfection of a lien pursuant to this article, an owner,
23 including any person who has a legal or equitable interest in the land
24 that is subject to the lien, a mortgagee or any other lien creditor ~~may~~,
25 either before or after the commencement of an action to foreclose the
26 lien, MAY cause to be recorded in the office of the county recorder in the
27 county in which the land is located a surety bond in the form described in
28 subsection B of this section, together with a power of attorney disclosing
29 the authority of the person executing the bond on behalf of the surety.
30 On the recordation of the bond, the property shall be discharged of the
31 lien whether or not a copy of the bond is served on the claimant or the
32 claimant perfects the claimant's rights against the bond.

33 B. A surety bond to discharge a lien perfected under this article
34 shall be executed by the person seeking to discharge the lien, as
35 principal, and by a surety company or companies holding a certificate of
36 authority to transact surety business in this state that is issued by the
37 director of the department of insurance AND FINANCIAL INSTITUTIONS
38 pursuant to title 20, chapter 2, article 1. The bond is for the sole
39 protection of the claimant who perfected the lien. Notwithstanding any
40 other statute, the surety bond shall not be executed by individual surety
41 or sureties, even if the requirements of section 7-101 are satisfied. The
42 bond shall be in an amount equal to one and one-half times the claim
43 secured by the lien and shall be conditioned for the payment of the
44 judgment that would have been rendered against the property for the
45 enforcement of the lien. The legal description of the property and the

1 docket and page of the lien sought to be discharged shall be set forth in
2 the bond.

3 C. On recordation of the bond with the county recorder, the
4 principal on the bond shall cause a copy of the bond to be served within a
5 reasonable time on the lien claimant, and if a suit is then pending to
6 foreclose the lien, the claimant, within ninety days after receipt of the
7 bond, shall cause proceedings to be instituted to add the surety and the
8 principal as parties to the lien foreclosure suit.

9 D. The bond shall be discharged and the principal and sureties
10 shall be released on any of the following:

11 1. The failure of the lien claimant to commence a suit within the
12 time allowed pursuant to section 33-1074.

13 2. ~~THE~~ failure of the lien claimant to name the principal and
14 sureties as parties to the action seeking foreclosure of the lien if a
15 copy of the bond has been served on the claimant. If the bond is served
16 on the claimant fewer than ninety days after the date the claimant would
17 be required to commence an action pursuant to section 33-1074, the
18 claimant has ninety days ~~from~~ AFTER the date of receiving a copy of the
19 bond to add the principal and the sureties as parties to the lien
20 foreclosure suit.

21 3. The dismissal of the foreclosure suit with prejudice as to the
22 claimant or the entry of judgment in a suit against the claimant.

23 E. In an action to foreclose a lien under this article, if a bond
24 has been filed and served as prescribed by this section a judgment for the
25 claimant on the bond shall be against the principal and the principal's
26 sureties and shall not be against the property.

27 F. If a copy of the bond is not served on the claimant as provided
28 in subsection C of this section, the claimant has six months after the
29 discovery of the bond to commence an action on the bond, except that no
30 action may be commenced on the bond after two years from the date it was
31 recorded as provided in this section.

32 G. The county recorder of the county in which the bond and contract
33 are recorded shall index the bond and contract under the index
34 classification in which commercial real estate broker liens are recorded.

35 Sec. 147. Section 34-201, Arizona Revised Statutes, is amended to
36 read:

37 34-201. Notice of intention to receive bids and enter
38 contract; procedure; doing work without advertising
39 for bids; county compliance

40 A. Except as provided in subsections B through G and L of this
41 section, every agent, on acceptance and approval of the working drawings
42 and specifications, shall publish a notice to contractors of intention to
43 receive bids and contract for the proposed work. This notice shall be
44 published by advertising in a newspaper of general circulation in the
45 county in which the agent is located for two consecutive publications if

1 it is a weekly newspaper or for two publications that are at least six but
2 ~~to~~ NOT more than ten days apart if it is a daily newspaper. The notice
3 shall state:

4 1. The nature of the work required, the type, purpose and location
5 of the proposed building and where the plans, specifications and full
6 information as to the proposed work may be obtained.

7 2. That contractors desiring to submit proposals may obtain copies
8 of full or partial sets of plans and specifications for estimate on
9 request or by appointment. The return of ~~such~~ THE plans and
10 specifications shall be guaranteed by a deposit of a designated amount
11 ~~which~~ THAT shall be refunded on return of the plans and specifications in
12 good order.

13 3. That every proposal shall be accompanied by a certified check,
14 cashier's check or surety bond for ten ~~per cent~~ PERCENT of the amount of
15 the bid included in the proposal as a guarantee that the contractor will
16 enter into a contract to perform the proposal in accordance with the plans
17 and specifications. Notwithstanding any other statute, the surety bond
18 shall be executed solely by a surety company or companies holding a
19 certificate of authority to transact surety business in this state issued
20 by the director of the department of insurance AND FINANCIAL INSTITUTIONS
21 pursuant to title 20, chapter 2, article 1. The surety bond shall not be
22 executed by an individual surety or sureties, even if the requirements of
23 section 7-101 are satisfied. The certified check, cashier's check or
24 surety bond shall be returned to the contractors whose proposals are not
25 accepted, and to the successful contractor on the execution of a
26 satisfactory bond and contract as provided in this article. The
27 conditions and provisions of the surety bid bond regarding the surety's
28 obligations shall follow the following form:

29 Now, therefore, if the obligee accepts the proposal of the
30 principal and the principal enters into a contract with the
31 obligee in accordance with the terms of the proposal and gives
32 the bonds and certificates of insurance as specified in the
33 standard specifications with good and sufficient surety for
34 the faithful performance of the contract and for the prompt
35 payment of labor and materials furnished in the prosecution of
36 the contract, or in the event of the failure of the principal
37 to enter into the contract and give the bonds and certificates
38 of insurance, if the principal pays to the obligee the
39 difference not to exceed the penalty of the bond between the
40 amount specified in the proposal and such larger amount for
41 which the obligee may in good faith contract with another
42 party to perform the work covered by the proposal then this
43 obligation is void. Otherwise it remains in full force and
44 effect provided, however, that this bond is executed pursuant
45 to the provisions of section 34-201, Arizona Revised Statutes,

1 and all liabilities on this bond shall be determined in
2 accordance with the provisions of the section to the extent as
3 if it were copied at length herein.

4 4. That the right is reserved to reject any or all proposals or to
5 withhold the award for any reason the agent determines.

6 B. If the agent believes that any construction, building addition
7 or alteration contemplated at a public institution can be advantageously
8 done by the inmates of the public institution and regularly employed help,
9 the agent may cause the work to be done without advertising for bids.

10 C. Any building, structure, addition or alteration may be
11 constructed either with or without the use of the agent's regularly
12 employed personnel without advertising for bids, provided that the total
13 cost of the work, excluding materials and equipment previously acquired by
14 bid, does not exceed:

15 1. In fiscal year 1994-1995, ~~fourteen thousand dollars~~ \$14,000.

16 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
17 amount provided in paragraph 1 of this subsection adjusted by the annual
18 percentage change in the GDP price deflator as defined in section 41-563.

19 D. Notwithstanding subsection C of this section, any street, road,
20 bridge, water or sewer work, other than a water or sewer treatment plant
21 or building, may be constructed either with or without the use of the
22 agent's regularly employed personnel without advertising for bids,
23 provided that the total cost of the work does not exceed:

24 1. In fiscal year 1994-1995, ~~one hundred fifty thousand dollars~~
25 \$150,000.

26 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
27 amount provided in paragraph 1 of this subsection adjusted by the annual
28 percentage change in the GDP price deflator as defined in section 41-563.

29 E. For the purposes of subsection D of this section, the total cost
30 of water or sewer work does not include services provided by volunteers or
31 donations made for the water or sewer project.

32 F. Notwithstanding this section, an agent may:

33 1. Construct, reconstruct, install or repair a natural gas or
34 electric utility and distribution system, owned or operated by such agent,
35 with regularly employed personnel of the agent without advertising for
36 bids, unless otherwise prohibited by charter or ordinance.

37 2. Construct recreational projects, including trails, playgrounds,
38 ballparks and other similar facilities and excluding buildings,
39 structures, building additions and alterations to buildings, structures
40 and building additions, with volunteer workers or workers provided by a
41 nonprofit organization without advertising for bids for labor and
42 materials, provided that the total cost of the work does not exceed:

43 (a) In fiscal year 2001-2002, ~~one hundred fifty thousand dollars~~
44 \$150,000.

1 (b) In fiscal year 2002-2003 and each fiscal year thereafter, the
2 amount provided in subdivision (a) adjusted by the annual percentage
3 change in the GDP price deflator as defined in section 41-563.

4 G. A contribution by an agent for the financing of public
5 infrastructure made pursuant to a development agreement is exempt from
6 this section if ~~such~~ THE contribution for any single development does not
7 exceed:

8 1. In fiscal year 1994-1995, ~~one hundred thousand dollars~~ \$100,000.

9 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
10 amount provided in paragraph 1 of this subsection adjusted by the annual
11 percentage change in the GDP price deflator as defined in section 41-563.

12 H. In addition to other state or local requirements relating to the
13 publication of bids, each agent shall provide at least one set of all
14 plans and specifications to any construction news reporting service that
15 files an annual request with the agent. For the purposes of this
16 subsection, "construction news reporting service" means a service that
17 researches, gathers and disseminates news and reports either in print or
18 electronically, on at least a weekly basis for building projects,
19 construction bids, the purchasing of materials, supplies or services and
20 other construction bidding or planned activity to the allied construction
21 industry. The allied construction industry includes both general and
22 specialty contractors, builders, material and service suppliers,
23 architects and engineers, owners, developers and government agencies.

24 I. Any construction by a county under this section shall comply
25 with the uniform accounting system prescribed for counties by the auditor
26 general under section 41-1279.21. Any construction by a city or town
27 under this section shall comply with generally accepted accounting
28 principles.

29 J. Any construction, building addition or alteration project that
30 is financed by monies of this state or its political subdivisions shall
31 not use endangered wood species unless an exemption is granted by the
32 director of the department of administration. The director shall only
33 grant an exemption if the use of endangered wood species is deemed
34 necessary for historical restoration or to repair existing facilities and
35 the use of any substitute material is not practical. Any lease-purchase
36 agreement entered into by this state or its political subdivisions for
37 construction shall specify that no endangered wood species may be used in
38 the construction unless an exemption is granted by the director. For the
39 purposes of this subsection, "endangered wood species" includes those
40 listed in appendix I of the convention on international trade in
41 endangered species of wild flora and fauna.

42 K. All bonds given by a contractor and surety pursuant to this
43 article, regardless of their actual form, will be deemed by law to be the
44 form required and set forth in this article and no other.

1 L. Any building, structure, addition or alteration may be
2 constructed without complying with this article if the construction,
3 including construction of buildings or structures on public or private
4 property, is required as a condition of development of private property
5 and is authorized by section 9-463.01 or 11-822. For the purposes of this
6 subsection, building does not include police, fire, school, library or
7 other public buildings.

8 M. Notwithstanding section 34-221, any agent may enter into a
9 guaranteed energy cost savings contract with a qualified provider for the
10 purchase of energy cost savings measures without complying with this
11 article and may procure a guaranteed energy cost savings contract through
12 the competitive sealed proposal process prescribed in title 41, chapter 23
13 or any similar competitive proposal process adopted by the agent.

14 Sec. 148. Section 34-222, Arizona Revised Statutes, is amended to
15 read:

16 34-222. Surety bond required; suit on bond; limitations

17 A. Except where specifically exempted by statute, before any
18 contract is executed with any person for the construction, alteration, or
19 repair of any public building, a public work or improvement of any county,
20 city or town, or officer, board or commission thereof, and irrigation,
21 power, electrical, drainage, flood protection and flood control districts,
22 tax levying public improvement districts, and county or city improvement
23 districts, the person shall furnish to the agent entering into such
24 contract the following bonds ~~which~~ THAT shall become binding ~~upon~~ ON the
25 award of the contract to such person, who, for purposes of this article,
26 means "contractor":

27 1. A performance bond in an amount equal to the full contract
28 amount conditioned ~~upon~~ ON the faithful performance of the contract in
29 accordance with plans, specifications and conditions thereof. Such bond
30 shall be solely for the protection of the public body awarding the
31 contract.

32 2. A payment bond in an amount equal to the full contract amount
33 solely for the protection of claimants supplying labor or materials to the
34 contractor or his subcontractors in the prosecution of the work provided
35 for in such contract.

36 B. Each such bond shall include a provision allowing the prevailing
37 party in a suit on such bond to recover as a part of the judgment such
38 reasonable attorneys' fees as may be fixed by a judge of the court.

39 C. Notwithstanding any other statute, each such bond shall be
40 executed solely by a surety company or companies holding a certificate of
41 authority to transact surety business in this state issued by the director
42 of the department of insurance ~~AND FINANCIAL INSTITUTIONS~~ pursuant to
43 title 20, chapter 2, article 1. The bonds shall not be executed by an
44 individual surety or sureties, even if the requirements of section 7-101
45 are satisfied. The bonds shall be payable to the public body concerned.

1 D. Such bonds shall be filed in the office of the department,
2 board, commission, institution, agency or other contracting body awarding
3 the contract.

4 E. It shall be illegal for the invitation for bids, or any person
5 acting or purporting to act on behalf of the contracting body, to require
6 that such bonds be furnished by a particular surety company, or through a
7 particular agent or broker.

8 F. The conditions and provisions in the payment bond regarding the
9 surety's obligations shall follow the following form:

10 Now, therefore, the condition of this obligation is such, that
11 if the principal promptly pays all monies due to all persons
12 supplying labor or materials to the principal or the
13 principal's subcontractors in the prosecution of the work
14 provided for in the contract, this obligation is void.
15 Otherwise it remains in full force and effect.

16 Provided, however, that this bond is executed pursuant to the
17 provisions of title 34, chapter 2, article 2, Arizona Revised
18 Statutes, and all liabilities on this bond shall be determined
19 in accordance with the provisions, conditions and limitations
20 of title 34, chapter 2, article 2, Arizona Revised Statutes,
21 to the same extent as if they were copied at length in this
22 agreement.

23 The prevailing party in a suit on this bond shall recover as a
24 part of the judgment reasonable attorney fees that may be
25 fixed by a judge of the court.

26 G. The conditions and provisions in the performance bond regarding
27 the surety's obligations shall follow the following form:

28 Now, therefore, the condition of this obligation is such, that
29 if the principal faithfully performs and fulfills all of the
30 undertakings, covenants, terms, conditions and agreements of
31 the contract during the original term of the contract and any
32 extension of the contract, with or without notice to the
33 surety, and during the life of any guaranty required under the
34 contract, and also performs and fulfills all of the
35 undertakings, covenants, terms, conditions and agreements of
36 all duly authorized modifications of the contract that may
37 hereafter be made, notice of which modifications to the surety
38 being hereby waived, the above obligation is void. Otherwise
39 it remains in full force and effect.

40 Provided, however, that this bond is executed pursuant to the
41 provisions of title 34, chapter 2, article 2, Arizona Revised
42 Statutes, and all liabilities on this bond shall be determined
43 in accordance with the provisions of title 34, chapter 2,
44 article 2, Arizona Revised Statutes, to the extent as if it
45 were copied at length in this agreement.

1 The prevailing party in a suit on this bond shall recover as
2 part of the judgment reasonable attorney fees that may be
3 fixed by a judge of the court.

4 H. If the prime contract or specifications require any persons
5 supplying labor or materials in the prosecution of the work to furnish
6 payment or performance bonds, these bonds shall be executed solely by a
7 surety company or companies holding a certificate of authority to transact
8 surety business in this state issued by the director of the department of
9 insurance AND FINANCIAL INSTITUTIONS pursuant to title 20, chapter 2,
10 article 1. Notwithstanding the provisions of any other statute, the bonds
11 shall not be executed by an individual surety or sureties, even if the
12 requirements of section 7-101 are satisfied.

13 I. All bonds given by a contractor and surety, pursuant to the
14 provisions of this article, regardless of their actual form, will be
15 deemed by law to be the form required and set forth in this article and no
16 other.

17 Sec. 149. Section 34-608, Arizona Revised Statutes, is amended to
18 read:

19 34-608. Bid security for design-build and
20 job-order-contracting construction services

21 A. As a guarantee that the contractor will enter into a contract,
22 bid security is required for all design-build construction services and
23 all job-order-contracting construction services awarded by an agent by
24 competitive sealed proposals pursuant to section 34-603, subsection F or
25 34-604, subsection F if the agent estimates that the budget for
26 construction, excluding the cost of any finance services, maintenance
27 services, operations services, design services, preconstruction services
28 or other related services, will be more than the amount prescribed in
29 section 41-2535, subsection D. Each proposal for design-build
30 construction services or job-order-contracting construction services shall
31 be accompanied by a certified check, cashier's check or surety bond. The
32 bid security amount for design-build construction services shall be an
33 amount equal to ten ~~per cent~~ PERCENT of the agent's budget for
34 construction, excluding any finance services, maintenance services,
35 operations services, design services, preconstruction services or other
36 related services, for the project as stated in the request for
37 proposals. The bid security amount for job-order-contracting construction
38 services shall be the amount determined by the agent and stated in the
39 request for proposals and shall not be more than ten ~~per cent~~ PERCENT of
40 the agent's reasonably estimated budget for construction that the agent
41 believes is likely to actually be done during the first year of the
42 job-order-contracting contract, excluding any finance services,
43 maintenance services, operations services, design services,
44 preconstruction services or other related services that are included in
45 the contract.

1 B. The agent shall return the certified check, cashier's check or
2 surety bond to the contractors whose proposals are not accepted and to the
3 successful contractor on the execution of satisfactory payment and
4 performance bonds, insurance and the contract as provided in this chapter.

5 C. Notwithstanding any other statute, the surety bond shall be
6 executed solely by a surety company or companies holding a certificate of
7 authority to transact surety business in this state issued by the director
8 of the department of insurance AND FINANCIAL INSTITUTIONS pursuant to
9 title 20, chapter 2, article 1. The bond shall not be executed by an
10 individual surety or sureties, even if the requirements of section 7-101
11 are satisfied.

