

Senate Engrossed

insurance; omnibus

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SENATE BILL 1049

AN ACT

AMENDING SECTIONS 20-117, 20-151, 20-239, 20-283, 20-321, 20-321.01, 20-367.01, 20-611, 20-614, 20-630, 20-631, 20-636, 20-637, 20-676, 20-694, 20-1095, 20-1095.02, 20-1095.06 AND 20-1676, ARIZONA REVISED STATUTES; RELATING TO INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 20-117, Arizona Revised Statutes, is amended to
3 read:

4 20-117. Definitions

5 In this title, unless the context otherwise requires:

6 1. "DELIVER" MEANS TO CAUSE TO BE PROVIDED, SENT OR HANDED OVER TO
7 THE INTENDED RECIPIENT.

8 ~~1.~~ 2. "Health care services organization" has the same meaning
9 prescribed in section 20-1051.

10 ~~2.~~ 3. "Private passenger motor vehicle" means any vehicle that is
11 rated or insured under a family automobile policy, standard automobile
12 policy, personal automobile policy or similar private passenger automobile
13 policy written for personal use, including use by an insured of a motor
14 vehicle in the course of the insured's volunteer work for a tax-exempt
15 organization as described in section 501(c)(3) of the internal revenue
16 code, as opposed to a motor vehicle rated or insured under a commercial
17 automobile policy.

18 ~~3.~~ 4. "Send", "sending" or "sent" means to deliver by United
19 States mail, personal delivery or fax or by electronic means consistent
20 with the requirements of section 20-239.

21 ~~4.~~ 5. "Volunteer work" means work performed without compensation
22 other than reimbursement of actual expenses incurred, or disbursement of
23 meals or other incidental benefits.

24 Sec. 2. Section 20-151, Arizona Revised Statutes, is amended to
25 read:

26 20-151. Issuance of orders and notices by director

27 A. Orders and notices of the director ~~shall~~ ARE not ~~be~~ effective
28 unless THE ORDERS AND NOTICES ARE in writing AND signed by ~~him~~ THE
29 DIRECTOR or by ~~his~~ THE DIRECTOR'S authority.

30 B. Every order of the director shall state its effective date and
31 shall concisely state:

32 1. Its intent or purpose.

33 2. The grounds on which THE ORDER IS based.

34 3. The provisions of this title pursuant to which action is so
35 taken or proposed to be taken, but failure to so designate any provision
36 shall not deprive the director of the right to rely ~~thereon~~ ON THE
37 PROVISION.

38 ~~C. An order or notice may be given by delivery to the person to be~~
39 ~~ordered or notified or by mailing it~~ THE DEPARTMENT MAY SEND ORDERS AND
40 NOTICES IN ACCORDANCE WITH SECTION 20-117, PARAGRAPH 4. IF THE DEPARTMENT
41 SENDS AN ORDER OR NOTICE BY MAIL, THE DEPARTMENT SHALL SEND THE ORDER OR
42 NOTICE, postage prepaid, ~~addressed to him at his~~ TO THE RECIPIENT'S
43 principal place of business as last of record in the director's office.

1 Sec. 3. Section 20-239, Arizona Revised Statutes, is amended to
2 read:

3 20-239. Electronic communications and records; applicability;
4 definitions

5 A. Any notice to a party or any other document that is required
6 under this title in an insurance transaction or that is to serve as
7 evidence of insurance coverage may be delivered, stored and presented by
8 electronic means if it meets the requirements of title 44, chapter 26,
9 article 1. IF AN INSURER UPLOADS A DOCUMENT OR NOTICE TO A PORTAL OR
10 SECURE WEBSITE, THE INSURER SHALL SEND A SEPARATE NOTICE TO THE PARTY THAT
11 SPECIFIES THAT THE DOCUMENT OR NOTICE HAS BEEN UPLOADED AND THAT INCLUDES
12 A DESCRIPTION OF THE DOCUMENT OR NOTICE THAT HAS BEEN UPLOADED.

13 B. An insurer may deliver a notice or document by electronic means
14 to a party pursuant to this section if the party electronically
15 consents, ~~or confirms consent electronically in advance,~~ to that method of
16 electronic delivery and has not withdrawn consent. ~~An insurer shall~~
17 ~~obtain distinct advanced electronic consent from the named insured for~~
18 ~~delivery of any notice under section 20-1632.~~ A NAMED INSURED THAT
19 EFFECTUATES INSURANCE TRANSACTIONS BY ELECTRONIC MEANS SHALL BE DEEMED TO
20 HAVE CONSENTED TO RECEIVE NOTICES AND DOCUMENTS BY ELECTRONIC MEANS IN
21 ACCORDANCE WITH THIS SECTION UNLESS THE NAMED INSURED OPTS OUT OF
22 ELECTRONIC DELIVERY AND ELECTS DELIVERY BY HARD COPY.