12 D. The conditions and provisions of the surety bond regarding the
13 surety's obligations shall follow the following form:

14 Now, therefore, if the obligee accepts the proposal of the
15 principal and the principal enters into a contract with the
16 obligee in accordance with the terms of the proposal and gives
17 the bonds and certificates of insurance as specified in the
18 standard specifications with good and sufficient surety for
19 the faithful performance of the contract and for the prompt
20 payment of labor and materials furnished in the prosecution of
21 the contract, or in the event of the failure of the principal
22 to enter into the contract and give the bonds and certificates
23 of insurance, if the principal pays to the obligee the
24 difference not to exceed the penalty of the bond between the
25 amount specified in the proposal and any larger amount for
26 which the obligee may contract in good faith with another
27 party to perform the work covered by the proposal, this
28 obligation is void. Otherwise it remains in full force and
29 effect. Provided, however, that this bond is executed
30 pursuant to section 34-608, Arizona Revised Statutes, and all
31 liabilities on this bond shall be determined in accordance
32 with the provisions of the section to the extent as if it were
33 copied at length in this agreement.

34 E. If the request for proposals requires security, noncompliance
35 requires that the agent reject the proposal for noncompliance with the
36 security requirement, unless the agent determines that the bid fails to
37 comply in a nonsubstantial manner with the security requirements.

38 F. After the agent opens the proposals, the proposals are
39 irrevocable for the period specified in the request for proposals, except
40 as provided in section 34-603, subsection F or section 34-604,
41 subsection F. If a proposer is ~~permitted~~ ALLOWED to withdraw its proposal
42 before award, no action may be had against the proposer or the bid
43 security.

1 G. All bonds given by a contractor and surety pursuant to this
2 section, regardless of their actual form, are deemed by law to be the form
3 required and set forth in this section.

4 Sec. 150. Section 34-610, Arizona Revised Statutes, is amended to
5 read:

6 34-610. Construction-manager-at-risk, design-build and
7 job-order-contracting construction services surety
8 bond required; suit on bond; limitations

9 A. Except if specifically exempted by statute, before an agent
10 executes any contract with any person or firm for
11 construction-manager-at-risk construction services, design-build
12 construction services or job-order-contracting construction services, the
13 person or firm shall furnish to the agent entering into the contract the
14 following bonds, except that the bonds shall be furnished only on and at
15 the same time as execution of a contract or an amendment to a contract
16 that commits the contractor to provide construction for a fixed price, a
17 guaranteed maximum price or any other fixed amount within a designated
18 time frame:

19 1. A performance bond in an amount equal to the full contract
20 amount conditioned on the faithful performance of the contract in
21 accordance with plans, specifications and conditions of the contract,
22 except that:

23 (a) For job-order-contracting construction services, the
24 performance bond shall cover the full amount of construction under the
25 job-order-contracting construction services contract, shall not include
26 any design services, preconstruction services, finance services,
27 maintenance services, operations services or other related services
28 included in the contract, may be a single bond for the full term of the
29 contract, a separate bond for each year of a multiyear contract or a
30 separate bond for each job order, as determined by the agent, and, if a
31 single bond for the full term of the contract or a separate bond for each
32 year of a multiyear contract, shall initially be based on the agent's
33 reasonable estimate of the amount of construction that the agent believes
34 is likely to actually be done during the full term of the contract or
35 during the particular year of a multiyear contract, as applicable.

36 (b) For construction-manager-at-risk construction services and
37 design-build construction services, the amount of the performance bond
38 shall be the price of construction and shall not include the cost of any
39 design services, preconstruction services, finance services, maintenance
40 services, operations services or any other related services included in
41 the contract. The performance bond shall be solely for the protection of
42 the public body awarding the contract.

1 2. A payment bond in an amount equal to the full contract amount
2 solely for the protection of claimants supplying labor or materials to the
3 contractor or the contractor's subcontractors in the prosecution of the
4 construction and not for the protection of persons providing any design
5 services, preconstruction services, finance services, maintenance
6 services, operations services or other related services provided for in
7 the contract, except that:

8 (a) For job-order-contracting construction services, the payment
9 bond shall cover the full amount of construction under the
10 job-order-contracting construction services contract, shall not include
11 any design services, preconstruction services, finance services,
12 maintenance services, operations services or other related services
13 included in the contract, may be a single bond for the full term of the
14 contract, a separate bond for each year of a multiyear contract or a
15 separate bond for each job order, as determined by the agent, and, if a
16 single bond for the full term of the contract or a separate bond for each
17 year of a multiyear contract, shall initially be based on the agent's
18 reasonable estimate of the amount of construction that the agent believes
19 is likely to actually be done during the full term of the contract or
20 during the particular year of a multiyear contract, as applicable.

21 (b) For construction-manager-at-risk construction services and
22 design-build construction services, the amount of the payment bond shall
23 be the price of construction and shall not include the cost of any design
24 services, preconstruction services, finance services, maintenance
25 services, operations services or any other related services included in
26 the contract.

27 B. Each bond shall include a provision allowing the prevailing
28 party in a suit on the bond to recover as a part of the judgment any
29 reasonable attorney fees as may be fixed by the court.

30 C. Notwithstanding any other statute, each bond shall be executed
31 solely by a surety company or companies holding a certificate of authority
32 to transact surety business in this state issued by the director of the
33 department of insurance AND FINANCIAL INSTITUTIONS pursuant to title 20,
34 chapter 2, article 1. The bonds shall not be executed by an individual
35 surety or sureties, even if the requirements of section 7-101 are
36 satisfied. The bonds shall be payable to the public body concerned.

37 D. The bonds shall be filed in the office of the department, board,
38 commission, institution, agency or other contracting body awarding the
39 contract.

40 E. It is illegal for a request for qualifications or a request for
41 proposals pursuant to section 34-603 or 34-604, or any person acting or
42 purporting to act on behalf of the contracting body, to require that bonds
43 be furnished by a particular surety company, or through a particular agent
44 or broker.

1 F. The conditions and provisions in the payment bond regarding the
2 surety's obligations shall follow the following form:

3 Now, therefore, the condition of this obligation is that if
4 the principal promptly pays all monies due to all persons
5 supplying labor or materials to the principal or the
6 principal's subcontractors in the prosecution of the
7 construction provided for in the contract, this obligation is
8 void. Otherwise it remains in full force and effect.
9 Provided, however, that this bond is executed pursuant to
10 title 34, chapter 6, Arizona Revised Statutes, and all
11 liabilities on this bond shall be determined in accordance
12 with the provisions, conditions and limitations of title 34,
13 chapter 6, Arizona Revised Statutes, to the same extent as if
14 they were copied at length in this agreement. The prevailing
15 party in a suit on this bond shall recover as a part of the
16 judgment reasonable attorney fees that may be fixed by the
17 court.

18 G. The conditions and provisions in the performance bond regarding
19 the surety's obligations shall follow the following form:

20 Now, therefore, the condition of this obligation is that if
21 the principal faithfully performs and fulfills all of the
22 undertakings, covenants, terms, conditions and agreements of
23 the contract during the original term of the contract and any
24 extension of the contract, with or without notice to the
25 surety, and during the life of any guaranty required under the
26 contract, and also performs and fulfills all of the
27 undertakings, covenants, terms, conditions and agreements of
28 all duly authorized modifications of the contract that may
29 hereafter be made, notice of which modifications to the surety
30 being hereby waived, the above obligation is void. Otherwise
31 it remains in full force and effect. Provided, however, that
32 this bond is executed pursuant to title 34, chapter 6, Arizona
33 Revised Statutes, and all liabilities on this bond shall be
34 determined in accordance with title 34, chapter 6, Arizona
35 Revised Statutes, to the extent as if it were copied at length
36 in this agreement. The prevailing party in a suit on this
37 bond shall recover as part of the judgment reasonable attorney
38 fees that may be fixed by the court. The performance under
39 this bond is limited to the construction to be performed under
40 the contract and does not include any design services,
41 preconstruction services, finance services, maintenance
42 services, operations services or any other related services
43 included in the contract.

1 H. If the prime contract or specifications require any persons
2 supplying labor or materials in the prosecution of the work to furnish
3 payment or performance bonds, these bonds shall be executed solely by a
4 surety company or companies holding a certificate of authority to transact
5 surety business in this state issued by the director of the department of
6 insurance AND FINANCIAL INSTITUTIONS pursuant to title 20, chapter 2,
7 article 1. Notwithstanding any other statute, the bonds shall not be
8 executed by an individual surety or sureties, even if the requirements of
9 section 7-101 are satisfied.

10 I. All bonds given by a contractor and surety pursuant to this
11 section, regardless of their actual form, are deemed by law to be in the
12 form required and set forth in this section.

13 Sec. 151. Section 35-457, Arizona Revised Statutes, is amended to
14 read:

15 35-457. Sale of bonds; bids; forfeiture of deposit;
16 definitions

17 A. Any or all of the bonds may be sold at public sale or through an
18 online bidding process in a manner prescribed by the governing body or
19 board that includes the following:

20 1. If sold by public sale before the sale of any bonds the
21 governing body or board shall meet and enter on its record an order
22 directing the sale of the bonds and the date and hour of the sale, and
23 cause a copy of the order to be published at least once a week for two
24 successive weeks in cities having a population of fifteen thousand or more
25 persons, and once a week for four successive weeks in all other political
26 subdivisions before the sale in one or more designated daily or weekly
27 newspapers, together with a notice that sealed proposals will be received
28 for purchase of the bonds on the date and hour named in the order.

29 2. If sold through an online bidding process, bids for the bonds
30 that are entered into the system may be concealed until a specified time
31 or disclosed in the online bidding process, may be subject to improvement
32 in favor of the political subdivision before a specified time and may be
33 for an entire issue of bonds or specified maturities according to the
34 manner, terms and notice provisions ordered by the governing body.

35 B. If the bonds are sold by public sale or through an online
36 bidding process, all proposals shall be received on the date and hour or
37 in the manner stated in the order and the governing body or board shall
38 award the bonds to the highest and most responsible bidder. The
39 successful bidder shall provide a bid guarantee for not less than two
40 percent of the total par value of the bonds within twenty-four hours after
41 the date and time the bid is awarded. The bid guarantee may be in the
42 form of a certified check or a bond issued by a surety company licensed by
43 the department of insurance AND FINANCIAL INSTITUTIONS to do business in
44 this state. The governing body or board may reject any and all bids. If
45 the successful bidder does not carry out the terms of the proposal to

1 purchase the bonds, the bid guarantee shall be forfeited as stipulated and
2 liquidated damages.

3 C. Notwithstanding any other provision of this section, bonds may
4 be sold by negotiated sale on terms the governing body deems to be the
5 best then available and may bear interest payable at such times as shall
6 be determined by the governing body.

7 D. The bonds may be sold below, at or above par. If an issue of
8 bonds is sold below par, the aggregate amount of discount plus interest to
9 be paid on the bonds must not exceed the amount of interest that would be
10 payable on the bonds over the maturity schedule prescribed by the
11 governing body at the maximum rate set out in the resolution calling the
12 election at which the bonds were voted. The amount of net premium
13 associated with a bond issue may be used only for one or more of the
14 following:

15 1. To pay costs incurred in issuing the bonds, subject to section
16 35-452, subsection C.

17 2. As a deposit in a debt service fund and used only to pay
18 interest on the bonds.

19 3. For any other purpose, if the political subdivision has voter
20 authorization and available capacity under its debt limitations and the
21 amount of net premium used for such purpose will reduce in an equal amount
22 both:

23 (a) The available aggregate indebtedness capacity of the political
24 subdivision under the statutes and constitution of this state.

25 (b) The principal amount authorized at the election for the
26 political subdivision from which the issue of bonds is being sold.

27 E. Any net premium used as provided in subsection D, paragraph 3 of
28 this section shall be amortized for all debt limitation purposes on a pro
29 rata basis each year by multiplying the net premium used by a percentage
30 equal to the percentage of the total principal amount of the bond issue
31 that matures in that year.

32 F. For the purposes of this section:

33 1. "Net premium" means the difference between the par amount of the
34 bond issue and the bond issue price determined pursuant to United States
35 treasury regulations.

36 2. "Online bidding process" means a procurement process in which
37 the governing body receives bids electronically over the internet in a
38 real-time, competitive bidding event.

39 Sec. 152. Section 35-762, Arizona Revised Statutes, is amended to
40 read:

41 35-762. Reviewing entities; approval of developments;
42 coordination; definitions

43 A. Any reviewing entity exercising its statutory duties in
44 connection with a project may agree with any other reviewing entity to
45 share information, coordinate review schedules or jointly conduct reviews.

1 B. A reviewing entity, in its discretion, may cooperate in the
2 review of a project financing by adopting in whole or in part
3 substantially similar review work performed on the project financing by
4 another reviewing entity that is also charged with review of the project
5 financing if the review work completed by the other entity meets the
6 standards of the reviewing entity.

7 C. A reviewing entity that adopts in whole or in part review work
8 performed on the project financing by another reviewing entity is deemed
9 for all purposes to have complied with its review responsibilities as if
10 the review work had been performed by the reviewing entity itself.

11 D. For the purposes of this section:

12 1. "Project" means a nursing home, rest home, skilled nursing
13 facility, senior residential facility providing on-site medical and
14 support services or life care facility owned and operated by a nonprofit
15 organization that is exempt from taxation under section 501(c)(3) of the
16 United States internal revenue code that is seeking debt financing
17 pursuant to this chapter or a permit pursuant to title 20, chapter 8.

18 2. "Reviewing entity" means an industrial development authority
19 formed pursuant to this chapter, a governing body approving the formation
20 of an industrial development authority or the department of insurance AND
21 FINANCIAL INSTITUTIONS.

22 Sec. 153. Section 36-2905, Arizona Revised Statutes, is amended to
23 read:

24 36-2905. Removal of medicaid special exemption for payments
25 to contractors; civil penalty

26 A. Notwithstanding any other law, beginning on October 1, 2003,
27 each contractor shall pay to the director of THE DEPARTMENT OF insurance
28 AND FINANCIAL INSTITUTIONS a tax equal to two percent of the total
29 capitation, including reinsurance, and any other reimbursement paid to the
30 contractor by the administration for persons eligible pursuant to section
31 36-2901, paragraph 6, subdivisions (a) and (g) and article 4 of this
32 chapter. The tax shall be paid in four payments pursuant to subsection C
33 of this section and deposited in the state general fund pursuant to
34 sections 35-146 and 35-147.

35 B. The contractor shall not deduct any disallowance or penalty
36 imposed by the administration pursuant to this chapter from the financial
37 information submitted to the director of THE DEPARTMENT OF insurance AND
38 FINANCIAL INSTITUTIONS.

39 C. Each contractor shall file the estimated tax and documentation
40 with the director of THE DEPARTMENT OF insurance AND FINANCIAL
41 INSTITUTIONS on a form prescribed by the director of THE DEPARTMENT OF
42 insurance AND FINANCIAL INSTITUTIONS to pay the estimated tax. A
43 contractor shall make estimated tax payments to the director of THE
44 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS for deposit in the
45 state general fund pursuant to sections 35-146 and 35-147. The tax

1 payments are due on or before September 15, December 15, March 15 and June
 2 15 of each year. The amount of the payments shall be an estimate of the
 3 tax due for the quarter that ends in the month that payment is due.

4 D. On or before April 1, 2004 and annually on or before April 1
 5 thereafter, the director of THE DEPARTMENT OF insurance AND FINANCIAL
 6 INSTITUTIONS shall use data provided by the administration to reconcile
 7 the amount paid by each contractor pursuant to this section with the
 8 actual amount of title XIX and title XXI reimbursement made by the
 9 administration to the contractor in the preceding calendar year. If there
 10 is a discrepancy in the two amounts, the director of THE DEPARTMENT OF
 11 insurance AND FINANCIAL INSTITUTIONS shall notify the contractor of the
 12 difference, provide a notice of right of appeal and bill the contractor
 13 for the unpaid amount of the premium tax or, if there is an overpayment,
 14 the director of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS
 15 shall either refund the amount of the overpayment to the contractor or
 16 issue a credit for the amount of the overpayment that the contractor can
 17 apply against future tax obligations prescribed by this section.

18 E. A contractor that fails to file an estimated payment or pay an
 19 unpaid premium tax as prescribed by this section is subject to a civil
 20 penalty equal to the greater of ~~twenty-five dollars~~ \$25 or five percent of
 21 the amount due and is subject to interest on the amount due at the rate of
 22 one percent per month from the date the amount was due.

23 F. From and after December 31, 2017, the director of THE DEPARTMENT
 24 OF insurance AND FINANCIAL INSTITUTIONS may require that reports and
 25 payments under this section be submitted electronically. If the director
 26 requires electronic submission, the director shall include on the
 27 department of ~~insurance's~~ INSURANCE AND FINANCIAL INSTITUTION'S official
 28 website a list of one or more acceptable methods by which a contractor
 29 must submit reports and payments.

30 Sec. 154. Section 36-2906.01, Arizona Revised Statutes, is amended
 31 to read:

32 36-2906.01. Qualified commercial carriers: administration:
 33 contracts

34 A. Entities, including insurers as defined in section 20-104,
 35 hospital, medical, dental and optometric service corporations AS defined
 36 in title 20, chapter 4, article 3 and health care services organizations
 37 as defined in section 20-1051, are prohibited from contracting with the
 38 administration as a system contractor unless the entity establishes an
 39 affiliated corporation whose only authorized business is to provide
 40 services or coverage pursuant to a contract with the administration to
 41 persons defined as eligible in section 36-2901, paragraph 6, subdivisions
 42 (a), (f) and (g).

43 B. If there is an insufficient number of, or an inadequate member
 44 capacity in, contracts awarded to contractors, the director may request
 45 that the director of the department of insurance AND FINANCIAL

1 INSTITUTIONS grant a temporary exemption from the requirements of
2 subsection A of this section for an entity regulated by the department of
3 insurance AND FINANCIAL INSTITUTIONS, and otherwise qualified to be a
4 system health plan, in order for that entity to enter into an arrangement
5 with the administration to provide services to persons defined as eligible
6 in section 36-2901, paragraph 6, subdivisions (a), (f) and (g). On a
7 written request from the administration, the director of the department of
8 insurance AND FINANCIAL INSTITUTIONS may grant a ~~one-time~~ ONETIME
9 exemption to an entity, for a period not to exceed one year. During the
10 temporary exemption, the entity must comply with all applicable provisions
11 of both this article and the applicable chapter or article of title 20
12 under which the entity is licensed to operate.

13 C. With respect to entities that have been granted an exemption
14 pursuant to subsection B of this section, the provisions of section
15 36-2903, subsection M, relating to the direct operation of a provider,
16 shall not apply. If the director determines that the operations of the
17 entity would otherwise meet the circumstances specified in contract under
18 which the administration could operate the entity directly or that the
19 public health, safety or welfare require emergency action relative to the
20 entity, the director shall notify the director of the department of
21 insurance AND FINANCIAL INSTITUTIONS and may request that the department
22 of insurance AND FINANCIAL INSTITUTIONS take appropriate actions.

23 Sec. 155. Section 36-2944.01, Arizona Revised Statutes, is amended
24 to read:

25 36-2944.01. Removal of medicaid special exemption for
26 payments to program contractors; civil penalty

27 A. Notwithstanding any other law, beginning on October 1, 2003,
28 each program contractor shall pay to the director of THE DEPARTMENT OF
29 insurance AND FINANCIAL INSTITUTIONS a tax equal to two percent of the
30 total capitation, including reinsurance, and any other reimbursement paid
31 to the program contractor by the administration for persons eligible
32 pursuant to section 36-2931, paragraph 5. The tax shall be paid in four
33 payments pursuant to subsection C of this section and deposited in the
34 state general fund pursuant to sections 35-146 and 35-147.

35 B. The program contractor shall not deduct any disallowance or
36 penalty imposed by the administration pursuant to this chapter from the
37 financial information submitted to the director of THE DEPARTMENT OF
38 insurance AND FINANCIAL INSTITUTIONS.

39 C. Each program contractor shall file the estimated tax and
40 documentation with the director of THE DEPARTMENT OF insurance AND
41 FINANCIAL INSTITUTIONS on a form prescribed by the director of THE
42 DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS. A program contractor
43 shall make estimated tax payments to the director of THE DEPARTMENT OF
44 insurance AND FINANCIAL INSTITUTIONS for deposit in the state general fund
45 pursuant to sections 35-146 and 35-147. The tax payments are due on or

1 before September 15, December 15, March 15 and June 15 of each year. The
2 amount of the payments shall be an estimate of the tax due for the quarter
3 that ends in the month that payment is due.

4 D. On or before April 1, 2004 and annually on or before April 1
5 thereafter, the director of THE DEPARTMENT OF insurance AND FINANCIAL
6 INSTITUTIONS shall use data provided by the administration to reconcile
7 the amount paid by each program contractor pursuant to this section with
8 the actual amount of title XIX reimbursement made by the administration to
9 the program contractor in the preceding calendar year. If there is a
10 discrepancy in the two amounts, the director of THE DEPARTMENT OF
11 insurance AND FINANCIAL INSTITUTIONS shall notify the program contractor
12 of the difference, provide a notice of right of appeal and bill the
13 program contractor for the unpaid amount of the premium tax or, if there
14 is an overpayment, the director of THE DEPARTMENT OF insurance AND
15 FINANCIAL INSTITUTIONS shall either refund the amount of the overpayment
16 to the contractor or issue a credit for the amount of the overpayment that
17 the program contractor can apply against future tax obligations prescribed
18 by this section.

19 E. A contractor that fails to file an estimated payment or pay an
20 unpaid premium tax as prescribed by this section is subject to a civil
21 penalty equal to the greater of ~~twenty-five dollars~~ \$25 or five percent of
22 the amount due and is subject to interest on the amount due at the rate of
23 one percent per month from the date the amount was due.

24 F. From and after December 31, 2017, the director of THE DEPARTMENT
25 OF insurance AND FINANCIAL INSTITUTIONS may require that reports and
26 payments under this section be submitted electronically. If the director
27 requires electronic submission, the director shall include on the
28 department of ~~insurance's~~ INSURANCE AND FINANCIAL INSTITUTION'S official
29 website a list of one or more acceptable methods by which a contractor
30 must submit reports and payments.

31 Sec. 156. Section 36-2999.51, Arizona Revised Statutes, is amended
32 to read:

33 36-2999.51. Definitions

34 In this article, unless the context otherwise requires:

35 1. "Continuing care retirement community" means an entity that
36 provides nursing facility services and assisted living or independent
37 living services on a contiguous campus that is either registered as a life
38 care facility with the department of insurance AND FINANCIAL INSTITUTIONS
39 or has assisted living and independent living beds in the aggregate that
40 equal at least twice the number of nursing facility beds. For the
41 purposes of this paragraph, "contiguous" means land that adjoins or
42 touches the other property held by the same or a related organization and
43 land divided by a public road.

44 2. "Fiscal year" means the period beginning on October 1 and ending
45 on September 30.

1 2. The director of the department of administration or the
2 director's designee.

3 3. The superintendent of the financial institutions division of the
4 department of insurance and financial institutions or the superintendent's
5 designee.

6 4. The director of THE DEPARTMENT OF insurance and financial
7 institutions or the director's designee.

8 5. The director of the Arizona state retirement system or the
9 director's designee.

10 B. Governing committee members are subject to the conflict of
11 interest provisions of chapter 3, article 8 of this title.

12 C. The governing committee may:

13 1. Investigate and approve deferred compensation plans that give
14 state employees income tax benefits authorized by title 26, United States
15 Code Annotated.

16 2. In carrying out the purposes of this article, enter into
17 agreements with companies with demonstrable expertise in the areas
18 encompassed by this article.

19 3. Adopt rules.

20 D. The governing committee shall:

21 1. Arrange for consolidated billing and efficient administrative
22 services so that any plans approved operate without cost or contribution
23 from this state except for the incidental expenses of statutorily required
24 administrative duties and the administration of payroll salary deduction
25 or reduction and remittance of the monies to the administrator, trustee or
26 custodian of the plan or plans.

27 2. Meet quarterly or more frequently as the committee deems
28 necessary.

29 3. Arrange for an annual financial audit of the plans.

30 4. Arrange for a performance review of the plans or participation
31 in benchmarking surveys or studies at least every five years.

32 Sec. 158. Section 41-621, Arizona Revised Statutes, is amended to
33 read:

34 41-621. Purchase of insurance; coverage; limitations;
35 exclusions; definitions

36 A. The department of administration shall obtain insurance against
37 loss, to the extent it is determined necessary and in the best interests
38 of ~~the~~ THIS state as provided in subsection F of this section, on the
39 following:

40 1. All ~~state-owned~~ STATE-OWNED buildings, including those of the
41 universities, excluding buildings of community colleges, whether financed
42 in whole or in part by state monies or buildings in which the state has an
43 insurable interest as determined by the department of administration.

1 2. Contents in any buildings owned, leased or rented, in whole or
2 in part, by or to ~~the~~ THIS state, excluding buildings of community
3 colleges, and reported to the department of administration.

4 3. ~~The~~ THIS state and its departments, agencies, boards and
5 commissions and all officers, agents and employees thereof and such others
6 as may be necessary to accomplish the functions or business of the state
7 and its departments, agencies, boards and commissions against liability
8 for acts or omissions of any nature while acting in authorized
9 governmental or proprietary capacities and in the course and scope of
10 employment or authorization except as prescribed by this chapter.

11 4. All personal property reported to the department of
12 administration, including vehicles and aircraft owned by the state and its
13 departments, agencies, boards and commissions and all ~~non-owned~~ NONOWNED
14 personal property ~~which~~ THAT is under the clear responsibility of this
15 state because of written leases or other written agreements.

16 5. ~~The~~ THIS state and its departments, agencies, boards and
17 commissions against casualty, use and occupancy and liability losses of
18 every nature except as prescribed by this chapter.

19 6. Workers' compensation and employers' liability insurance.

20 7. Design and construction of buildings, roads, environmental
21 remediations and other construction projects.

22 8. Other exposures to loss where insurance may be required to
23 protect this state and its departments, agencies, boards and commissions
24 and all officers, agents and employees acting in the course and scope of
25 employment or authorization except as prescribed by this chapter.

26 B. To the extent it is determined necessary and in the best
27 interests of ~~the~~ THIS state, the department of administration shall obtain
28 insurance or provide for state self-insurance against property damage
29 caused by clients and liability coverage resulting from the direct or
30 incidental care of clients participating in programs of ~~the~~ THIS state and
31 its departments, agencies, boards or commissions relating to custodial
32 care. The insurable programs shall include foster care, programs for ~~the~~
33 persons with developmental disabilities, an independent living program
34 pursuant to section 8-521 and respite-sitter service programs. The
35 department shall obtain insurance or provide for state self-insurance
36 pursuant to this subsection to protect the clients participating in these
37 programs and individual providers of these program services on behalf of
38 ~~the~~ THIS state and its departments, agencies, boards or commissions. The
39 insurance provided under this subsection does not include medical or
40 workers' compensation coverage for providers. The department may include
41 in its annual budget request pursuant to section 41-622, subsection D a
42 charge for the insurance or self-insurance provided in this subsection.
43 To assist in carrying out ~~the provisions of~~ this subsection, the
44 department shall establish a ~~seven member~~ SEVEN-MEMBER advisory board in
45 accordance with the following provisions:

1 1. The board shall consist of three members appointed by the
2 director of the department of administration, at least one of whom shall
3 be a foster parent, one member appointed by the director of the department
4 of economic security, one member appointed by the director of the
5 department of child safety, one member appointed by the director of the
6 state department of corrections, and one member appointed by the
7 administrative director of the courts.

8 2. The board shall elect a chairman from among its members.

9 3. The board shall hold at least two meetings a year or shall meet
10 at the call of the chairman.

11 4. Board members shall serve for ~~three year~~ THREE-YEAR terms.

12 5. Board members are not eligible to receive compensation but are
13 eligible for reimbursement of expenses pursuant to title 38, chapter 4,
14 article 2.

15 6. The board shall provide advice to the department regarding
16 coverage and administration of ~~the provisions of~~ this subsection and shall
17 assist the department in coordinating its activities pursuant to this
18 subsection with state departments, agencies, boards and commissions.

19 C. The department of administration may obtain insurance against
20 loss, to the extent it is determined necessary and in the best interests
21 of ~~the~~ THIS state as provided in subsection F of this section for the
22 professional liability of individual physicians and psychiatrists who
23 provide services under a contract with the state department of
24 corrections. Coverage is limited to acts and omissions committed inside a
25 state department of corrections facility while in the performance of the
26 contract and to individual physicians and psychiatrists who demonstrate to
27 the satisfaction of the state department of corrections that they cannot
28 otherwise obtain professional liability coverage for the services required
29 by the contract. The director of the department of administration may
30 impose on the state department of corrections a deductible for each loss
31 that arises out of a professional liability claim pursuant to this
32 subsection. Any changes in deductible amounts established by the director
33 shall be subject to review by the joint legislative budget committee.

34 D. The department of administration may obtain property, liability,
35 disability or workers' compensation insurance, self-insure or develop risk
36 retention pools to provide for payment of property loss or casualty claims
37 or disability insurance claims against contractors of this state with the
38 approval of the joint legislative budget committee. With respect to
39 insurance, self-insurance or risk retention pools for contractors licensed
40 and contracted to do work for this state, the coverage afforded applies
41 with respect to the conduct of the business entity of that contractor.
42 The pool is available to all contractors regardless of the amount that the
43 ~~state contracted~~ STATE-CONTRACTED work bears in relation to the amount of
44 nonstate contracted work. The contractor shall be terminated from the
45 pool if the contractor ceases to be a state contractor.

1 E. The department of administration may determine, in the best
2 interests of ~~the~~ THIS state, that state self-insurance is necessary or
3 desirable and, if that decision is made, shall provide for state
4 self-insurance for losses arising out of state property, liability or
5 workers' compensation claims prescribed by subsection A of this section.
6 If the department of administration provides state self-insurance, such
7 coverage shall be excess over any other valid and collectible insurance.
8 The director of the department of administration may impose on state
9 departments, agencies, boards and commissions a deductible for each loss
10 that arises out of a property, liability or workers' compensation loss
11 pursuant to this subsection. Any changes in deductible amounts
12 established by the director shall be subject to review by the joint
13 legislative budget committee.

14 F. In carrying out ~~the provisions of~~ this chapter, the department
15 of administration shall establish and provide the state with some or all
16 of the necessary risk management services, or shall contract for risk
17 management services pursuant to chapter 23 of this title, as the director
18 of the department of administration deems necessary in the best interest
19 of the state, and ~~may~~, in addition to other specifications of such
20 coverage as deemed necessary, MAY determine self-insurance to be
21 established. ~~The provisions of~~ Chapter 23 of this title ~~shall~~ DOES not
22 apply to the department of administration's procurement of insurance to
23 cover losses arising out of state property or liability claims prescribed
24 in subsections A and D of this section or excess loss insurance for the
25 state's workers' compensation liability for individual or aggregate
26 claims, or both, in such amounts and at such primary retention levels as
27 the department of administration deems in the best interest of ~~the~~ THIS
28 state. In purchasing insurance to cover losses arising out of state
29 property or liability claims prescribed by subsection A of this section,
30 the department of administration is not subject to ~~the provisions of~~ title
31 20, chapter 2, article 5.

32 G. ~~No~~ A successful bidder for risk management services pursuant to
33 this section ~~shall be~~ IS NOT entitled to receive directly or indirectly
34 any sales commission, contingent commission, excess profit commission, or
35 other commissions, or anything of value, as payment for the risk
36 management services except those amounts received directly from this state
37 as payment for the risk management services.

38 H. The department of administration shall pay for purchased risk
39 management services, premiums for insurance on state property and state
40 liability and workers' compensation pursuant to ~~the provisions of~~ this
41 chapter.

42 I. A state officer, agent or employee acting in good faith, without
43 wanton disregard of ~~his~~ statutory duties and under the authority of an
44 enactment that is subsequently declared to be unconstitutional, invalid or
45 inapplicable, is not personally liable for an injury or damage caused

1 thereby except to the extent that ~~he~~ THE OFFICER, AGENT OR EMPLOYEE would
2 have been personally liable had the enactment been constitutional, valid
3 and applicable.

4 J. A state officer, agent or employee, except as otherwise provided
5 by statute, is not personally liable for an injury or damage resulting
6 from ~~his~~ AN act or omission in a public official capacity where the act or
7 omission was the result of the exercise of the discretion vested in ~~him~~
8 THE OFFICER, AGENT OR EMPLOYEE AND if the exercise of the discretion was
9 done in good faith without wanton disregard of ~~his~~ statutory duties.

10 K. ~~The~~ THIS state and its departments, agencies, boards and
11 commissions are immune from liability for losses arising out of a judgment
12 for ~~willful~~ WILFUL and wanton conduct resulting in punitive or exemplary
13 damages.

14 L. The following exclusions shall apply to subsections A, B and E
15 of this section:

16 1. Losses against this state and its departments, agencies, boards
17 and commissions that arise out of and are directly attributable to an act
18 or omission determined by a court to be a felony by a person who is
19 provided coverage pursuant to this article unless the state knew of the
20 person's propensity for that action, except those acts arising out of the
21 operation or use of a motor vehicle.

22 2. Losses arising out of contractual breaches.

23 M. If self-insurance coverage is determined to exist, the attorney
24 general, with funds provided by the department of administration, shall
25 provide for the defense, either through ~~his~~ THE ATTORNEY GENERAL'S office
26 or by appointment of outside legal counsel, of ~~the~~ THIS state and its
27 departments, agencies, boards and commissions and all officers, agents and
28 employees thereof and such others as are insured by the department of
29 administration for or on account of their acts or omissions covered
30 pursuant to this chapter. All state departments, agencies, boards and
31 commissions, all officers, agents and employees thereof and such others as
32 are insured by the department of administration shall cooperate fully with
33 the attorney general and department of administration in the defense of
34 claims arising pursuant to this chapter.

35 N. A claim for liability damages made pursuant to this chapter may
36 be settled and payment made up to the amount of ~~twenty-five thousand~~
37 ~~dollars~~ \$25,000 or such higher limit as may be established by the joint
38 legislative budget committee with the approval of the director of the
39 department of administration. A claim over the amount of ~~twenty-five~~
40 ~~thousand dollars~~ \$25,000 up to ~~fifty thousand dollars~~ \$50,000 or such
41 higher limit as may be established by the joint legislative budget
42 committee may be settled and payment made with the approval of the
43 director of the department of administration and the attorney general.
44 Any claim over the amount of ~~fifty thousand dollars~~ \$50,000 or such higher
45 limit as may be established by the joint legislative budget committee may

1 be settled and payment made with the approval of the director of the
2 department of administration, the attorney general and the joint
3 legislative budget committee. If it is in the best interest of this
4 state, the joint legislative budget committee may establish higher
5 settlement limits. Any settlements involving amounts in excess of ~~fifty~~
6 ~~thousand dollars~~ \$50,000 or such higher limit as may be established by the
7 joint legislative budget committee shall be approved by the department of
8 administration, the attorney general and the joint legislative budget
9 committee pursuant to the authority granted. The settlement of liability
10 claims shall be solely the authority of the department of administration,
11 the attorney general and the joint legislative budget committee. No state
12 department, agency, board or commission or any officer, agent or employee
13 of this state may voluntarily make any payment, assume any obligation,
14 incur any expense or maintain the individual right of consent for
15 liability claims made pursuant to this chapter except as provided by this
16 section.

17 0. Neither the authority provided by this section to insure, nor
18 the exercise of such authority, shall:

19 1. Impose any liability on this state or the departments, agencies,
20 boards and commissions or any officers, agents and employees of this state
21 unless such liability otherwise exists.

22 2. Impair any defense this state or the departments, agencies,
23 boards and commissions or any officers, agents and employees of this state
24 otherwise may have.

25 P. The department of administration shall pay, on behalf of any
26 state officer, agent or employee, any damages, excluding punitive damages,
27 for which the officer, agent or employee becomes legally responsible if
28 the acts or omissions resulting in liability were within the officer's,
29 agent's or employee's course and scope of employment. The department of
30 administration may pay for all damages however designated ~~which~~ THAT the
31 officer, agent or employee becomes legally responsible for if the acts or
32 omissions resulting in liability are determined by the director of the
33 department of administration to be within the person's course and scope of
34 employment.

35 Q. The department of administration shall adopt such rules as are
36 deemed necessary to carry out, implement and limit ~~the provisions of~~ this
37 chapter.

38 R. For the purposes of determining whether a state officer, agent
39 or employee is entitled to coverage under this chapter, "within the course
40 and scope of employment or authorization" means:

41 1. The acts or omissions that the state officer, agent or employee
42 is employed or authorized to perform.

43 2. The acts or omissions of the state officer, agent or employee
44 occur substantially within the authorized time and space limit.

1 3. The acts or omissions are activated at least in part by a
2 purpose to serve this state or its departments, agencies, boards or
3 commissions.