23 C. An oral communication or a recording of an oral communication
24 does not qualify as consent for the purposes of this section.

25 D. Notwithstanding subsection A of this section, an insurer sending
26 a notice pursuant to section 20-1632, subsection A, for a period of five
27 years after the date of the notice, shall maintain in its files
28 verification that the notice was sent by electronic means with a United
29 States postal service electronic postmark or another email delivery
30 service that provides electronic postmarks substantially similar to a
31 United States postal service electronic postmark. The verification must
32 contain sufficient information from which the department may determine
33 that the notice was properly sent.

34 E. An insurer providing notice to an insured PURSUANT TO SECTION
35 20-1632 by electronic means shall also send that notice to the named
36 insured by United States postal service certified mail, certificate of
37 mailing or first class mail using intelligent mail barcode or another
38 similar tracking method used or approved by the United States postal
39 service pursuant to section 20-1632 if either of the following applies:

40 1. The notice being electronically delivered is rejected for
41 delivery or returned to the insurer.

42 2. The insurer becomes aware that the email address provided by the
43 party is no longer valid.

44 F. Delivery of a notice or document pursuant to this section is
45 equivalent to any delivery method required OR ALLOWED under this title,

1 including delivery by the United States postal service by first class
2 mail, postage prepaid, certified mail, certificate of mailing or first
3 class mail using intelligent mail barcode or another similar tracking
4 method used or approved by the United States postal service.

5 G. After the party ~~gives consent~~ **ELECTS TO RECEIVE NOTICES AND**
6 **DOCUMENTS BY ELECTRONIC MEANS**, if a change in the hardware or software
7 requirements needed to access or retain a notice or document delivered by
8 electronic means creates a material risk that the party will not be able
9 to access or retain a subsequent notice or document to which the consent
10 applies, the insurer must inform the party of:

11 1. The revised hardware and software requirements for access to and
12 retention of a notice or document delivered by electronic means.

13 2. The party's right to withdraw consent without the imposition of
14 any fee, condition or consequence.

15 H. This section does not affect the requirements related to content
16 or timing of any notice or document required under this title.

17 I. If a provision of this title expressly requires verification or
18 acknowledgment of receipt of a notice or document, the notice or document
19 may be delivered by electronic means only if the method used provides for
20 verification or acknowledgment of receipt.

21 J. The legal effectiveness, validity or enforceability of any
22 insurance contract or policy executed by a party may not be denied solely
23 because the insurer failed to obtain electronic consent or confirmation of
24 consent.

25 K. A party's withdrawal of consent:

26 1. Does not affect the legal effectiveness, validity or
27 enforceability of a notice or document delivered by electronic means to
28 the party before the withdrawal of consent is effective.

29 2. Is effective within seven days after the insurer receives the
30 withdrawal.

31 L. If an insurer fails to comply with subsection G of this section,
32 the party may treat that failure as a withdrawal of consent for the
33 purposes of this section.

34 M. This section does not apply to a notice or document delivered by
35 an insurer in an electronic format before July 24, 2014 to a party who,
36 before that date, has consented to receive a notice or document in an
37 electronic format as otherwise provided by law.

38 N. If a party's consent to receive certain notices or documents in
39 an electronic format is on file with an insurer before July 24, 2014 and
40 the insurer intends to deliver additional notices or documents to that
41 party in an electronic format pursuant to this section, before delivering
42 the additional notices or documents electronically the insurer must notify
43 the party of both of the following:

1 1. The notices or documents that may be delivered by electronic
2 means under this section that were not previously delivered
3 electronically.

4 2. The party's right to withdraw consent to have notices or
5 documents delivered by electronic means.

6 0. An insurer may not charge a fee to a party who does not consent
7 to receive notices or documents by electronic means and who chooses to
8 receive the notices or documents in hard copy.

9 P. This section applies only to property, casualty, **DISABILITY,**
10 **MARINE AND TRANSPORTATION, SURETY, PREPAID LEGAL, PREPAID DENTAL, TITLE,**
11 **IDENTITY THEFT, WORKERS' COMPENSATION** and life insurance policies **AND**
12 **ANNUITIES** that are subject to this title, **INCLUDING POLICIES AND CONTRACTS**
13 **ISSUED BY HEALTH CARE SERVICES ORGANIZATIONS AND HOSPITAL, MEDICAL, DENTAL**
14 **AND OPTOMETRIC SERVICE CORPORATIONS.**

15 Q. This section does not modify, limit or supersede the electronic
16 signatures in global and national commerce act (P.L. 106-229; 15 United
17 States Code sections 7001 through 7031).

18 R. For the purposes of this section:

19 1. "Delivered by electronic means" includes either:

20 (a) The delivery to an email address at which a party has consented
21 to receive notices or documents.

22 (b) The posting on an electronic network or site accessible via the
23 internet or a mobile application, computer, mobile device, tablet or other
24 electronic device, together with a separate notice of the posting **THAT**
25 **INCLUDES A DESCRIPTION OF THE DOCUMENT OR NOTICE THAT HAS BEEN POSTED AND**
26 that is provided by email to the email address at which the party has
27 consented to receive notice or by any other delivery method that has been
28 consented to by the party.

29 2. "Party" means a recipient of any notice or document as part of
30 an insurance transaction, including an applicant, an insured or a
31 policyholder.

32 Sec. 4. Section 20-283, Arizona Revised Statutes, is amended to
33 read:

34 **20-283. Exceptions to insurance producer licensing**

35 A. An insurer is not required to obtain an insurance producer
36 license. In this section, insurer does not include an insurer's officers,
37 directors, employees, subsidiaries or affiliates.

38 B. The following persons are not required to obtain a license as an
39 insurance producer:

40 1. An officer, director or employee of an insurer or of an
41 insurance producer, if the officer, director or employee does not receive
42 any commission on policies written or sold to insurer risks residing,
43 located or to be performed in this state and either:

44 (a) The activities of the officer, director or employee are
45 executive, administrative, managerial, clerical or a combination of these

1 and are only indirectly related to the sale, solicitation or negotiation
2 of insurance.

3 (b) The functions of the officer, director or employee relate to
4 underwriting, loss control, inspection or the processing, adjusting,
5 investigating or settling of a claim on a contract of insurance.

6 (c) The officer, director or employee either:

7 (i) Acts as a special agent or agency supervisor assisting
8 insurance producers and engages in activities that are limited to
9 providing technical advice and assistance to licensed insurance producers
10 and that do not include the sale, solicitation or negotiation of
11 insurance.

12 (ii) Responds to requests from existing policyholders to transact
13 matters after effectuation of the policy and arising out of the policy and
14 does not engage in negotiation or solicitation, other than to confer with
15 the policyholders regarding the policyholders' requests.

16 2. A person who does not receive any commission, but who secures
17 and provides information for the purpose of either:

18 (a) Group life insurance, group annuities, group or blanket
19 accident and health or sickness insurance.

20 (b) Enrolling individuals under plans, issuing certificates under
21 plans or otherwise assisting in administering plans or performing
22 administrative services related to mass-marketed property and casualty
23 insurance.

24 3. An employer or association or its officers, directors or
25 employees or the trustees of an employee trust plan, to the extent that
26 the employer or association or officers, directors, employees or trustees
27 are engaged in the administration or operation of a program of employee
28 benefits for the employer's or association's own employees or the
29 employees of its subsidiaries or affiliates and the program involves the
30 use of insurance issued by an insurer, if the employer or association or
31 officers, directors, employees or trustees are not directly or indirectly
32 compensated in any manner by the company that issues the contracts.

33 4. Employees of insurers or organizations employed by insurers who
34 engage in the inspection, rating or classification of risks or the
35 supervision of the training of insurance producers and who are not
36 individually engaged in the sale, solicitation or negotiation of
37 insurance.

38 5. A person whose activities in this state are limited to
39 advertising without the intent to solicit insurance in this state through
40 communications in printed publications or other forms of electronic mass
41 media whose distribution is not limited to residents of the state, if the
42 person does not sell, solicit or negotiate insurance that would insure
43 risks residing, located or to be performed in this state.

1 6. A person who is not a resident of this state and who sells,
2 solicits or negotiates a contract of insurance for commercial property and
3 casualty risks to an insured with risks that are located in more than one
4 state insured under that contract, if that person is otherwise licensed as
5 an insurance producer to sell, solicit or negotiate that insurance in the
6 state where the insured maintains its principal place of business and the
7 contract of insurance insures risks located in that state.

8 7. A salaried full-time employee who counsels or advises the
9 employee's employer regarding the insurance interests of the employer or
10 its subsidiaries or business affiliates, if the employee does not sell or
11 solicit insurance or receive a commission.

12 8. A PERSON WHOSE ACTIVITIES IN THIS STATE ARE LIMITED TO PROVIDING
13 A WEBSITE OR OTHER ELECTRONIC PLATFORM FOR INSURERS OR INSURANCE PRODUCERS
14 TO SELL INSURANCE.

15 9. A PERSON THAT PROCESSES PAYMENTS OR CHARGES FOR INSURANCE
16 PREMIUMS IF THE PERSON DOES NOT SELL, SOLICIT OR NEGOTIATE INSURANCE.