4 S. To the extent it is determined necessary and in the best
5 interest of this state, the department of administration may obtain design
6 and construction insurance or provide for self-insurance against property
7 damage caused by this state, its departments, agencies, boards and
8 commissions and all officers and employees of this state in connection
9 with the construction of public works projects. Workers' compensation
10 liability insurance may be purchased to cover both general contractors and
11 subcontractors doing work on a specific contracted ~~work-site~~ WORKSITE.
12 The department may include in its annual budget request, pursuant to
13 section 41-622, subsection D, the cost of the insurance purchased or
14 provided. In connection with the construction of public works projects,
15 the department of administration may also use an owner-controlled or
16 wrap-up insurance program if all of the following conditions are met:

17 1. The total cost of the project is over ~~fifty million dollars~~
18 \$50,000,000.

19 2. The program maintains completed operations coverage for a term
20 during which coverage is reasonably commercially available as determined
21 by the director of the department of insurance AND FINANCIAL INSTITUTIONS,
22 but in no event for less than three years.

23 3. Bid specifications clearly specify for all bidders the insurance
24 coverage provided under the program and the minimum safety requirements
25 that shall be met.

26 4. The program does not prohibit a contractor or subcontractor from
27 purchasing any additional insurance coverage that a contractor believes is
28 necessary for protection from any liability arising out of the contract.
29 The cost of the additional insurance shall not be passed through to this
30 state on a contract bid.

31 5. The program does not include surety insurance.

32 T. The state may purchase an owner-controlled or wrap-up policy
33 that has a deductible or self-insured retention as long as the deductible
34 or self-insured retention does not exceed ~~one million dollars~~ \$1,000,000.

35 U. For the purposes of subsections S and T of this section:

36 1. "Owner-controlled or wrap-up insurance" means a series of
37 insurance policies issued to cover this state and all of the contractors,
38 subcontractors, architects and engineers on a specified contracted ~~work~~
39 ~~site~~ WORKSITE for purposes of general liability, property damage and
40 workers' compensation.

41 2. "Specific contracted ~~work-site~~ WORKSITE" means construction
42 being performed at one site or a series of contiguous sites separated only
43 by a street, roadway, waterway or railroad right-of-way, or along a
44 continuous system for the provision of water and power.

1 V. Notwithstanding any other statute the department of
2 administration may:

3 1. Limit the liability of a person who contracts to provide goods,
4 software or other services to this state.

5 2. Allow the person to disclaim incidental or consequential
6 damages.

7 3. Indemnify or hold harmless any party to the contract.

8 Sec. 159. Section 41-621.01, Arizona Revised Statutes, is amended
9 to read:

10 41-621.01. Contractors or subcontractors; pooling of
11 property, liability and workers' compensation
12 coverage; exemptions; board of trustees;
13 contract; termination; audit; insolvency

14 A. Pursuant to section 41-621, subsection D and section 41-622.01
15 two or more contractors or subcontractors licensed to do work for this
16 state or any political subdivision of this state may with the approval of
17 the department of administration enter into contracts or agreements
18 pursuant to this section for the joint purchase of insurance, to pool
19 retention of their risks for property and liability losses and to provide
20 for the payment of the property loss or claim of liability made against
21 any member of the pool on a cooperative or contract basis with one another
22 or may jointly form a nonprofit corporation or enter into a trust
23 agreement to carry out ~~the provisions of~~ this section in their behalf
24 directly or by contract with a private party, if the department of
25 administration has determined to sanction such a pool. Two or more
26 contractors may also enter into contracts or agreements pursuant to this
27 section to establish a workers' compensation pool to provide for the
28 payment of workers' compensation claims pursuant to title 23, chapter 6 on
29 a cooperative or contract basis with one another or may jointly form a
30 nonprofit corporation or enter into a trust agreement to carry out ~~the~~
31 ~~provisions of~~ this section in their behalf directly or by contract with a
32 private party. A workers' compensation pool established pursuant to this
33 subsection may provide coverage for workers' compensation, employers'
34 liability and occupational disease claims. A workers' compensation pool
35 is subject to approval as a self-insurer by the industrial commission OF
36 ARIZONA pursuant to section 23-961, subsection A, paragraph 2 and is
37 subject to title 23, chapter 6 and rules adopted pursuant to that chapter
38 in addition to the requirements of this section. The industrial
39 commission OF ARIZONA, by rule, resolution or order, may adopt
40 requirements for the administration of a workers' compensation pool under
41 this subsection, including separation or commingling of funds, accounting,
42 auditing, reporting, actuarial standards and procedures.

43 B. In addition to other authority granted pursuant to this title,
44 two or more contractors or subcontractors licensed to do work for this
45 state or any political subdivision of this state may enter into contracts

1 or agreements for the joint purchase of life insurance, disability
2 insurance, accident insurance or health benefits plan insurance, to pool
3 retention of their risks of loss for life, disability, health or accident
4 claims made against any contractor or subcontractor member of the pool or
5 to jointly provide the health and medical services authorized in section
6 36-2907. Contractors and subcontractors may establish pools for the
7 purposes of this subsection by any of the following methods:

8 1. On a cooperative or contract basis.

9 2. By the formation of a nonprofit corporation.

10 3. By a contract or intergovernmental agreement with the Arizona
11 health care cost containment system administration.

12 4. By the execution of a trust agreement directly by the
13 contractors and subcontractors or by contracting with a third party.

14 C. Contractors or subcontractors of a political subdivision of this
15 state that is a member of a risk retention pool authorized under title 11
16 may obtain life insurance, disability insurance, accident insurance or
17 health benefits plan insurance coverage directly from that political
18 subdivision if coverage is available and as authorized by section
19 11-952.01, subsection C.

20 D. Section 10-11301 does not apply to nonprofit corporations formed
21 pursuant to this section.

22 E. Chapter 23 of this title does not apply to the procurement of
23 insurance or to the procurement of the services provided for in subsection
24 I, paragraph 8 of this section by any pool established pursuant to this
25 section.

26 F. Title 43 does not apply to any pool established pursuant to this
27 section. Any pool established pursuant to this section is exempt from
28 taxation under title 43.

29 G. Each pool shall be operated by a board of trustees consisting of
30 at least five members. The board of trustees of each group shall do all
31 of the following:

32 1. Establish terms and conditions of coverage within the pool
33 including exclusions of coverage.

34 2. Ensure that all claims are paid promptly.

35 3. Take all necessary precautions to safeguard the assets of the
36 group.

37 4. Maintain minutes of its meetings.

38 5. Designate an administrator to carry out the policies established
39 by the board of trustees and to provide day to day management of the group
40 and delineate in the written minutes of its meetings the areas of
41 authority it delegates to the administrator.

42 6. Notify the director of the department of insurance **AND FINANCIAL**
43 **INSTITUTIONS** of the existence of the pool and file a copy of the agreement
44 with the director and with the attorney general.

1 7. If the pool is a workers' compensation pool, file a copy of the
2 agreement with the director of the industrial commission [OF ARIZONA](#).

3 H. The board of trustees shall not:

4 1. Extend credit to individual members for payment of a premium
5 except pursuant to payment plans established by the board.

6 2. Borrow any monies from the group or in the name of the group
7 except in the ordinary course of business.

8 I. A contract or agreement made pursuant to subsection A of this
9 section shall contain the following:

10 1. A provision for a system or program of loss control.

11 2. A provision for termination of membership including either:

12 (a) Cancellation of individual members of the pool by the pool.

13 (b) Election by an individual member of the pool to terminate its
14 participation.

15 3. A provision requiring the pool to pay all claims for which each
16 member incurs liability during each member's period of membership.

17 4. A provision stating that each member is not relieved of its
18 liability incurred during the member's period of membership except through
19 the payment of losses by the pool or by the member.

20 5. A provision for the maintenance of claims reserves equal to
21 known incurred losses and an estimate of incurred but not reported claims.

22 6. A provision for a final accounting and settlement of the
23 obligations of or refunds to a terminating member to occur when all
24 incurred claims are concluded, settled or paid.

25 7. A provision that the pool may establish offices where necessary
26 in this state and employ necessary staff to carry out the purposes of the
27 pool.

28 8. A provision that the pool may retain legal counsel, actuaries,
29 auditors, engineers, private consultants and advisors.

30 9. A provision that the pool may make and alter bylaws and rules
31 pertaining to the exercise of its purpose and powers.

32 10. A provision that the pool may purchase, lease or rent real and
33 personal property it deems necessary.

34 11. A provision that the pool shall enter into a financial services
35 agreement with banks and that it may issue checks in its own name.

36 J. A pool or a terminating member shall provide at least ninety
37 days' written notice of the termination or cancellation. A workers'
38 compensation pool shall notify the industrial commission [OF ARIZONA](#) of the
39 termination or cancellation of a member thirty days before the termination
40 or cancellation of the member.

41 K. The pool shall be audited annually at the expense of the pool by
42 a certified public accountant, with a copy of the report submitted to the
43 governing body or chief executive officer of each member of the pool and
44 to the director of the department of insurance [AND FINANCIAL INSTITUTIONS](#).
45 The board of trustees of the pool shall obtain an appropriate actuarial

1 evaluation of the claim reserves of the pool including an estimate of the
2 incurred but not reported claims. The department of insurance AND
3 FINANCIAL INSTITUTIONS shall examine each contractor pool once every five
4 years. The director of the department of insurance AND FINANCIAL
5 INSTITUTIONS may examine a contractor pool sooner than five years from the
6 preceding examination if the director has reason to believe that the pool
7 is insolvent. The costs of any examination shall be paid by the pool
8 subject to the examination.

9 L. If, as a result of the annual audit or an examination by the
10 director of the department of insurance AND FINANCIAL INSTITUTIONS, it
11 appears that the assets of the pool are insufficient to enable the pool to
12 discharge its legal liabilities and other obligations, the director of the
13 department of insurance AND FINANCIAL INSTITUTIONS shall notify the
14 administrator and the board of trustees of the pool of the deficiency and
15 provide the director's list of recommendations to abate the deficiency,
16 including a recommendation not to add any new members until the deficiency
17 is abated. If the pool fails to comply with the recommendations within
18 sixty days after the date of the notice, the director shall notify the
19 chief executive officer or the governing bodies, if any, of the members of
20 the pool, the governor, the president of the senate and the speaker of the
21 house of representatives that the pool has failed to comply with the
22 recommendations of the director.

23 M. If a pool is determined to be insolvent or is otherwise found to
24 be unable to discharge its legal liabilities and other obligations, each
25 agreement or contract shall provide that the members of the pool shall be
26 assessed on a pro rata basis as calculated by the amount of each member's
27 annual contribution in order to satisfy the amount of deficiency. The
28 assessment shall not exceed the amount of each member's annual
29 contribution to the pool.

30 N. If a workers' compensation pool fails to comply with title 23,
31 chapter 6 or rules adopted pursuant to that chapter, the director of the
32 industrial commission OF ARIZONA shall immediately notify the director of
33 the department of administration and the director of the department of
34 insurance AND FINANCIAL INSTITUTIONS.

35 Sec. 160. Section 41-1009, Arizona Revised Statutes, is amended to
36 read:

37 41-1009. Inspections and audits; applicability; exceptions

38 A. An agency inspector, auditor or regulator who enters any
39 premises of a regulated person for the purpose of conducting an inspection
40 or audit shall, unless otherwise provided by law:

41 1. Present photo identification on entry of the premises.

42 2. On initiation of the inspection or audit, state the purpose of
43 the inspection or audit and the legal authority for conducting the
44 inspection or audit.

1 3. Disclose any applicable inspection or audit fees.
2 NOTWITHSTANDING ANY OTHER LAW, A REGULATED PERSON BEING INSPECTED OR
3 AUDITED IS RESPONSIBLE FOR ONLY THE DIRECT AND REASONABLE COSTS OF THE
4 INSPECTION OR AUDIT AND IS ENTITLED TO RECEIVE A DETAILED BILLING
5 STATEMENT AS DESCRIBED IN PARAGRAPH 5, SUBDIVISION (e) OF THIS SUBSECTION.

6 4. Afford an opportunity to have an authorized on-site
7 representative of the regulated person accompany the agency inspector,
8 auditor or regulator on the premises, except during confidential
9 interviews.

10 5. Provide notice of the right to have on request:

11 (a) Copies of any original documents taken by the agency during the
12 inspection or audit if the agency is ~~permitted~~ ALLOWED by law to take
13 original documents.

14 (b) A split of any samples taken during the inspection if the split
15 of any samples would not prohibit an analysis from being conducted or
16 render an analysis inconclusive.

17 (c) Copies of any analysis performed on samples taken during the
18 inspection.

19 (d) Copies of any documents to be relied on to determine compliance
20 with licensure or regulatory requirements if the agency is otherwise
21 ~~permitted~~ ALLOWED by law to do so.

22 (e) A DETAILED BILLING STATEMENT THAT PROVIDES REASONABLE
23 SPECIFICITY OF THE INSPECTION OR AUDIT FEES IMPOSED PURSUANT TO PARAGRAPH
24 3 OF THIS SUBSECTION AND THAT CITES THE STATUTE OR RULE THAT AUTHORIZES
25 THE FEES BEING CHARGED.

26 6. Inform each person whose conversation with the agency inspector,
27 auditor or regulator during the inspection or audit is tape recorded that
28 the conversation is being tape recorded.

29 7. Inform each person who is interviewed during the inspection or
30 audit that:

31 (a) Statements made by the person may be included in the inspection
32 or audit report.

33 (b) Participation in an interview is voluntary, unless the person
34 is legally compelled to participate in the interview.

35 (c) The person is allowed at least twenty-four hours to review and
36 revise any written witness statement that is drafted by the agency
37 inspector, auditor or regulator and on which the agency inspector, auditor
38 or regulator requests the person's signature.

39 (d) The agency inspector, auditor or regulator may not prohibit the
40 regulated person from having an attorney or any other experts in their
41 field present during the interview to represent or advise the regulated
42 person.

43 B. On initiation of an audit or an inspection of any premises of a
44 regulated person, an agency inspector, auditor or regulator shall provide
45 the following in writing:

1 1. The rights described in subsection A of this section and section
2 41-1001.01, subsection C.

3 2. The name and telephone number of a contact person who is
4 available to answer questions regarding the inspection or audit.

5 3. The due process rights relating to an appeal of a final decision
6 of an agency based on the results of the inspection or audit, including
7 the name and telephone number of a person to contact within the agency and
8 any appropriate state government ombudsman.

9 4. A statement that the agency inspector, auditor or regulator may
10 not take any adverse action, treat the regulated person less favorably or
11 draw any inference as a result of the regulated person's decision to be
12 represented by an attorney or advised by any other experts in their field.

13 5. A notice that if the information and documents provided to the
14 agency inspector, auditor or regulator become a public record, the
15 regulated person may redact trade secrets and proprietary and confidential
16 information unless the information and documents are confidential pursuant
17 to statute.

18 6. The time limit or statute of limitations applicable to the right
19 of the agency inspector, auditor or regulator to file a compliance action
20 against the regulated person arising from the inspection or audit, which
21 applies to both new and amended compliance actions.

22 C. An agency inspector, auditor or regulator shall obtain the
23 signature of the regulated person or on-site representative of the
24 regulated person on the writing prescribed in subsection B of this section
25 and section 41-1001.01, subsection C, if applicable, indicating that the
26 regulated person or on-site representative of the regulated person has
27 read the writing prescribed in subsection B of this section and section
28 41-1001.01, subsection C, if applicable, and is notified of the regulated
29 person's or on-site representative of the regulated person's inspection or
30 audit and due process rights. The agency inspector, auditor or regulator
31 may provide an electronic document of the writing prescribed in subsection
32 B of this section and section 41-1001.01, subsection C and, at the request
33 of the regulated person or on-site representative, obtain a receipt in the
34 form of an electronic signature. The agency shall maintain a copy of this
35 signature with the inspection or audit report and shall leave a copy with
36 the regulated person or on-site representative of the regulated person.
37 If a regulated person or on-site representative of the regulated person is
38 not at the site or refuses to sign the writing prescribed in subsection B
39 of this section and section 41-1001.01, subsection C, if applicable, the
40 agency inspector, auditor or regulator shall note that fact on the writing
41 prescribed in subsection B of this section and section 41-1001.01,
42 subsection C, if applicable.

43 D. An agency that conducts an inspection shall give a copy of the
44 inspection report to the regulated person or on-site representative of the
45 regulated person either:

- 1 1. At the time of the inspection.
- 2 2. Notwithstanding any other state law, within thirty working days
- 3 after the inspection.
- 4 3. As otherwise required by federal law.
- 5 E. The inspection report shall contain deficiencies identified
- 6 during an inspection. Unless otherwise provided by state or federal law,
- 7 the agency shall provide the regulated person an opportunity to correct
- 8 the deficiencies unless the agency documents in writing as part of the
- 9 inspection report that the deficiencies are:
 - 10 1. Committed intentionally.
 - 11 2. Not correctable within a reasonable period of time as determined
 - 12 by the agency.
 - 13 3. Evidence of a pattern of noncompliance.
 - 14 4. A risk to any person, the public health, safety or welfare or
 - 15 the environment.
- 16 F. If the agency is unsure whether a regulated person meets the
- 17 exemptions in subsection E of this section, the agency shall provide the
- 18 regulated person with an opportunity to correct **THE DEFICIENCIES**.
- 19 G. If the agency allows the regulated person an opportunity to
- 20 correct the deficiencies pursuant to subsection E of this section, the
- 21 regulated person shall notify the agency when the deficiencies have been
- 22 corrected. Within thirty days after receipt of notification from the
- 23 regulated person that the deficiencies have been corrected, the agency
- 24 shall determine if the regulated person is in substantial compliance and
- 25 notify the regulated person whether or not the regulated person is in
- 26 substantial compliance. If the regulated person fails to correct the
- 27 deficiencies or the agency determines the deficiencies have not been
- 28 corrected within a reasonable period of time, the agency may take any
- 29 enforcement action authorized by law for the deficiencies.
- 30 H. If the agency does not allow the regulated person an opportunity
- 31 to correct deficiencies pursuant to subsection E of this section, on the
- 32 request of the regulated person, the agency shall provide a detailed
- 33 written explanation of the reason that an opportunity to correct was not
- 34 allowed.
- 35 I. An agency decision pursuant to subsection E or G of this section
- 36 is not an appealable agency action.
- 37 J. At least once every month after the commencement of the
- 38 inspection, an agency shall provide a regulated person with an update on
- 39 the status of any agency action resulting from an inspection of the
- 40 regulated person. An agency is not required to provide an update after
- 41 the regulated person is notified that no agency action will result from
- 42 the agency inspection or after the completion of agency action resulting
- 43 from the agency inspection.
- 44 K. For agencies with authority under title 49, if, as a result of
- 45 an inspection or any other investigation, an agency alleges that a

1 regulated person is not in compliance with licensure or other applicable
2 regulatory requirements, the agency shall provide written notice of that
3 allegation to the regulated person. The notice shall contain the
4 following information:

5 1. A citation to the statute, regulation, license or permit
6 condition on which the allegation of noncompliance is based, including the
7 specific provisions in the statute, regulation, license or permit
8 condition that are alleged to be violated.