17 Sec. 5. Section 20-321, Arizona Revised Statutes, is amended to
18 read:

19 20-321. Definitions

20 In this article, unless the context otherwise requires:

21 1. "Adjuster":

22 (a) Means any person who for compensation, fee or commission
23 either:

24 (i) Adjusts, investigates or negotiates settlement of claims
25 arising under property and casualty insurance contracts on behalf of
26 either the insurer or the insured.

27 (ii) Holds oneself out to perform a service listed in item (i) of
28 this subdivision.

29 (b) Does not include:

30 (i) A licensed attorney-at-law who is qualified to practice law in
31 this state.

32 (ii) A salaried employee of an insurer or of a managing general
33 agent. For the purposes of this item, "salaried employee" means an
34 employee whose compensation is not contingent on the outcome of a claim
35 determination.

36 (iii) A licensed insurance producer who adjusts or assists in
37 adjustment of losses arising under policies procured through the insurance
38 producer.

39 (iv) An employee of a political subdivision who adjusts or assists
40 in the adjustment of losses arising under policies covering the political
41 subdivision or persons indemnified by the political subdivision.

42 (v) An independent contractor retained by a licensed adjuster or a
43 person listed in items (i), (ii), (iii) and (iv) of this subdivision for
44 the sole purpose of providing technical assistance in connection with a

1 claim. Independent contractors may include photographers, estimators,
2 engineers, private detectives or handwriting experts.

3 (vi) An individual who collects claim information from or furnishes
4 claim information to insureds or claimants and who conducts data entry,
5 including entering data into an automated claims adjudication system, if
6 not more than twenty-five persons, as described in this item, are under
7 the supervision of a single licensed adjuster or licensed producer.

8 (vii) A licensed insurance producer who supervises or adjusts
9 claims pursuant to item (vi) of this subdivision.

10 (viii) Registered third-party administrators and their employees
11 who are engaged in administering accident and health or life insurance
12 claims.

13 (ix) An ~~employee of a third-party administrator or self-insured~~
14 ~~employer~~ INDIVIDUAL who adjusts, investigates or negotiates settlement of
15 only workers' compensation claims.

16 2. "Automated claims adjudication system" means a preprogrammed
17 computer system that is designed for the collection, data entry,
18 calculation and final resolution of portable consumer electronic products
19 insurance claims and that:

20 (a) May be used only by a licensed adjuster, a licensed producer or
21 supervised individuals operating pursuant to this paragraph.

22 (b) Must comply with all claims payment requirements under this
23 title and be certified as compliant by a licensed adjuster.

24 3. "Portable consumer electronic products" means electronic devices
25 and related accessories that are portable in nature.

26 Sec. 6. Section 20-321.01, Arizona Revised Statutes, is amended to
27 read:

28 20-321.01. Licensing of adjusters; qualifications; exemption

29 A. A person shall not act as or claim to be an adjuster unless the
30 person is licensed under this article.

31 B. To obtain a license as an adjuster a person shall apply to the
32 director for the license and use the forms prescribed and provided by the
33 director. The director shall issue the license to qualified persons on
34 payment of the license fee prescribed in section 20-167.

35 C. To be licensed as an adjuster the applicant shall meet all of
36 the following qualifications:

37 1. Be a person who is at least eighteen years of age.

38 2. Be a resident of this state or a resident of another state that
39 allows residents of this state to act as adjusters in the other state.

40 3. Take and pass an examination that is given by or under the
41 supervision of the director and that reasonably tests the applicant's
42 knowledge of insurance and legal responsibilities as an adjuster and
43 otherwise comply with section 20-321.02. Notwithstanding subsection D of
44 this section, the requirements under this paragraph AND PARAGRAPH 2 OF
45 THIS SUBSECTION are waived if the applicant holds a CURRENT claims

1 certificate issued by a national or state-based claims association with a
2 certification program that **IS APPROVED BY THE DIRECTOR AND THAT** consists
3 of at least forty hours of preexamination coursework, a proctored
4 examination of sufficient length to adequately determine the competency of
5 the applicant and at least twenty-four hours of continuing education
6 required for certification renewals on a biennial basis.

7 D. An adjuster who is licensed or allowed to act as an adjuster in
8 the state of the adjuster's domicile is not required to be licensed
9 pursuant to this section or meet the qualifications prescribed in this
10 section if the adjuster is sent to this state on behalf of an insurer for
11 the purpose of investigating or making adjustment of a particular loss
12 under an insurance policy or a series of losses resulting from a
13 catastrophe common to all those losses.

14 E. To determine license eligibility, the director may require
15 fingerprints of applicants and the submission of the fee and the
16 fingerprints as required by section 20-285, paragraph 2.