9 2. Identification of any documents relied on as a basis for the
10 allegation of noncompliance.

11 3. An explanation stated with reasonable specificity of the
12 regulatory and factual basis for the allegation of noncompliance.

13 4. Instructions for obtaining a timely opportunity to discuss the
14 alleged violation with the agency.

15 L. Subsection K of this section applies only to inspections
16 necessary for the issuance of a license or to determine compliance with
17 licensure or other regulatory requirements. Subsection K of this section
18 does not apply to an action taken pursuant to section 11-871, 11-876,
19 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under
20 subsection K of this section is not a prerequisite to otherwise lawful
21 agency actions seeking an injunction or issuing an order if the agency
22 determines that the action is necessary on an expedited basis to abate an
23 imminent and substantial endangerment to public health or the environment
24 and documents the basis for that determination in the documents initiating
25 the action.

26 M. This section does not authorize an inspection or any other act
27 that is not otherwise authorized by law.

28 N. Except as otherwise provided in subsection L of this section,
29 this section applies only to inspections necessary for the issuance of a
30 license or to determine compliance with licensure or other regulatory
31 requirements applicable to a licensee and audits pursuant to enforcement
32 of title 23, chapters 2 and 4. This section does not apply:

33 1. To criminal investigations, investigations under tribal state
34 gaming compacts and undercover investigations that are generally or
35 specifically authorized by law.

36 2. If the agency inspector, auditor or regulator has reasonable
37 suspicion to believe that the regulated person may be engaged in criminal
38 activity.

39 3. To the Arizona peace officer standards and training board
40 established by section 41-1821.

41 4. To certificates of convenience and necessity that are issued by
42 the corporation commission pursuant to title 40, chapter 2.

43 0. If an agency inspector, auditor or regulator gathers evidence in
44 violation of this section, the violation may be a basis to exclude the
45 evidence in a civil or administrative proceeding.

1 P. Failure of an agency, board or commission employee to comply
2 with this section:

3 1. May subject the employee to disciplinary action or dismissal.

4 2. Shall be considered by the judge and administrative law judge as
5 grounds for reduction of any fine or civil penalty.

6 Q. An agency may make rules to implement subsection A, paragraph 5
7 of this section.

8 R. Nothing in this section shall be used to exclude evidence in a
9 criminal proceeding.

10 S. Subsection A, paragraph 7, subdivision (c) and subsection E of
11 this section do not apply to the department of health services for the
12 purposes of title 36, chapters 4 and 7.1.

13 T. Subsection B, paragraph 5 and subsection E of this section do
14 not apply to the corporation commission for the purposes of title 44,
15 chapters 12 and 13.

16 Sec. 161. Section 41-1525, Arizona Revised Statutes, is amended to
17 read:

18 41-1525. Arizona quality jobs incentives; tax credits for new
19 employment; qualifications; definitions

20 A. The owner of a business that is located in this state before
21 July 2025 is eligible for income tax credits under section 43-1074 or
22 43-1161 or an insurance premium tax credit under section 20-224.03 for net
23 increases in full-time employees residing in this state and hired in
24 qualified employment positions in this state.

25 B. To qualify under this section, and subject to preapproval by the
26 authority, the business must meet at least one of the following
27 requirements for each location of the business before it claims a first
28 year tax credit for the location:

29 1. Invest at least ~~five million dollars~~ \$5,000,000 of capital
30 investment and create at least twenty-five net new qualified employment
31 positions that pay compensation at least equal to one hundred percent of
32 the county median wage as computed annually by the authority in an urban
33 location.

34 2. Invest at least ~~two million five hundred thousand dollars~~
35 \$2,500,000 of capital investment and create at least twenty-five net new
36 qualified employment positions that pay compensation at least equal to one
37 hundred twenty-five percent of the county median wage as computed annually
38 by the authority in an urban location.

39 3. Invest at least ~~one million dollars~~ \$1,000,000 of capital
40 investment and create at least twenty-five net new qualified employment
41 positions that pay compensation at least equal to one hundred fifty
42 percent of the county median wage as computed annually by the authority in
43 an urban location.

44 4. Invest at least ~~five hundred thousand dollars~~ \$500,000 of
45 capital investment and create at least twenty-five net new qualified

1 employment positions that pay compensation at least equal to two hundred
2 percent of the county median wage as computed annually by the authority in
3 an urban location.

4 5. Invest at least ~~one million dollars~~ \$1,000,000 of capital
5 investment and create at least five net new qualified employment positions
6 that pay compensation at least equal to one hundred percent of the county
7 median wage as computed annually by the authority in a rural location.

8 6. Invest at least ~~five hundred thousand dollars~~ \$500,000 of
9 capital investment and create at least five net new qualified EMPLOYMENT
10 positions that pay compensation at least equal to one hundred twenty-five
11 percent of the county median wage as computed annually by the authority in
12 a rural location.

13 7. Invest at least ~~one hundred thousand dollars~~ \$100,000 of capital
14 investment and create at least five net new qualified EMPLOYMENT positions
15 that pay compensation at least equal to one hundred fifty percent of the
16 county median wage as computed annually by the authority in a rural
17 location.

18 C. The capital investment and the new qualified employment
19 positions requirements of subsection B of this section must be
20 accomplished within twelve months after the start of the required capital
21 investment. ~~No~~ Credit may NOT be claimed until both requirements are met.
22 A business that meets the requirements of subsection B of this section for
23 a location is eligible to claim first year credits for three years
24 beginning with the taxable year in which those requirements are completed.
25 Employees hired at the location before the beginning of the taxable year
26 but during the twelve-month period allowed in this subsection are
27 considered to be new employees for the taxable year in which all of those
28 requirements are completed. The employees that are considered to be new
29 employees for the taxable year under this subsection shall not be included
30 in the average number of full-time employees during the immediately
31 preceding taxable year until the taxable year in which all of the
32 requirements of subsection B of this section are completed. An employee
33 working at a temporary worksite in this state while the designated
34 location is under construction is considered to be working at the
35 designated location if all of the following occur:

36 1. The employee is hired after the start of the required investment
37 at the designated location.

38 2. The employee is hired to work at the designated location after
39 it is completed.

40 3. The payroll for the employees destined for the designated
41 location is segregated from other employees.

42 4. The employee is moved to the designated location within thirty
43 days after its completion.

44 D. ~~No~~ NOT more than ten thousand new jobs for all employers qualify
45 for first year credits each year.

1 E. To claim a tax credit, the business must:

2 1. Obtain preapproval from the authority at a time, on a form and
3 in a manner prescribed by the authority. Preapproval shall cover all
4 first year credits intended to be claimed for the designated location and
5 all second and third year credits associated with those first year
6 credits.

7 2. Certify to the department of revenue or the department of
8 insurance **AND FINANCIAL INSTITUTIONS**, as applicable, on or before the due
9 date of the tax return, including any extensions for the year for which
10 the credit is claimed, in a form prescribed by the department, including
11 electronic media, information that the department may require, including
12 the ownership interests of co-owners of the business if the business is a
13 partnership, limited liability company or an S corporation, and the
14 following information for each employee in the designated location:

15 (a) The date of initial employment.

16 (b) The number of hours worked during the year.

17 (c) Whether the position was full-time.

18 (d) The employee's annual compensation.

19 (e) The total cost of health insurance for the employee and the
20 cost paid by the employer.

21 (f) Other information required by the department.

22 3. Report and certify to the authority the following information,
23 and provide supporting documentation, on a form and in a manner approved
24 by the authority, and as specified in subsection F of this section, for
25 each year in which the taxpayer earned and claimed or used credits or is
26 carrying forward amounts from previously earned and claimed credits:

27 (a) The business name and mailing address and any other contact
28 information requested by the authority.

29 (b) The physical address of the business location or locations and
30 the number of employees qualified for the credit at each location.

31 (c) The average hourly wage and the total amount of compensation
32 paid to employees qualified for the credit and for all employees.

33 (d) The total number of qualified employment positions and the
34 amount of income tax or premium tax credits qualified for in the taxable
35 year.

36 (e) The estimated amount of tax credits to be used in the taxable
37 year to offset tax liability.

38 (f) The estimated amount of tax credits to be available for
39 carryforward in the taxable year and the year in which the credits expire.

40 (g) The number of jobs and the amount of credits earned and claimed
41 on the prior year's tax return.

42 (h) The amount of credits used to offset tax liabilities on the
43 prior year's tax return.

44 (i) The amount of credits available for carryforward as reported on
45 the prior year's tax return and the year the credits expire.

1 (j) Capital investment made during the taxable year and the
2 preceding taxable year.

3 (k) Other information necessary for the management and reporting of
4 the incentives under this section.

5 4. For any year in which the taxpayer is claiming first year
6 credits, report and certify the following additional information and
7 provide supporting documentation to the authority on a form and in a
8 manner approved by the authority, and as specified in subsection F of this
9 section:

10 (a) That the net increase in the number of qualified employment
11 positions for which credit is sought is the least of:

12 (i) The total number of filled qualified employment positions
13 created at the designated location or locations during the taxable year.

14 (ii) The difference between the average number of full-time
15 employees in this state in the current taxable year and the average number
16 of full-time employees in this state during the immediately preceding
17 taxable year.

18 (b) That all employees filling a qualified employment position were
19 employed for at least ninety days during the first taxable year.
20 Employees hired in the last ninety days of the taxable year are excluded
21 for that taxable year and are considered to be new employees in the
22 following taxable year.

23 (c) That none of the employees filling qualified employment
24 positions were employed by the taxpayer during the twelve months before
25 the current date of hire except for those relocating to this state.

26 (d) That all employees for whom second and third year credits are
27 claimed are in qualified employment positions for which first year credits
28 were allowed and claimed by the taxpayer on the original first and second
29 year tax returns.

30 (e) That all employees for whom credits are taken performed their
31 job duties primarily at the designated locations of the business.

32 F. To qualify for first year credits, the report and certification
33 prescribed by subsection E, paragraphs 3 and 4 of this section must be
34 filed with the authority by the earlier of six months after the end of the
35 taxable year in which the qualified employment positions were created or
36 by the date the tax return is filed for the taxable year in which the
37 qualified employment positions were created. To qualify for second year
38 credits, the report and certification prescribed by subsection E,
39 paragraph 3 of this section must be filed with the authority by the
40 earlier of six months after the end of the taxable year or the date the
41 tax return is filed for the taxable year in which the second year credits
42 are allowable. To qualify for third year credits, the report and
43 certification prescribed by subsection E, paragraph 3 of this section must
44 be filed with the authority by the earlier of six months after the end of

1 the taxable year or the date the tax return is filed for the taxable year
2 in which the third year credits are allowable.

3 G. Any information submitted to the authority under subsection E,
4 paragraph 3, subdivisions (e) through (j) of this section is exempt from
5 title 39, chapter 1, article 2 and considered to be confidential and is
6 not subject to disclosure except:

7 1. To the extent that the person or organization that provided the
8 information consents to the disclosure.

9 2. To the department of revenue for use in tax administration.

10 H. Documents filed with the authority, the department of insurance
11 AND FINANCIAL INSTITUTIONS and the department of revenue under subsection
12 E of this section shall contain either a sworn statement or certification,
13 signed by an officer of the company under penalty of perjury, that the
14 information contained is true and correct according to the best belief and
15 knowledge of the person submitting the information after a reasonable
16 investigation of the facts. If the document contains information that is
17 materially false, the taxpayer is ineligible for the tax credits described
18 under subsection A of this section and is subject to recovery of the
19 amount of tax credits allowed in preceding taxable years based on the
20 false information, plus penalties and interest.

21 I. The authority may make site visits to a taxpayer's facilities if
22 it is necessary to further document or clarify reported information. The
23 taxpayer must freely provide the access.

24 J. The authority by rule shall prescribe preapproval requirements
25 and additional reporting requirements for taxpayers who claim tax credits
26 pursuant to this section.

27 K. On or before September 30 of each year, the authority shall
28 transmit a report to the governor, the president of the senate, the
29 speaker of the house of representatives and the chairpersons of the senate
30 finance committee and the house of representatives ways and means
31 committee and provide a copy of the report to the secretary of state. The
32 report shall include the following information:

33 1. The business names, locations, number of employees and amount of
34 compensation paid to employees qualifying for income tax credits as
35 reported to the authority.

36 2. The amount of capital investment, ~~—~~ made during the preceding
37 fiscal year and cumulatively.

38 3. The total amount of income tax credits allowed for the preceding
39 taxable year and the number of qualified employment positions for which
40 credits were claimed pursuant to sections 43-1074 and 43-1161.

41 L. For the purposes of this section:

42 1. "Capital investment" means an expenditure to acquire, lease or
43 improve property that is used in operating a business, including:

44 (a) Land, buildings, machinery and fixtures.

1 (b) For taxable years beginning from and after June 30, 2011,
2 equipment.

3 2. "Designated location" means the location at which the required
4 capital investment is made under subsection B of this section.

5 3. "Location" means a single parcel or contiguous parcels of owned
6 or leased land in this state, the structures and personal property
7 contained on the land or any part of the structures occupied by the owner.
8 Parcels that are separated only by a public thoroughfare or right-of-way
9 are considered to be contiguous but a single contiguous parcel that is
10 located in both an urban location and a rural location is considered to be
11 a contiguous urban location.

12 4. "Qualified employment position" means employment that meets the
13 following requirements:

14 (a) The position consists of at least one thousand seven hundred
15 fifty hours per year of full-time permanent employment.

16 (b) The job duties are performed primarily at the location or
17 locations of the business in this state.

18 (c) The employment provides health insurance coverage for the
19 employee for which the employer pays at least sixty-five percent of the
20 premium or membership cost. If the business is self-insured, the employer
21 pays at least sixty-five percent of a predetermined fixed cost per
22 employee for an insurance program that is payable whether or not the
23 employee has filed claims.

24 (d) The employer pays compensation at least equal to the wage
25 threshold as described in subsection B of this section.

26 5. "Rural location" means a location that is within the boundaries
27 of tribal lands or a city or town with a population of less than fifty
28 thousand persons or a county with a population of less than eight hundred
29 thousand persons.

30 6. "Urban location" means a location that is within the exterior
31 boundaries of a city or town that has a population of fifty thousand
32 persons or more and that is located in a county that has a population of
33 eight hundred thousand persons or more.

34 Sec. 162. Section 41-2574, Arizona Revised Statutes, is amended to
35 read:

36 41-2574. Contract performance and payment bonds

37 A. The following bonds or security is required and is binding on
38 the parties to the contract if the value of a construction award exceeds
39 the amount established by section 41-2535:

40 1. A performance bond that is executed and furnished as required
41 under title 34, chapter 2, article 2 or chapter 6, as applicable, in an
42 amount equal to one hundred ~~percent~~ PERCENT of the price specified in the
43 contract conditioned on the faithful performance of the contract in
44 accordance with the plans, specifications and conditions of the contract,
45 except that:

1 (a) For job-order-contracting construction services, the
2 performance bond shall cover the full amount of construction under the
3 job-order-contracting construction services contract, shall not include
4 any design services, preconstruction services, finance services,
5 maintenance services, operations services or other related services
6 included in the contract, may be a single bond for the full term of the
7 contract, a separate bond for each year of a multiyear contract or a
8 separate bond for each job order, as determined by the purchasing agency,
9 and, if a single bond for the full term of the contract or a separate bond
10 for each year of a multiyear contract, shall initially be based on the
11 purchasing agency's reasonable estimate of the amount of construction that
12 the purchasing agency believes is likely to actually be done during the
13 full term of the contract or during the particular year of a multiyear
14 contract, as applicable.

15 (b) For construction-manager-at-risk construction services and
16 design-build construction services, the amount of the performance bond
17 shall be the price of construction and shall not include the cost of any
18 design services, preconstruction services, finance services, maintenance
19 services, operations services and other related services included in the
20 contract. This bond is solely for the protection of this state. The
21 conditions and provisions of the performance bond regarding the surety's
22 obligations shall follow the form required under section 34-222,
23 subsection G or section 34-610, subsection G, as applicable.

24 2. A payment bond that is executed and furnished as required by
25 title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount
26 equal to one hundred ~~per cent~~ PERCENT of the price specified in the
27 contract for the protection of all persons supplying labor or material to
28 the contractor or its subcontractors for the performance of the
29 construction provided for in the contract, except that:

30 (a) For job-order-contracting construction services, the payment
31 bond shall cover the full amount of construction under the
32 job-order-contracting construction services contract, shall not include
33 any design services, preconstruction services, finance services,
34 maintenance services, operations services or other related services
35 included in the contract, may be a single bond for the full term of the
36 contract, a separate bond for each year of a multiyear contract or a
37 separate bond for each job order, as determined by the purchasing agency,
38 and, if a single bond for the full term of the contract or a separate bond
39 for each year of a multiyear contract, shall initially be based on the
40 purchasing agency's reasonable estimate of the amount of construction that
41 the purchasing agency believes is likely to actually be done during the
42 full term of the contract or during the particular year of a multiyear
43 contract, as applicable.

44 (b) For construction-manager-at-risk construction services and
45 design-build construction services, the amount of the payment bond shall

1 be the price of construction and shall not include the cost of any design
2 services, preconstruction services, finance services, maintenance
3 services, operations services or other related services included in the
4 contract. The conditions and provisions of the payment bond regarding the
5 surety's obligations shall follow the form required under section 34-222,
6 subsection F or section 34-610, subsection F, as applicable.

7 B. For design-bid-build construction, the bonds prescribed in
8 subsection A of this section shall be provided on and at the same time as
9 execution of the construction contract. For construction-manager-at-risk,
10 design-build and job-order-contracting construction services, the bonds
11 prescribed in subsection A of this section shall be provided only on and
12 at the same time as execution of a contract or an amendment to a contract
13 that commits the contractor to provide construction for a fixed price,
14 guaranteed maximum price or other fixed amount within a designated time
15 frame.