17 F. The director may contract with nongovernmental entities to
18 perform any ministerial functions, including collection of fees and data
19 related to licensing, that the director deems appropriate.

20 G. A resident of Canada may apply for a license that grants the
21 applicant the authority only to adjust portable electronics insurance
22 claims in this state if the person has obtained an adjuster license in
23 another state that allows that person to adjust portable electronics
24 insurance claims in that state. A Canadian resident who qualifies for
25 licensure as an adjuster under this subsection is not subject to section
26 25-320, subsection P.

27 H. An applicant who resides in a state that does not issue licenses
28 to adjusters and who is otherwise allowed to adjust portable electronics
29 insurance claims in the applicant's resident state may apply for a license
30 that grants the applicant the authority only to adjust portable
31 electronics insurance claims in this state.

32 Sec. 7. Section 20-367.01, Arizona Revised Statutes, is amended to
33 read:

34 **20-367.01. Appeals procedure**

35 A. Within a reasonable time after receiving a written request and
36 on payment of a reasonable fee, every rating organization and insurer
37 shall give to any insured affected by a rate that is made or applied by
38 the organization or insurer, or to the insured's authorized
39 representative, all pertinent information related to the rate.

40 B. If a person is aggrieved by the application of a rating system,
41 the person may send a written request to the workers' compensation appeals
42 board established by section 20-367 to review the manner in which the
43 rating system has been applied to the insurance afforded the aggrieved
44 person. The aggrieved person or that person's representative may present
45 the grievance before the board. A representative of the rating

1 organization whose rating system is the subject of the appeal shall attend
2 any hearing before the board pursuant to this section to explain that
3 application of the rating system to the aggrieved person.

4 C. If the board does not act on the aggrieved person's request for
5 review within thirty days after receiving the request, the aggrieved
6 person may proceed as if the board had rejected the request for review.

7 D. The appellant shall pay the cost to record the board's
8 proceedings.

9 E. The board shall ~~send~~ MAIL a written notice of its decision to
10 the aggrieved person. Within thirty days after the date the board ~~sends~~
11 MAILED the written notice of its decision, the aggrieved person may appeal
12 the action to the director. After a hearing held on at least ten days'
13 written notice to the person and the rating organization or insurer, the
14 director shall affirm, modify or reverse the board's decision. The person
15 appealing the board's decision shall pay the costs of the transcript and
16 record of the appeal to the director.

17 Sec. 8. Section 20-611, Arizona Revised Statutes, is amended to
18 read:

19 20-611. Definitions

20 ~~For the purpose of~~ IN this article, UNLESS THE CONTEXT OTHERWISE
21 REQUIRES:

22 1. "Ancillary state" means any state other than a domiciliary
23 state.

24 2. "Commodity exchange act" means the federal commodity exchange
25 act (7 United States Code chapter 1).

26 3. "Court" means, unless the context otherwise requires, the judge
27 of the superior court assigned to the delinquency proceeding.

28 4. "Delinquency proceeding" means any proceeding commenced against
29 an insurer pursuant to this article for the purpose of liquidating,
30 rehabilitating, reorganizing or conserving such insurer.

31 5. "Domiciliary state" means the state in which an insurer is
32 incorporated or organized, or in the case of an insurer incorporated or
33 organized in a foreign country, the state in which such insurer, having
34 become authorized to do business in such state, has, at the commencement
35 of delinquency proceedings, the largest amount of its assets held in trust
36 and assets held on deposit for the benefit of its policyholders or
37 policyholders and creditors in the United States, and any such insurer is
38 deemed to be domiciled in such state.

39 6. "FEDERAL HOME LOAN BANK" MEANS AN INSTITUTION THAT IS
40 ESTABLISHED UNDER THE FEDERAL HOME LOAN BANK ACT (12 UNITED STATES CODE
41 SECTIONS 1421 THROUGH 1449) OR ITS SUCCESSOR STATUTE.

42 ~~6.~~ 7. "Foreign country" means territory not in any state.

43 ~~7.~~ 8. "General assets" means all property, real, personal or
44 otherwise, not specifically mortgaged, pledged, deposited or otherwise
45 encumbered for the security or benefit of specified persons or a limited

1 class or classes of persons, and as to such specifically encumbered
2 property the term includes all such property or its proceeds in excess of
3 the amount necessary to discharge the amount or amounts secured thereby.
4 Assets held in trust and assets held on deposit for the security or
5 benefit of all policyholders or all policyholders and creditors in the
6 United States shall be deemed general assets.

7 ~~8.~~ 9. "Impairment" or "insolvency" means that the capital of a
8 stock insurer or limited capital stock insurer, or the surplus of a mutual
9 or reciprocal insurer, ~~shall be~~ IS deemed ~~to be~~ impaired and the insurer
10 ~~shall be~~ IS deemed ~~to be~~ insolvent, when ~~such~~ THE insurer is not possessed
11 of assets at least equal to all liabilities and required reserves together
12 with its total issued and outstanding capital stock if a stock insurer, or
13 the minimum surplus if a mutual or reciprocal insurer, required by this
14 title to be maintained for the kind or kinds of insurance it is then
15 authorized to transact.

16 ~~9.~~ 10. "Insurer" means any person, firm, corporation, association
17 or aggregation of persons doing an insurance business and subject to the
18 insurance supervisory authority of, or to liquidation, rehabilitation,
19 reorganization or conservation by the director or the equivalent insurance
20 supervisory official of another state.

21 11. "INSURER MEMBER" MEANS AN INSURER THAT IS A MEMBER OF A FEDERAL
22 HOME LOAN BANK.

23 ~~10.~~ 12. "Netting agreement" means:

24 (a) A contract or an agreement including a master agreement that
25 documents one or more transactions between the parties to the agreement
26 for or involving one or more qualified financial contracts and that
27 provides for the netting, liquidation, setoff, termination, acceleration
28 or close out under or in connection with one or more qualified financial
29 contracts or present or future payment or delivery obligations or payment
30 or delivery entitlements thereunder, including liquidation or close-out
31 values relating to ~~such~~ THE obligations or entitlements, among the parties
32 to the netting agreement. A master agreement, together with all
33 schedules, confirmations, definitions and addenda thereto and transactions
34 under any thereof, shall be treated as one netting agreement.

35 (b) Any master agreement or bridge agreement for one or more master
36 agreements described in subdivision (a) of this paragraph.

37 (c) Any security agreement or arrangement or other credit
38 enhancement or guarantee or reimbursement obligation related to any
39 contract or agreement described in subdivision (a) or (b) of this
40 paragraph. Any contract or agreement described in subdivision (a) or (b)
41 of this paragraph relating to agreements or transactions that are not
42 qualified financial contracts are deemed to be a netting agreement only
43 with respect to those agreements or transactions that are qualified
44 financial contracts.

1 ~~11.~~ 13. "Preferred claim" means any claim with respect to which the
2 law of the state or of the United States accords priority of payments from
3 the general assets of the insurer.

4 ~~12.~~ 14. "Qualified financial contract" means any commodity
5 contract, forward contract, repurchase agreement, securities
6 contract, ~~AND~~ swap agreement and any similar agreement that the director
7 determines by rule or order to be a qualified financial contract for the
8 purposes of this article. For the purposes of this paragraph:

9 (a) "Commodity contract" means:

10 (i) A contract for the purchase or sale of a commodity for future
11 delivery on, or subject to the rules of, a board of trade or contract
12 market under the commodity exchange act or a board of trade outside the
13 United States.

14 (ii) An agreement that is subject to regulation under section 19 of
15 the commodity exchange act and that is commonly known to the commodities
16 trade as a margin account, margin contract, leverage account or leverage
17 contract.

18 (iii) An agreement or transaction that is subject to regulation
19 under section 6c(b) of the commodity exchange act and that is commonly
20 known to the commodities trade as a commodity option.

21 (iv) Any combination of the agreements or transactions referred to
22 in this paragraph.

23 (v) Any option to enter into an agreement or transaction referred
24 to in this paragraph.

25 (b) "Forward contract", "repurchase agreement", "securities
26 contract" and "swap agreement" have the same meanings prescribed in the
27 federal deposit insurance act, 12 United States Code section
28 1821(e)(8)(D), as amended.

29 ~~13.~~ 15. "Receiver" means the director as receiver, liquidator,
30 rehabilitator or conservator as the context may require.

31 ~~14.~~ 16. "Reciprocal state" means any state other than this state in
32 which in substance and effect the provisions of the uniform insurers
33 liquidation act, as defined in section 20-631, are in force, including the
34 provisions requiring that the director of insurance or equivalent
35 insurance supervisory official be the receiver of a delinquent insurer.

36 ~~15.~~ 17. "Secured claim" means any claim secured by mortgage, trust
37 deed, pledge, deposit as security, escrow or otherwise, including federal,
38 state or local tax liens that are perfected before the commencement of a
39 delinquency proceeding but not including a special deposit claim or claims
40 against general assets. The term also includes claims that more than four
41 months ~~prior to~~ BEFORE the commencement of delinquency proceedings in the
42 state of the insurer's domicile have become liens on specific assets by
43 reason of judicial process.

1 ~~16.~~ 18. "Special deposit claim" means any claim secured by a
2 deposit made pursuant to statute for the security or benefit of a limited
3 class or classes of persons, but not including any general assets.