16 C. If the prime contract or specifications require any persons
17 supplying labor or materials in the prosecution of the work to furnish
18 payment or performance bonds, these bonds shall be executed solely by a
19 surety company or companies holding a certificate of authority to transact
20 surety business in this state issued by the director of the department of
21 insurance AND FINANCIAL INSTITUTIONS pursuant to title 20, chapter 2,
22 article 1. Notwithstanding ~~the provisions of~~ any other statute, the bonds
23 shall not be executed by an individual surety or sureties, even if the
24 requirements of section 7-101 are satisfied.

25 Sec. 163. Section 41-3451, Arizona Revised Statutes, is amended to
26 read:

27 41-3451. Automobile theft authority; powers and duties; fund;
28 audit

29 A. The automobile theft authority is established in the department
30 of insurance and financial institutions consisting of the following
31 members:

32 1. Two police chiefs who are appointed by an Arizona association of
33 chiefs of police, one of whom represents a city or town with a population
34 of one hundred thousand or more persons and one of whom represents a city
35 or town with a population of less than one hundred thousand persons, or
36 their designees.

37 2. Two sheriffs who are appointed by an Arizona sheriffs
38 association, one of whom represents a county with a population of five
39 hundred thousand or more persons and one of whom represents a county with
40 a population of less than five hundred thousand persons, or their
41 designees.

42 3. Two county attorneys who are appointed by the governor, one of
43 whom represents a county with a population of two million or more persons
44 and one of whom represents a county with a population of less than two
45 million persons, or their designees.

1 4. Two employees of insurers who are licensed to write motor
2 vehicle liability insurance in this state and who are appointed by the
3 governor.

4 5. Two members of the general public who are appointed by the
5 governor.

6 6. The assistant director for the motor vehicle division in the
7 department of transportation or the assistant director's designee.

8 7. The director of the department of public safety or the
9 director's designee.

10 B. Members serve staggered four-year terms beginning and ending on
11 the third Monday in January. At the first meeting each year, the members
12 shall select a chairman from among the members. The authority shall meet
13 at the call of the chairman or seven members.

14 C. The authority may:

15 1. Subject to chapter 4, article 4 of this title, hire staff
16 members as necessary.

17 2. Provide work facilities and equipment as necessary.

18 3. Determine the scope of the problem of motor vehicle theft,
19 including particular areas of the state where the problem is greatest.

20 4. Analyze the various methods of combating the problem of motor
21 vehicle theft.

22 5. Develop and implement a plan of operation.

23 6. Develop and implement a financial plan.

24 7. Solicit and accept gifts and grants.

25 8. Report by December 31 of each year to the governor, the
26 president of the senate, the speaker of the house of representatives and
27 the secretary of state on its activities during the preceding fiscal year.

28 D. If the chairman of the authority knows that a potential ground
29 for the removal of a member of the authority exists under this subsection,
30 the chairman shall notify the governor. The governor shall remove the
31 member if the governor finds that any of the following applies:

32 1. The member was not qualified to serve at the time the member was
33 appointed.

34 2. The member does not maintain the member's qualifications to
35 serve.

36 3. The member cannot discharge the member's duties for a
37 substantial part of the term due to illness or other disability.

38 4. The member is absent from more than one-half of the regularly
39 scheduled meetings during a calendar year unless the member's absence is
40 excused by a majority vote of the authority.

41 E. The automobile theft authority fund is established consisting of
42 any public or private monies that the authority may receive. The
43 automobile theft authority shall administer the fund. Subject to
44 legislative appropriation, monies in the fund shall ~~only~~ be used **ONLY** to
45 pay the expenses of the authority and to carry out the purposes of this

1 section. Monies in the fund are exempt from the provisions of sections
2 35-143.01 and 35-190 relating to lapsing of appropriations. On notice
3 from the authority, the state treasurer shall invest and divest monies in
4 the fund as provided by section 35-313, and monies earned from investment
5 shall be credited to the fund. **MONIES APPROPRIATED FROM THE FUND THAT ARE**
6 **INCLUDED IN THE GENERAL APPROPRIATIONS ACT SHALL INCLUDE AT LEAST THE**
7 **FOLLOWING SEPARATE LINE ITEMS:**

- 8 1. **AUTOMOBILE THEFT AUTHORITY OPERATING LUMP SUM APPROPRIATION.**
- 9 2. **ARIZONA VEHICLE THEFT TASK FORCE.**
- 10 3. **LOCAL GRANTS.**

11 F. The authority may accept nonmonetary contributions, including
12 the services of individuals, office and secretarial assistance, mailings,
13 printing, office equipment, facilities and supplies, that are necessary to
14 carry out its functions. The nonmonetary contributions shall not be
15 included in the costs of administration limitation prescribed by
16 subsection H of this section.

17 G. The automobile theft authority shall allocate monies in the fund
18 to public agencies for the purpose of establishing, maintaining and
19 supporting programs that are designed to prevent motor vehicle theft,
20 including:

- 21 1. Financial support to law enforcement and prosecution agencies
22 for programs that are designed to increase the effectiveness of motor
23 vehicle theft prosecution.
- 24 2. Financial support for programs that are designed to educate and
25 assist the public in the prevention of motor vehicle theft.

26 H. **PURSUANT TO SECTION 20-466, SUBSECTION A, THE DIRECTOR OF THE**
27 **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS SHALL APPOINT AN**
28 **INDIVIDUAL TO OPERATE THE AUTOMOBILE THEFT AUTHORITY IN CONJUNCTION WITH**
29 **OPERATING THE FRAUD UNIT ESTABLISHED BY SECTION 20-466.** The costs of
30 administration shall not exceed ten percent of the monies in the fund in
31 any one year so that the greatest possible portion of the monies available
32 to the authority is expended on combating motor vehicle theft.

33 I. Monies expended from the automobile theft authority fund shall
34 be used to supplement, not supplant, other monies that are available for
35 motor vehicle theft prevention.

36 J. Each insurer issuing motor vehicle liability insurance policies
37 in this state shall pay a semiannual fee of \$.50 per vehicle insured under
38 a motor vehicle liability insurance policy issued by the insurer. The fee
39 shall be fully earned and nonrefundable at the time the insurer collects
40 the premium for the motor vehicle liability insurance policy. Each
41 insurer shall transmit the fee on or before January 31 and on or before
42 July 31 of each year to the automobile theft authority for deposit in the
43 automobile theft authority fund. The payment due on or before January 31
44 shall cover vehicles insured under policies that are issued during the
45 period from July 1 through December 31 of the previous year. The payment

1 due on or before July 31 shall cover vehicles insured under policies that
2 are issued during the period from January 1 through June 30 of the same
3 year.

4 K. The authority shall cause an audit to be made of the automobile
5 theft authority fund. The audit shall be conducted by a certified public
6 accountant every two years. The authority shall file a certified copy of
7 the audit with the auditor general immediately. The auditor general may
8 make further audits and examinations as the auditor general deems
9 necessary and may take appropriate action relating to the audit pursuant
10 to chapter 7, article 10.1 of this title.

11 L. Authority members are not eligible to receive compensation but
12 are eligible for reimbursement of expenses pursuant to title 38, chapter
13 4, article 2.

14 M. This section does not apply to vehicles or vehicle combinations
15 with a declared gross weight of more than twenty-six thousand pounds.
16 Motor vehicle liability insurance policies issued in this state for
17 vehicles or vehicle combinations with a declared gross weight of more than
18 twenty-six thousand pounds are exempt from subsection J of this section.

19 Sec. 164. Section 42-1102, Arizona Revised Statutes, is amended to
20 read:

21 42-1102. Taxpayer bonds; definition

22 A. If the department deems it necessary to protect the revenues to
23 be collected under this title and title 43, it may require a person liable
24 for the tax to file a bond to secure the payment of the tax, penalty or
25 interest, which may become due from that person. The bond shall be:

26 1. Issued by a surety company authorized to transact business in
27 this state and approved by the director of THE DEPARTMENT OF insurance AND
28 FINANCIAL INSTITUTIONS of this state as to solvency and responsibility or
29 composed of securities or cash that are deposited with, and kept in the
30 custody of, the department.

31 2. Except as otherwise provided in this section, in the amount
32 ~~which~~ THAT the department prescribes by administrative rule to secure the
33 payment of any tax, penalty or interest, which may become due from the
34 person.

35 B. For the purposes of licenses to sell tobacco products issued
36 under section 42-3401, the amount of the bond required under this section
37 is the greater of ~~five hundred dollars~~ \$500 or four times the average
38 monthly tax liability. For the purposes of determining the bond amount,
39 the average monthly tax liability is equal to the average monthly tax due
40 from the applicant for the preceding six consecutive months. If an
41 applicant does not have a six-month payment history, the bond amount is a
42 minimum of ~~five hundred dollars~~ \$500. If an applicant provides a surety
43 bond and the bond lapses, the applicant shall deposit with the department
44 cash or other security in an amount equal to the lapsed surety bond within
45 five business days after the applicant's receipt of written notification

1 by the department. The bond amount may be increased or decreased as
2 necessary based on any reason listed in subsection D of this section or a
3 change in the applicant's previous filing period, filing compliance record
4 or payment history. If the bond amount is increased above the amount
5 computed under this subsection, the applicant may request a hearing
6 pursuant to subsection C of this section to show why the order increasing
7 the bond amount is in error.

8 C. If the department determines that a person is to file ~~such~~ a
9 bond it shall notify ~~him~~ THE PERSON to that effect, specifying the amount
10 of the bond required. The person shall file the bond within five days
11 after the giving of notice unless within that time ~~he~~ THE PERSON requests
12 in writing a hearing before the department at which time the department
13 shall determine the necessity, propriety and amount of the bond. The
14 determination is final unless within fifteen days after the giving of
15 notice of the determination the person appeals the determination to the
16 state board of tax appeals. The board shall decide on the appeal within
17 fifteen days of its receipt. The bond, at any time without notice, may be
18 applied to any tax, penalties or interest due, and for that purpose the
19 securities may be sold at public or private sale without notice to the
20 depositor.

21 D. For purposes of this section a bond may be required if:

22 1. After investigation of financial status, the department
23 determines that an applicant for a new license would be unable to timely
24 remit amounts due.

25 2. An applicant for a new license held a license for a prior
26 business, and the remittance record for the prior business falls within
27 one of the conditions in paragraph 5 OF THIS SUBSECTION.

28 3. The department experienced collection problems while the
29 applicant was engaged in business under a prior license.

30 4. The applicant is substantially similar to a person who would
31 have been required to post a bond under paragraph 5 of this subsection or
32 the person had a previous license that was revoked. An applicant is
33 substantially similar if it is owned or controlled by persons who owned or
34 controlled a previous licensee.

35 5. An existing licensee has had two or more delinquencies in
36 remitting tax during the preceding twenty-four months if filing on a
37 quarterly or less frequent basis or four or more delinquencies during the
38 preceding twenty-four months if filing on a monthly or more frequent
39 basis.

40 E. If a licensee who is required to post a bond or security
41 maintains a good filing and payment record for a period of two years, the
42 licensee may request that the department waive the continued bond or
43 security requirement.

1 F. ~~It~~ FOR THE PURPOSES OF this section, "person" includes a firm,
2 partnership, joint venture, association, corporation, sole proprietorship
3 or any other business or governmental entity subject to a tax administered
4 by this article but does not include an individual subject to individual
5 income tax.

6 Sec. 165. Section 43-1183, Arizona Revised Statutes, is amended to
7 read:

8 43-1183. Credit for contributions to school tuition
9 organization

10 A. Beginning from and after June 30, 2006, a credit is allowed
11 against the taxes imposed by this title for the amount of voluntary cash
12 contributions made by the taxpayer during the taxable year to a school
13 tuition organization that is certified pursuant to chapter 15 of this
14 title at the time of donation.

15 B. The amount of the credit is the total amount of the taxpayer's
16 contributions for the taxable year under subsection A of this section and
17 is preapproved by the department of revenue pursuant to subsection D of
18 this section.

19 C. The department of revenue:

20 1. Shall not allow tax credits under this section and section
21 20-224.06 that exceed in the aggregate a combined total of \$10,000,000 in
22 any fiscal year. Beginning in fiscal year 2007-2008, the aggregate dollar
23 amount of the tax credit cap from the previous fiscal year shall be
24 annually increased by twenty percent. Beginning in fiscal year 2020-2021,
25 the aggregate dollar amount of the tax credit cap from the previous fiscal
26 year shall be increased as follows:

27 (a) For fiscal year 2020-2021, BY fifteen percent.

28 (b) For fiscal year 2021-2022, BY ten percent.

29 (c) For fiscal year 2022-2023, BY five percent.

30 (d) For fiscal year 2023-2024 and each fiscal year thereafter, by
31 the greater of:

32 (i) The percentage of the annual increase, if any, in the
33 metropolitan Phoenix consumer price index published by the United States
34 DEPARTMENT OF LABOR bureau of labor statistics.

35 (ii) Two percent.

36 2. Shall preapprove tax credits under this section and section
37 20-224.06 subject to subsection D of this section.

38 3. Shall allow the tax credits under this section and section
39 20-224.06 on a first-come, first-served basis.

40 D. For the purposes of subsection C, paragraph 2 of this section,
41 before making a contribution to a school tuition organization, the
42 taxpayer under this title or title 20 must notify the school tuition
43 organization of the total amount of contributions that the taxpayer
44 intends to make to the school tuition organization. Before accepting the
45 contribution, the school tuition organization shall request preapproval

1 from the department of revenue for the taxpayer's intended contribution
2 amount. The department of revenue shall preapprove or deny the requested
3 amount within twenty days after receiving the request from the school
4 tuition organization. If the department of revenue preapproves the
5 request, the school tuition organization shall immediately notify the
6 taxpayer, and the department of insurance AND FINANCIAL INSTITUTIONS in
7 the case of a credit under section 20-224.06, that the requested amount
8 was preapproved by the department of revenue. In order to receive a tax
9 credit under this subsection, the taxpayer shall make the contribution to
10 the school tuition organization within twenty days after receiving notice
11 from the school tuition organization that the requested amount was
12 preapproved. If the school tuition organization does not receive the
13 preapproved contribution from the taxpayer within the required twenty
14 days, the school tuition organization shall immediately notify the
15 department of revenue, and the department of insurance AND FINANCIAL
16 INSTITUTIONS in the case of a credit under section 20-224.06, and the
17 department of revenue shall no longer include this preapproved
18 contribution amount when calculating the limit prescribed in subsection C,
19 paragraph 1 of this section.

20 E. If the allowable tax credit exceeds the taxes otherwise due
21 under this title on the claimant's income, or if there are no taxes due
22 under this title, the taxpayer may carry the amount of the claim not used
23 to offset the taxes under this title forward for not more than five
24 consecutive taxable years' income tax liability.

25 F. Co-owners of a business, including corporate partners in a
26 partnership and stockholders of an S corporation as defined in section
27 1361 of the internal revenue code, may each claim only the pro rata share
28 of the credit allowed under this section based on the ownership interest.
29 The total of the credits allowed all such owners may not exceed the amount
30 that would have been allowed a sole owner.

31 G. The credit allowed by this section is in lieu of any deduction
32 pursuant to section 170 of the internal revenue code and taken for state
33 tax purposes.

34 H. A taxpayer shall not claim a credit under this section and also
35 under section 43-1184 with respect to the same contribution.

36 I. The tax credit is not allowed if the taxpayer designates the
37 taxpayer's contribution to the school tuition organization for the direct
38 benefit of any specific student.

39 J. The department of revenue, with the cooperation of the
40 department of insurance AND FINANCIAL INSTITUTIONS, shall adopt rules and
41 publish and prescribe forms and procedures necessary for the
42 administration of this section.

1 Sec. 166. Section 43-1504, Arizona Revised Statutes, is amended to
2 read:

3 43-1504. Special provisions; corporate donations for
4 low-income scholarships; rules

5 A. A school tuition organization that receives contributions from a
6 corporation for the purposes of section 20-224.06 or 43-1183 must use at
7 least ninety ~~per cent~~ PERCENT of those contributions to provide
8 educational scholarships or tuition grants only to children whose family
9 income does not exceed one hundred eighty-five ~~per cent~~ PERCENT of the
10 income limit required to qualify a child for reduced price lunches under
11 the national school lunch and child nutrition acts (42 United States Code
12 sections 1751 through 1785) and to whom any of the following applies:

13 1. Attended a governmental primary or secondary school as a
14 full-time student as defined in section 15-901 or attended a preschool
15 program that offers services to students with disabilities at a
16 governmental school for at least ninety days of the prior fiscal year or
17 one full semester and transferred from a governmental school to a
18 qualified school.

19 2. Enroll in a qualified school in a kindergarten program or a
20 preschool program that offers services to students with disabilities.

21 3. Is the dependent of a member of the armed forces of the United
22 States who is stationed in this state pursuant to military orders.

23 4. Received an educational scholarship or tuition grant under
24 paragraph 1, 2 or 3 of this subsection or chapter 16, article 1 of this
25 title if the children continue to attend a qualified school in a
26 subsequent year.

27 B. A child is eligible to receive an educational scholarship or
28 tuition grant under subsection A of this section if the child meets the
29 criteria to receive a reduced price lunch but does not actually claim that
30 benefit.

31 C. In 2006, a school tuition organization shall not issue an
32 educational scholarship or a tuition grant for the purposes of section
33 20-224.06 or 43-1183 in an amount that exceeds ~~four thousand two hundred~~
34 ~~dollars~~ \$4,200 for students in a ~~disabled preschool or~~ kindergarten
35 program, **A PRESCHOOL PROGRAM THAT OFFERS SERVICES TO STUDENTS WITH**
36 **DISABILITIES** or grades one through eight or ~~five thousand five hundred~~
37 ~~dollars~~ \$5,500 for students in grades nine through twelve. In each year
38 after 2006, the limitation amount for a scholarship or a grant under this
39 subsection shall be increased by ~~one hundred dollars~~ \$100.

40 D. A school tuition organization shall require that student
41 beneficiaries use the educational scholarships or tuition grants on a
42 full-time basis. If a child leaves the school before completing an entire
43 school year, the school shall refund a prorated amount of the educational
44 scholarship or tuition grant to the school tuition organization that
45 issued the scholarship or grant. The school tuition organization shall

1 allocate any refunds it receives under this subsection for educational
2 scholarships or tuition grants.

3 E. Students who receive an educational scholarship or tuition grant
4 under this section shall be allowed to attend any qualified school of
5 their parents' choice.