4 ~~17.~~ 19. "State" means any state of the United States, the District
5 of Columbia and the territories and possessions of the United States.

6 Sec. 9. Section 20-614, Arizona Revised Statutes, is amended to
7 read:

8 20-614. Injunctions

9 A. ~~Upon~~ ON application by the director for an order to show cause,
10 or at any time thereafter, the court may without notice issue an
11 injunction restraining the insurer, its officers, directors, stockholders,
12 members, subscribers and agents and all other persons from the transaction
13 of its business or the waste or disposition of its property until further
14 order of the court.

15 B. The court may at any time during a proceeding under this article
16 issue ~~such~~ other injunctions or orders as is deemed necessary to prevent
17 any of the following:

18 1. Interference with the receiver or the proceeding.

19 2. The waste of the assets of the insurer.

20 3. The commencement or prosecution of any actions.

21 4. The obtaining of preferences, judgments, attachments or other
22 liens.

23 5. The making of any levy against the insurer or against its assets
24 or any part of its assets.

25 C. An injunction issued pursuant to subsection A or B of this
26 section does not operate to enjoin or prohibit any right to cause the
27 netting, liquidation, setoff, termination, acceleration or close out of
28 obligations or enforcement of any security agreement or arrangement or
29 other credit enhancement or guarantee or reimbursement obligation under or
30 in connection with any netting agreement or qualified financial contract
31 as provided in section 20-637.

32 D. The court may also prescribe exclusive conditions and procedures
33 for access to information from the receiver including procedures for the
34 inspection or copying of the records of the insurer or receiver. The
35 court may not place conditions on a reinsurer's contract rights to access
36 to claim files other than the payment of reasonable charges for locating
37 and copying the records.

38 E. Notwithstanding any other ~~provision of~~ law, ~~no~~ A bond ~~shall be~~
39 IS NOT required of the director or receiver as a prerequisite for the
40 issuance of any injunction or restraining order pursuant to this section
41 or for the filing of any appeal or other action for which a bond may be
42 required.

43 F. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A FEDERAL
44 HOME LOAN BANK MAY NOT BE STAYED, ENJOINED OR PROHIBITED FROM EXERCISING
45 OR ENFORCING ANY RIGHT OR CAUSE OF ACTION AGAINST COLLATERAL PLEDGED BY AN

1 INSURER MEMBER UNDER ANY FEDERAL HOME LOAN BANK SECURITY AGREEMENT OR ANY
2 PLEDGE, SECURITY, COLLATERAL OR GUARANTEE AGREEMENT OR OTHER SIMILAR
3 ARRANGEMENT OR CREDIT ENHANCEMENT RELATING TO A SECURITY AGREEMENT TO
4 WHICH THAT FEDERAL HOME LOAN BANK IS A PARTY.

5 Sec. 10. Section 20-630, Arizona Revised Statutes, is amended to
6 read:

7 20-630. Attachment and garnishment of assets

8 A. During the pendency of delinquency proceedings in this or any
9 reciprocal state, ~~no~~ AN action or proceeding in the nature of an
10 attachment, garnishment or execution ~~shall~~ MAY NOT be commenced or
11 maintained in the courts of this state against the delinquent insurer or
12 its assets. Any lien obtained by any such action or proceeding within
13 four months ~~prior to~~ BEFORE the commencement of any such delinquency
14 proceeding or at any time thereafter ~~shall be~~ IS void as against any
15 rights arising in the delinquency proceeding.

16 B. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A FEDERAL
17 HOME LOAN BANK MAY NOT BE STAYED, ENJOINED OR PROHIBITED FROM EXERCISING
18 OR ENFORCING ANY RIGHT OR CAUSE OF ACTION AGAINST COLLATERAL PLEDGED BY AN
19 INSURER MEMBER UNDER ANY FEDERAL HOME LOAN BANK SECURITY AGREEMENT OR ANY
20 PLEDGE, SECURITY, COLLATERAL OR GUARANTEE AGREEMENT OR OTHER SIMILAR
21 ARRANGEMENT OR CREDIT ENHANCEMENT RELATING TO A SECURITY AGREEMENT TO
22 WHICH THAT FEDERAL HOME LOAN BANK IS A PARTY.

23 Sec. 11. Section 20-631, Arizona Revised Statutes, is amended to
24 read:

25 20-631. Uniform insurers liquidation act

26 A. Section 20-611, paragraphs 1, 4, ~~through~~ 5, 7, 8, ~~9~~, 10, ~~11~~, 13,
27 ~~through~~ 15, 16, 17, 18 AND 19 and sections 20-613, 20-614, 20-624, 20-625,
28 20-626, 20-627, 20-628, 20-629 and 20-630 are and may be cited as the
29 uniform insurers liquidation act.