6 F. The department of revenue, with the cooperation of the
7 department of insurance AND FINANCIAL INSTITUTIONS, shall adopt rules and
8 publish and prescribe forms and procedures necessary for the
9 administration of this section.

10 Sec. 167. Section 44-288, Arizona Revised Statutes, is amended to
11 read:

12 44-288. Insurance provisions of contract

13 A. The amount, if any, included for insurance, which may be
14 purchased by the holder of the retail installment contract, shall not
15 exceed the applicable premiums chargeable in accordance with the rates
16 filed with the director of THE DEPARTMENT OF insurance ~~of the Arizona~~
17 ~~corporation commission~~ AND FINANCIAL INSTITUTIONS.

18 B. If dual interest insurance on the motor vehicle is purchased by
19 the seller or seller's assignee, as the case may be, it shall within
20 thirty days after execution of the retail installment contract, ~~send or~~
21 ~~cause to be sent to the buyer a policy, or policies, or certificates of~~
22 insurance written by an insurance company authorized to do business in
23 this state, clearly setting forth the amount of the premium, the kind or
24 kinds of insurance, the coverages and all the terms, options, limitations,
25 restrictions and conditions of the contract or contracts of insurance.
26 The buyer ~~shall have the privilege~~ at the time of execution of the
27 contract ~~of purchasing~~ MAY PURCHASE such insurance from an agent or broker
28 of ~~his~~ THE BUYER'S own selection and ~~of selecting~~ MAY SELECT an insurance
29 company acceptable to the holder, but in such case the inclusion of the
30 insurance premium in the retail installment contract shall be optional
31 with the seller.

32 C. If any insurance is canceled, or the premium adjusted, any
33 refund of the insurance premium received by the holder shall be credited
34 to the contract except to the extent applied toward payment for similar
35 insurance protecting the interests of the buyer and the holder or either
36 of them.

37 Sec. 168. Section 44-1273, Arizona Revised Statutes, is amended to
38 read:

39 44-1273. Limited exemptions

40 A. The following sellers are not required to register and, except
41 for section 44-1278, subsection B and section 44-1282, are exempt from
42 this article:

43 1. A person acting within the scope of a license issued under
44 title 20.

- 1 2. A person who is either a:
- 2 (a) Charitable organization as defined in section 44-6551, this
- 3 state or any county or municipality of this state or its agencies.
- 4 (b) Political party, candidate for federal, state or local office
- 5 or campaign committee required to file financial information with federal,
- 6 state or local election agencies.
- 7 3. A person making telephone solicitations without the intent to
- 8 complete and who does not complete the sales presentation during the
- 9 telephone solicitation but completes the sales presentation at a later
- 10 face-to-face meeting between the solicitor and the consumer provided that
- 11 the later face-to-face meeting is not for the purpose of collecting the
- 12 payment or delivering any item purchased.
- 13 4. A person who after making a telephone contact with a consumer
- 14 sends the consumer descriptive literature and does not require payment
- 15 before the consumer's review of the descriptive literature and the person
- 16 is not conducting a solicitation involving any of the following:
- 17 (a) The sale of an investment or an opportunity for an investment
- 18 that is not registered with any state or federal authority.
- 19 (b) A prize promotion or premium.
- 20 (c) A recovery service.
- 21 (d) A business opportunity or merchandise related to a business
- 22 opportunity.
- 23 5. A person or solicitor for a person who operates a retail
- 24 business establishment under the same name as the name used in the
- 25 solicitation of sales by telephone, if on a continuing basis all of the
- 26 following apply:
- 27 (a) Merchandise is displayed and offered for sale or services are
- 28 offered for sale and provided at the person's business establishment.
- 29 (b) At least fifty percent of the person's business involves the
- 30 buyer obtaining the merchandise at the person's business establishment.
- 31 (c) The person holds a transaction privilege tax license pursuant
- 32 to title 42, chapter 5.
- 33 6. A person or solicitor for a person soliciting another business
- 34 if all of the following apply:
- 35 (a) At least fifty percent of the person's dollar volume consists
- 36 of repeat sales to existing businesses.
- 37 (b) The person does not conduct a prize promotion that requires or
- 38 implies that to win a consumer must pay money or purchase merchandise.
- 39 (c) ~~Neither~~ The person ~~nor~~ HAS NOT, OR any of the person's
- 40 principals ~~has~~ HAVE NOT, within twenty years been convicted in any state
- 41 of a felony or crime of moral turpitude, breach of trust, fraud, theft,
- 42 dishonesty or violation of telephone solicitation laws, been subject to a
- 43 final judgment in a civil action involving fraud, deceit or
- 44 misrepresentation or been subject to an administrative order involving
- 45 fraud, deceit, misrepresentation or any violation of telephone

1 solicitations laws of any agency of this state, another state, the federal
2 government, a territory of the United States or another country.

3 (d) The person is not selling a business opportunity or merchandise
4 related to a business opportunity.

5 7. A person or solicitor on behalf of a person who solicits sales
6 by periodically publishing and delivering a catalog to consumers if all of
7 the following apply:

8 (a) The catalog contains a written description or illustration of
9 each item offered for sale and the price of each item offered for sale.

10 (b) The catalog includes the business address or home office
11 address of the person.

12 (c) The catalog includes at least twenty-four pages of written
13 material and illustrations.

14 (d) The catalog is distributed in more than one state and has an
15 annual circulation by mail of at least two hundred fifty thousand.

16 B. The following sellers shall file a limited registration
17 statement pursuant to section 44-1272.01 and, except for sections 44-1278
18 and 44-1282, are exempt from this article:

19 1. A person acting within the scope of a license issued under title
20 6 or 32 or by the corporation commission pursuant to this title, except
21 persons licensed under title 6, chapter 13.

22 2. If soliciting within the scope of the license, any licensed
23 securities, commodities or investments broker or dealer or investment
24 advisor or any licensed associated person of a securities, commodities or
25 investments broker or dealer or investment advisor.

26 3. An issuer or a subsidiary of an issuer that has a class of
27 securities that is subject to section 12 of the securities exchange act of
28 1934 (15 United States Code sections 78a through 78mm) and that is either
29 registered or exempt from registration under paragraph (A), (B), (C), (E),
30 (F), (G) or (H) or subsection (g)(2) of section 12 of the act. A
31 subsidiary of an issuer that qualifies for exemption under this paragraph
32 is not exempt unless at least sixty percent of the voting power of the
33 subsidiary's shares is owned by the qualifying issuer or issuers.

34 4. A person certificated or regulated by the corporation commission
35 pursuant to title 40, chapter 2 or a subsidiary of that person or a
36 federal communications commission licensed cellular telephone company or
37 radio telecommunication services provider.

38 5. A person making telephone solicitations for a newspaper of
39 general circulation, a magazine or a licensed cable television system or
40 video service provider.

41 6. An issuer or subsidiary of an issuer that is subject to
42 registration under chapter 12, article 6 or 7 of this title or that is
43 exempt from registration under section 44-1843, subsection A, paragraph 1,
44 2, 3, 4, 5, 7 or 9.

1 7. A person making telephone solicitations for the sale or purchase
2 of books, recordings, videocassettes and similar goods through a
3 membership group or club regulated by the federal trade commission or
4 through a contractual plan or arrangement such as a continuity plan,
5 subscription arrangement, series arrangement or single purchase under
6 which the seller ships goods to a consumer who has consented in advance to
7 receive those goods and the recipient is given the opportunity to review
8 goods for at least seven days and to receive a full refund for return of
9 undamaged goods.

10 8. A person or solicitor for a person when soliciting previous
11 customers, if all of the following apply:

12 (a) The person is not offering to sell or selling a security that
13 is not registered with any state or federal authority.

14 (b) The person makes the solicitation under the same name as the
15 name used to sell merchandise to the customer previously.

16 (c) The person does not operate a recovery service.

17 (d) The person does not conduct a prize promotion that requires a
18 consumer to, or implies that to win a consumer must, pay money or purchase
19 merchandise.

20 (e) The person has not, or any of its principals have not, within
21 twenty years been convicted in any state of a felony or a crime of moral
22 turpitude, breach of trust, fraud, theft, dishonesty or a violation of
23 telephone solicitation laws, been subject to a final judgment in a civil
24 action involving fraud, deceit or misrepresentation or been subject to an
25 administrative order involving fraud, deceit, misrepresentation or any
26 violation of telephone solicitation laws of any agency of this state,
27 another state, the federal government, a territory of the United States or
28 another country.

29 9. A person making telephone solicitations exclusively for the
30 purpose of the sale of telephone answering services to be provided by that
31 person or that person's employer.

32 10. Any bank holding company, bank, financial institution, trust
33 company, savings and loan association, credit union, mortgage banker or
34 broker, consumer lender or insurer that is licensed or supervised by an
35 official or agency of this state, any other state or the United States,
36 including any parent, subsidiary or affiliate of these institutions.

37 11. A person providing telemarketing sales service continuously for
38 at least five years under the same ownership and control that derives
39 seventy-five percent of its gross telemarketing sales revenues from
40 contracts with persons exempted by this section. A seller using an exempt
41 telemarketing sales service is not exempt unless otherwise qualifying for
42 an exemption under this section.

43 C. On request by the secretary of state, the director of the
44 department of insurance **AND FINANCIAL INSTITUTIONS** shall provide a current
45 list in a mutually acceptable electronic format to the secretary of state

1 of the requested licensees described in subsection A, paragraph 1 of this
2 section that includes all of the following information:

3 1. The true legal name of the seller.

4 2. All of the names under which the seller is doing business or
5 intends to do business.

6 3. The complete street address of the physical location of the
7 principal place of business of the seller and the telephone number for the
8 location.

9 4. The name and address of the seller's agent who is authorized to
10 receive service of process in this state.

11 D. In any civil proceeding alleging a violation of this article,
12 the burden of proving an exemption or an exception from a definition is on
13 the person claiming the exemption or exception. In any criminal
14 proceeding in which a violation of this article is alleged, the burden of
15 producing evidence to support a defense based on an exemption or an
16 exception from a definition is on the person claiming the exemption or
17 exception.

18 E. Any person or solicitor exempted in part from this article by
19 this section shall not make or submit a charge to a consumer's credit card
20 account or a consumer's checking, savings, share or similar account unless
21 any of the following applies:

22 1. The person provides that the consumer may receive a full refund
23 for the return of undamaged and unused goods or a cancellation of services
24 by providing notice to the person within seven days after the date that
25 the consumer receives the merchandise and the person processes:

26 (a) A full refund within thirty days after the date that the person
27 receives the returned merchandise from the consumer.

28 (b) A full refund within thirty days after the purchaser of
29 services cancels an order for the services or a pro rata refund for any
30 services not yet performed for the consumer.

31 2. The person provides the consumer with a signed copy of a written
32 contract that includes the person's name, address and business telephone
33 number and that fully describes the merchandise offered by the person, the
34 total price to be charged by the person and any terms or conditions
35 affecting the sale.

36 3. The person is either a:

37 (a) Charitable organization as defined in section 44-6551, this
38 state or any county or municipality of this state or its agencies.

39 (b) Political party, candidate for federal, state or local office
40 or campaign committee required to file financial information with federal,
41 state or local election agencies.

1 Sec. 169. Section 44-3152, Arizona Revised Statutes, is amended to
2 read:

3 44-3152. Exemption of certain investment advisers and
4 investment adviser representatives; private fund
5 adviser exemption; definitions

6 A. An investment adviser is not required to be licensed or make a
7 notice filing under this chapter if that investment adviser does not have
8 a place of business in this state and either:

9 1. Its only clients in this state are investment companies, other
10 investment advisers, dealers, depository institutions, insurance
11 companies, employee benefit plans with assets of not less than ~~one million~~
12 ~~dollars~~ \$1,000,000 and governmental agencies or instrumentalities, whether
13 acting for themselves or as trustees with investment control.

14 2. During the preceding twelve months it had fewer than six clients
15 who are residents of this state other than those clients specified in
16 paragraph 1 of this subsection.

17 B. An investment adviser is not required to be licensed or make a
18 notice filing under this chapter if that investment adviser is a private
19 fund adviser ~~who~~ THAT:

20 1. Satisfies each of the following conditions:

21 (a) The private fund adviser or any of its advisory affiliates are
22 not subject to an event that would disqualify an issuer under SEC rule 262
23 of regulation A (17 Code of Federal Regulations section 230.262).

24 (b) The private fund adviser to a qualifying private fund that is
25 not a venture capital company files with the commission each report and
26 each report amendment that the investment adviser is required to file with
27 the SEC pursuant to SEC rule 204-4 (17 Code of Federal Regulations section
28 275.204-4). The private fund adviser shall electronically file the
29 reports with the commission through the IARD. A report is deemed filed
30 when the report and the fee required by subdivision (c) of this paragraph
31 are accepted by the IARD on this state's behalf.

32 (c) The private fund adviser to a qualifying private fund that is
33 not a venture capital company has paid a fee of ~~one hundred twenty-five~~
34 ~~dollars~~ \$125 to the commission for each calendar year in which it relies
35 on the exemption provided by this subsection.

36 2. Except as provided in subsection H of this section, advises at
37 least one retail buyer fund and ~~who~~ THAT complies with paragraph 1 of this
38 subsection and all of the following requirements with respect to each
39 retail buyer fund advised by the private fund adviser:

40 (a) The private fund adviser only advises those retail buyer funds
41 whose outstanding securities, other than short-term paper, are
42 beneficially owned entirely by either:

43 (i) Any person ~~who~~ THAT, at the time that the securities are sold,
44 the private fund adviser reasonably believes to be an accredited investor
45 as defined in SEC rule 501(a) of regulation D (17 Code of Federal

1 Regulations section 230.501(a)) or ~~who~~ THAT is a manager, director,
2 officer or employee of the private fund adviser.

3 (ii) Any person that obtains the security through a transfer not
4 involving a sale of that security.

5 (b) At or before the time of purchase of any security of a retail
6 buyer fund, the private fund adviser discloses in writing to the purchaser
7 of the security both of the following:

8 (i) All services, if any, to be provided by the investment adviser
9 to a purchaser of securities of the retail buyer fund and to the retail
10 buyer fund itself.

11 (ii) All duties, if any, that the investment adviser owes to a
12 purchaser of securities of the retail buyer fund and to the retail buyer
13 fund itself.

14 (c) The private fund adviser obtains on an annual basis audited
15 financial statements of each retail buyer fund that is advised by the
16 private fund adviser and delivers a copy of the audited financial
17 statements to each purchaser of securities of the retail buyer fund. This
18 subdivision does not apply to a limited retail buyer fund with respect to
19 any annual period for which each owner of outstanding securities of the
20 limited retail buyer fund has waived the application of this subdivision
21 after the beginning of the annual period to which the waiver applies.

22 C. If a private fund adviser is registered with the SEC, the
23 private fund adviser is not eligible for the exemption provided by
24 subsection B of this section.

25 D. A person is not required to be licensed or to make a notice
26 filing under this chapter if the person is employed by or associated with
27 an investment adviser that is not required to be licensed or make a notice
28 filing under this chapter pursuant to subsection B of this section and the
29 person does not otherwise act as an investment adviser representative.

30 E. An investment adviser ~~who~~ THAT becomes ineligible for the
31 exemption provided by subsection B of this section must comply with all
32 applicable laws and rules requiring licensing or notice filing within
33 ninety days after the date that the investment adviser's eligibility for
34 the exemption ceases.

35 F. Subsection B, paragraph 1, subdivision (a) of this section does
36 not apply on a showing of good cause and without prejudice to any other
37 commission action if the commission determines that it is not necessary
38 under the circumstances that an exemption be denied.

39 G. Compliance with subsection B, paragraph 2, subdivision (b) of
40 this section does not relieve a private fund adviser of any disclosure
41 obligation under any other state or federal law.

42 H. An investment adviser to a retail buyer fund that existed before
43 September 1, 2016 and that does not satisfy the conditions prescribed by
44 subsection B, paragraph 2, subdivision (a) of this section on September 1,
45 2016 may be eligible for the exemption prescribed by subsection B,

1 paragraph 1 of this section if all of the following conditions are
2 satisfied:

3 1. Beginning on September 1, 2016, the retail buyer fund ceases to
4 sell securities to persons other than the persons described in subsection
5 B, paragraph 2, subdivision (a), item (i) of this section.

6 2. The investment adviser discloses in writing the information
7 described in subsection B, paragraph 2, subdivision (b) of this section to
8 each purchaser of securities of the retail buyer fund by December 1, 2016.

9 3. For every fiscal year ending after August 31, 2016, the
10 investment adviser delivers audited financial statements to each owner of
11 securities of the retail buyer fund as required by subsection B, paragraph
12 2, subdivision (c) of this section.

13 I. If the commission determines that it is not necessary for any
14 investment adviser or class of investment advisers or investment adviser
15 representative or class of investment adviser representatives to be
16 licensed to protect the public interest because of the special
17 characteristics of the securities or transactions in which the investment
18 adviser or investment adviser representative may be involved, the
19 commission may by rule or order provide limited licensure requirements or
20 exempt these persons from licensure under this article.

21 J. A dealer or salesman that is registered with the commission
22 pursuant to chapter 12, article 9 of this title is not required to be
23 licensed, make a notice filing or comply with reporting requirements under
24 this article.

25 K. The authorized use of the designation "chartered financial
26 consultant" by an insurance producer licensed by the department of
27 insurance AND FINANCIAL INSTITUTIONS does not in and of itself constitute
28 holding oneself out to the public as an investment adviser or require a
29 license under this article.

30 L. Subsection B of this section does not exempt an investment
31 adviser ~~who~~ THAT has custody of any securities or funds of any client from
32 complying with commission rules relating to the custody of client funds or
33 securities by investment advisers.

34 M. For the purposes of this section:

35 1. "Advisory affiliate" has the same meaning prescribed in the
36 glossary of terms to form ADV, which is the uniform application for
37 investment adviser registration (17 Code of Federal Regulations section
38 279.1) or its successor form.

39 2. "Affiliated person" means a person that controls, is controlled
40 by or is under common control with the other specified persons.

41 3. "Control" means possessing, directly or indirectly, the power to
42 direct or cause the direction of management and policies.

43 4. "Derivative investment" means an acquisition of securities by a
44 venture capital company in the ordinary course of its business in exchange
45 for an existing venture capital investment, either on the exercise or

1 conversion of the existing venture capital investment or in connection
2 with a public offering of securities or the merger or reorganization of
3 the operating company to which the existing venture capital investment
4 relates.

5 5. "Entity" means a partnership, corporation, trust, limited
6 liability company, limited liability partnership, sole proprietorship or
7 other organization.

8 6. "Family member":

9 (a) Means a lineal descendant, including a child related by
10 adoption or blood and an individual who was a minor when another family
11 member became the individual's legal guardian, of a common ancestor who is
12 living or deceased if the common ancestor is not more than ten generations
13 removed from the youngest generation of family members.

14 (b) Includes:

15 (i) A spouse of the lineal descendant described in subdivision (a)
16 of this paragraph.

17 (ii) A stepchild and the stepchild's spouse.

18 (iii) A foster child and the foster child's spouse.

19 7. "Former family member" means a spouse or stepchild who was a
20 family member but who is no longer a family member.

21 8. "Limited retail buyer fund" means a retail buyer fund that
22 satisfies all of the following conditions:

23 (a) Has no more than, or the private fund adviser reasonably
24 believes that the fund has no more than, fifteen purchasers of securities,
25 individually or collectively with all other limited retail buyer funds,
26 that are advised by the private fund adviser or an affiliated person. For
27 the purposes of calculating the number of purchasers under this
28 subdivision, a purchaser that is an entity shall be counted as the number
29 of individuals who are directly or indirectly beneficial owners in the
30 entity, except that all individuals who are family members or former
31 family members shall be counted as a single purchaser.

32 (b) When the securities are sold the private fund adviser
33 reasonably believes that each purchaser of securities from the limited
34 retail buyer fund that is not a qualified purchaser, as defined in section
35 2(a)(51) of the investment company act of 1940, is a qualified client as
36 defined in 17 Code of Federal Regulations section 275.205-3.

37 (c) The private fund adviser and any affiliated person do not hold
38 themselves out to the public as an investment adviser and the private fund
39 adviser and any affiliated person do not act as an investment adviser to
40 any investment company registered under the investment company act of
41 1940.

42 (d) The private fund adviser and any affiliated person have not
43 offered or sold any securities of the limited retail buyer fund by any
44 form of general solicitation or general advertising.

1 9. "Management rights" means the right, obtained contractually or
2 through ownership of securities, either through one person alone or in
3 conjunction with one or more persons acting together or through an
4 affiliated person, to substantially participate in, substantially
5 influence the conduct of or provide or offer to provide significant
6 guidance and counsel concerning the management, operations or business
7 objectives of the operating company in which the venture capital
8 investment is made.

9 10. "Operating company":

10 (a) Means an entity that is primarily engaged, directly or through
11 a ~~majority-owned~~ MAJORITY-OWNED subsidiary, in the production or sale,
12 including any research or development, of a product or service other than
13 the management or investment of capital.

14 (b) Does not include an individual or sole proprietorship.

15 11. "Person" means an individual or an entity.

16 12. "Private fund adviser" means an investment adviser ~~who~~ THAT
17 provides advice solely to one or more qualifying private funds.

18 13. "Qualifying private fund" means an issuer that qualifies for
19 the exclusion from the definition of an investment company under section
20 3(c)(1), 3(c)(5) or 3(c)(7) of the investment company act of 1940.

21 14. "Retail buyer fund" means a qualifying private fund that is
22 neither a venture capital company nor a qualifying private fund that
23 qualifies for the exclusion from the definition of an investment company
24 under section 3(c)(7) of the investment company act of 1940.

25 15. "Venture capital company" means an entity that satisfies at
26 least one of the following conditions:

27 (a) The entity is a venture capital fund as defined in SEC rule
28 203(l)-1 (17 Code of Federal Regulations section 275.203(l)-1).

29 (b) The entity is a venture capital operating company as defined in
30 SEC rule 2510.3-101(d) (29 Code of Federal Regulations section
31 2510.3-101(d)).

32 (c) On at least one occasion during the annual period commencing
33 with the date of its initial capitalization, and on at least one occasion
34 during each annual period thereafter, at least fifty percent of its assets
35 other than short-term investments pending long-term commitment or
36 distribution to investors, valued at cost, are venture capital investments
37 or derivative investments.

38 16. "Venture capital investment" means an acquisition of securities
39 of an operating company as to which the investment adviser, the entity
40 advised by the investment adviser or an affiliated person of either has or
41 obtains management rights.

42 Sec. 170. Section 44-6951, Arizona Revised Statutes, is amended to
43 read:

44 44-6951. Definitions

45 In this chapter, unless the context otherwise requires:

1 the work, which may be extended from time to time by the superintendent
2 with the consent of the governing body.

3 C. The governing body may prescribe in the form of the
4 contract, ~~an amount, not as a forfeit or penalty,~~ but as liquidated
5 damages, per calendar day to be paid by the contractor if the contractor
6 fails to complete the work within the time fixed in the contract or as the
7 time for completion of the work may have been extended by the
8 superintendent with the consent of the governing body. ~~Permitting~~
9 ~~ALLOWING~~ the contractor to finish the work or any part of the work after
10 the time fixed for its completion, or after the date to which the time
11 fixed for its completion may have been extended, does not operate as a
12 waiver by the governing body or the superintendent of any of their rights
13 under the contract or subsections E and F of this section. Any liquidated
14 damages received shall be used to decrease the amounts assessed. Any
15 assessments that are affected by a decrease in the contract amount as a
16 result of the imposition of liquidated damages may be adjusted pursuant to
17 section 48-590, subsection F, except that where the ~~city~~ MUNICIPALITY has
18 contributed its funds to the construction of the improvements, the
19 liquidated damages so received shall be prorated between the ~~city~~
20 MUNICIPALITY and the properties assessed.

21 D. The work shall be done under the direction of the
22 superintendent, but the governing body may prescribe rules and regulations
23 relating to the supervision of the work. The superintendent may appoint a
24 suitable person to take charge of and superintend the construction of an
25 improvement who shall see that the contract is fulfilled. The governing
26 body shall fix the compensation to be allowed such person.

27 E. If the work is not prosecuted with diligence, the governing
28 body, after a hearing ~~upon~~ ON notice served ~~upon~~ ON the contractor and ~~his~~
29 THE CONTRACTOR'S bondsmen, may prescribe such terms and conditions as it
30 deems proper before ~~permitting~~ ~~ALLOWING~~ the contractor to continue with
31 the work.

32 F. If the governing body finds that the contractor is unable to
33 continue with the work or to perform the work according to the contract,
34 the governing body shall hold the contractor in default and make demand
35 ~~upon~~ ON the surety to act in accordance with the contract and terms and
36 conditions of the performance bond. Should the surety fail to act within
37 sixty days from written notice, the governing body may order that bids be
38 received from other contractors to complete the work. After receiving
39 bids, the governing body may award the contract to the lowest responsible
40 bidder. If, after receiving the new bids, the cost of completion exceeds
41 the monies or bonds available for payment, the governing body shall make a
42 demand ~~upon~~ ON the defaulting contractor's ~~bondsman~~ SURETY for payment of
43 the differential within twenty days ~~of~~ AFTER the mailing of the notice.
44 If the ~~bondsman~~ SURETY is represented by an attorney-in-fact, the demand
45 may be served ~~upon~~ ON the attorney-in-fact or at the ~~bondsman's~~ SURETY'S

1 principal office within this state. If the ~~bondsman~~ SURETY has no
 2 attorney-in-fact and no principal office within this state, the demand
 3 shall be served ~~upon~~ ON the director of THE DEPARTMENT OF insurance AND
 4 FINANCIAL INSTITUTIONS. The demand may not exceed the penal sum of the
 5 performance bond. Monies collected from the ~~bondsman~~ SURETY shall be used
 6 to pay the added costs of the work. Any difference between the actual
 7 costs of the work and the amount assessed shall be advanced by the
 8 municipality, which shall use its contingency funds or any other available
 9 funds to make payments to the new contractor. The municipality shall
 10 reimburse itself from the amounts paid by the former contractor or ~~his~~
 11 ~~bondsman~~ THE FORMER CONTRACTOR'S SURETY or from assessments and bonds when
 12 funds become available. All additional costs of the work not received
 13 from the original contractor's ~~bondsman~~ SURETY shall ultimately be
 14 assessed against the benefitting parcels of property.

15 G. If the contractor is not to be paid pursuant to section 48-597,
 16 subsection G or section 48-618, subsection F, ~~upon~~ ON completion of the
 17 work the contractor shall be entitled to the issuance and delivery of the
 18 assessment as provided in this article.

19 Sec. 172. Section 48-924, Arizona Revised Statutes, is amended to
 20 read:

21 48-924. Form and execution of contract; supervision of
 22 performance; default; new bids; delivery of
 23 assessment

24 A. The superintendent of streets shall make all written contracts
 25 and receive all bonds authorized by this article. The contract shall
 26 require the contractor to timely repair any defects in the work determined
 27 to exist within one year after completion of the contract. The contracts
 28 shall specify a reasonable time for the completion of the improvement.

29 B. The board of directors may prescribe a form of contract not
 30 inconsistent with this article and fix a reasonable time for the
 31 completion of the work, which may be extended from time to time by the
 32 superintendent.

33 C. The work shall be done pursuant to contract and under the
 34 direction of the superintendent, but the board of directors may prescribe
 35 rules and regulations relating to the supervision of the work. The
 36 superintendent may appoint a suitable person to take charge of and
 37 superintend the construction of an improvement who shall see that the
 38 contract is fulfilled. The board of directors shall fix the compensation
 39 to be allowed such person.

40 D. If the work is not prosecuted with diligence, the board of
 41 directors, after a hearing ~~upon~~ ON notice mailed or personally served ~~upon~~
 42 ON the contractor, the contractor's surety and all persons shown as the
 43 owners of property affected by the assessments as their names and
 44 addresses appear on the last certified property tax roll, may prescribe
 45 such terms and conditions as it deems proper before ~~permitting~~ ALLOWING

1 the contractor to continue with the work if the board of directors
2 determines that the contractor is capable of continuing the work. The
3 determination of the board of directors shall be final and conclusive, and
4 the determination may be reviewed only by a special action. Any such
5 action shall be given priority by the court. The board of directors may
6 cause a reporter's transcript to be made of the hearing. Such transcript,
7 when made and certified and filed with the clerk, shall be the official
8 record of the hearing. ~~उपरा~~ ON request by the contractor, the surety, any
9 owner, or the superintendent of streets, the board of directors may issue
10 subpoenas or subpoenas duces tecum directed to any witness desired by any
11 party to the hearing. The subpoena shall have the same effect as
12 subpoenas in civil actions. If the subpoena is not obeyed, the board of
13 directors may, on a majority vote of its members, MAY cite the disobedient
14 party for contempt and certify such action to the superior court. The
15 superior court shall act ~~उपरा~~ ON such citation in the same manner as other
16 cases of civil contempt.

17 E. If the board of directors finds that the contractor is unable to
18 continue with the work or to perform the work according to the contract or
19 has not performed the work according to the contract, the board of
20 directors shall hold the contractor in default and make demand on the
21 surety to act in accordance with the contract and terms and conditions of
22 the performance bond. If the surety fails to act within sixty days ~~from~~
23 AFTER receiving written notice, the board of directors may order that bids
24 be received from other contractors to complete the work. After receiving
25 bids, the board of directors may award the contract to the lowest
26 responsible bidder. If, after receiving the new bids, the cost of
27 completion exceeds the monies or bonds available for payment, the board of
28 directors shall make a demand on the defaulting contractor's surety for
29 payment of the difference within twenty days ~~of~~ AFTER the mailing of the
30 notice. If the surety is represented by an attorney-in-fact, the demand
31 may be served on the attorney-in-fact or at the surety's principal office
32 within this state. If the surety has no attorney-in-fact and no principal
33 office within this state, the demand shall be served ~~उपरा~~ ON the director
34 of the DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS. The demand may
35 not exceed the penal sum of the performance bond. Monies collected from
36 the surety shall be used to pay the added costs of the work. The district
37 shall advance any difference between the actual costs of the work and the
38 amount assessed and shall use its contingency fund or any other available
39 monies to make payments to the new contractor. The district shall
40 reimburse itself from the amounts paid by the former contractor or surety
41 or from assessments and bonds when monies become available. All
42 additional costs of the work not received from the original contractor or
43 such contractor's surety may be assessed against the benefiting parcels of
44 property if the board of directors finds that such action is necessary

1 both to prevent a default on the district's bonds and to complete the
2 work.

3 F. If the contractor is not to be paid pursuant to section 48-935,
4 subsection G or section 48-962, subsection F, ~~upon~~ ON completion of the
5 work the contractor is entitled to the issuance and delivery of the
6 assessment as provided by this article.

7 G. This section governs over any other law. Notwithstanding any
8 other law, the contractor and the surety shall not be paid interest on
9 amounts due during any period of contract suspension or termination unless
10 the findings of the board of directors are arbitrary and capricious.

11 Sec. 173. Section 48-2054, Arizona Revised Statutes, is amended to
12 read:

13 48-2054. Form and execution of contract; supervision of
14 performance; delivery of assessment

15 A. The district shall make all written contracts and receive all
16 bonds authorized by this article. The contracts shall specify a
17 reasonable time for completing the improvement.

18 B. The board may prescribe a form for the contract ~~which~~ THAT is
19 not inconsistent with this article and fix a reasonable time for
20 completing the work, which may be extended by the board.

21 C. The work shall be done under the direction of the board or its
22 engineer. The board may prescribe administrative rules relating to
23 supervising the work. The board may appoint a suitable person to take
24 charge of and superintend the construction of an improvement. The person
25 appointed is responsible for supervising fulfillment of the contract. The
26 board shall fix the compensation for such person.

27 D. If the work is not performed with diligence, the board, after a
28 hearing and service of notice on the contractor and ~~his~~ THE CONTRACTOR'S
29 surety, may prescribe such terms and conditions as it deems proper before
30 ~~permitting~~ ALLOWING the contractor to continue with the work.

31 E. If the board finds that the contractor is unable to continue
32 with the work or to perform the work according to the contract, the board
33 shall hold the contractor in default and make demand on the surety to act
34 according to the contract and the terms and conditions of the performance
35 bond. If the surety fails to act within sixty days ~~from~~ AFTER the date of
36 the written notice, the board may order that bids be received from other
37 contractors to complete the work. After receiving bids, the board may
38 award the contract to the lowest responsible bidder. If, after receiving
39 the new bids, the cost of completion exceeds the monies or bonds available
40 for payment, the board shall make a demand on the defaulting contractor's
41 surety for payment of the difference within twenty days of the mailing of
42 the notice. If the surety is represented by an attorney-in-fact, the
43 demand may be served on the attorney-in-fact or at the surety's principal
44 office in this state. If the surety has no attorney-in-fact and no
45 principal office in this state, the demand shall be served on the director

1 of THE DEPARTMENT OF insurance AND FINANCIAL INSTITUTIONS. The demand may
2 not exceed the penal sum of the performance bond. Monies collected from
3 the surety shall be used to pay the added costs of the work. Any
4 difference between the actual costs of the work and the amount assessed
5 shall be advanced by the district, which shall use its contingency fund or
6 any other available monies to pay the new contractor. The district shall
7 reimburse itself from the amounts paid by the former contractor or ~~his~~ THE
8 CONTRACTOR'S surety or from assessments and bonds when monies become
9 available. All additional costs of the work not received from the
10 original contractor's surety shall ultimately be assessed against the
11 benefitting parcels of property.

12 F. If the contractor is not to be paid pursuant to section 48-2065,
13 subsection G or section 48-2081, subsection F, on completion of the work
14 the contractor is entitled to the issuance and delivery of the assessment
15 as provided in this article.

16 Sec. 174. Section 48-2842, Arizona Revised Statutes, is amended to
17 read:

18 48-2842. Form and execution of contract; supervision of
19 performance; surety

20 A. The district shall make all written contracts and receive all
21 bonds authorized by this article. The contracts shall specify a
22 reasonable time for completing the flood protection facility.

23 B. The board may prescribe a form for the contract that is not
24 inconsistent with this article or with title 34, chapter 6, article 1, if
25 that procurement method is chosen, and fix a reasonable time for
26 completing the work, which may be extended by the board.

27 C. The work shall be done under the direction of the board or its
28 engineer. The board may prescribe administrative rules relating to
29 supervising the work. The board may appoint its engineer or a suitable
30 person to take charge of and direct the construction of a flood protection
31 facility on behalf of the district. The person appointed is responsible
32 for supervising fulfillment of the contract. The board shall fix the
33 compensation for that person.

34 D. If the work is not performed with diligence, the board, after a
35 hearing and service of notice on the contractor and the contractor's
36 surety, may prescribe those terms and conditions as it deems proper before
37 ~~permitting~~ ALLOWING the contractor to continue with the work.

38 E. If the board finds that the contractor is unable to continue
39 with the work or to perform the work according to the contract, the board
40 shall hold the contractor in default and make demand on the surety to act
41 according to the contract and the terms and conditions of the performance
42 bond. If the surety fails to act within sixty days after the date of the
43 written notice, the board may order that proposals be received from other
44 contractors to complete the work. After receiving proposals, the board
45 may award the contract to the lowest responsible bidder. If, after

1 receiving the new proposals, the cost of completion exceeds the monies or
2 bonds available for payment, the board shall make a demand on the
3 defaulting contractor's surety for payment of the difference within twenty
4 days after the mailing of the notice. If the surety is represented by an
5 attorney-in-fact, the demand may be served on the attorney-in-fact or at
6 the surety's principal office in this state. If the surety has no
7 attorney-in-fact and no principal office in this state, the demand shall
8 be served on the director of [THE DEPARTMENT OF insurance AND FINANCIAL](#)
9 [INSTITUTIONS](#). The demand may not exceed the penal sum of the performance
10 bond. Monies collected from the surety shall be used to pay any added
11 costs of completing the work. Any difference between the actual costs of
12 the work and the amount assessed shall be advanced by the district, which
13 shall use its contingency fund or any other available monies to pay the
14 new contractor. The district shall reimburse itself from the amounts paid
15 by the former contractor or its surety or from assessments and bonds when
16 monies become available. All additional costs of the work not received
17 from the original contractor's surety shall ultimately be assessed against
18 the benefiting parcels of property.

19 Sec. 175. [Conforming legislation](#)

20 The legislative council staff shall prepare proposed legislation
21 conforming the Arizona Revised Statutes to the provisions of this act for
22 consideration in the fifty-fifth legislature, first regular session.

23 Sec. 176. [Retroactivity](#)

24 This act applies retroactively to from and after June 30, 2020.