30 B. The uniform insurers liquidation act shall be so interpreted and
31 construed as to effectuate its general purpose to make uniform the law of
32 those states that enact it. To the extent that its provisions when
33 applicable conflict with other provisions of this article the provisions
34 of such act shall control.

35 Sec. 12. Section 20-636, Arizona Revised Statutes, is amended to
36 read:

37 20-636. Voidable transfers

38 A. Any transfer of, or lien ~~upon~~ ON, the property of an insurer
39 ~~which~~ THAT is made or created within four months ~~prior to~~ BEFORE the
40 granting of an order to show cause under this article with the intent of
41 giving to any creditor or of enabling such creditor to obtain a greater
42 percentage of ~~his~~ THE CREDITOR'S debt than any other creditor of the same
43 class, and ~~which~~ THAT is accepted by such creditor having reasonable cause
44 to believe that such preference will occur, shall be voidable.

1 B. Every director, officer, employee, stockholder, member and
2 subscriber and any other person acting on behalf of the insurer who is
3 concerned in any such act or deed and every person receiving thereby any
4 property of the insurer or the benefit thereof shall be personally liable
5 therefor and shall be bound to account to the receiver.

6 C. The receiver in any proceeding under this article may avoid any
7 transfer of or lien ~~upon~~ ON the property of an insurer ~~which~~ THAT any
8 creditor, stockholder, subscriber or member of ~~such~~ THE insurer might have
9 avoided and may recover the property so transferred unless ~~such~~ THE person
10 was a bona fide holder for value ~~prior to~~ BEFORE the date of the granting
11 of an order to show cause under this article. Such property or its value
12 may be recovered from anyone who has received it except a bona fide holder
13 for value as specified in this article.

14 D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A RECEIVER,
15 REHABILITATOR, LIQUIDATOR OR CONSERVATOR MAY NOT VOID ANY TRANSFER OF, OR
16 ANY OBLIGATION TO TRANSFER, MONEY OR OTHER PROPERTY ARISING UNDER OR IN
17 CONNECTION WITH ANY FEDERAL HOME LOAN BANK SECURITY AGREEMENT WITH AN
18 INSURER MEMBER, OR ANY PLEDGE, SECURITY, COLLATERAL OR GUARANTEE AGREEMENT
19 OR ANY OTHER SIMILAR ARRANGEMENT OR CREDIT ENHANCEMENT RELATING TO A
20 FEDERAL HOME LOAN BANK SECURITY AGREEMENT WITH AN INSURER MEMBER UNLESS
21 THE TRANSFER WAS MADE WITH ACTUAL INTENT TO HINDER, DELAY OR DEFRAUD
22 EITHER EXISTING OR FUTURE CREDITORS.

23 Sec. 13. Section 20-637, Arizona Revised Statutes, is amended to
24 read:

25 20-637. Qualified financial contracts; definition

26 A. Notwithstanding any other provision of this article, a person
27 shall not be enjoined or prohibited from exercising:

28 1. A contractual right to cause the termination, liquidation,
29 acceleration or close out of obligations under or in connection with any
30 netting agreement or qualified financial contract with an insurer because
31 of either:

32 (a) The insolvency, financial condition or default of the insurer
33 at any time if the right is enforceable under applicable law other than
34 this article.

35 (b) The commencement of a formal delinquency proceeding under this
36 article.

37 2. Any right under a pledge, security, collateral, reimbursement or
38 guarantee agreement or arrangement or any other similar security agreement
39 or arrangement or other credit enhancement relating to one or more netting
40 agreements or qualified financial contracts.

41 3. Subject to section 20-638, subsection B, any right to offset or
42 net out any termination value, payment amount or other transfer obligation
43 arising under or in connection with one or more qualified financial
44 contracts where the counterparty or its guarantor is organized under the
45 laws of the United States or a state or a foreign jurisdiction approved by

1 the securities valuation office of the national association of insurance
2 commissioners as eligible for netting.

3 B. If a counterparty to a master netting agreement or a qualified
4 financial contract with an insurer subject to a proceeding under this
5 article terminates, liquidates, closes out or accelerates the agreement or
6 contract, damages shall be measured as of the date or dates of
7 termination, liquidation, close out or acceleration. The amount of a
8 claim for damages shall be actual direct compensatory damages calculated
9 pursuant to subsection H of this section.

10 C. On termination of a netting agreement or qualified financial
11 contract, the net or settlement amount owed by a nondefaulting party to an
12 insurer against which a proceeding under this article has been commenced
13 shall be transferred to or on the order of the receiver for the insurer,
14 even if the insurer is the defaulting party, notwithstanding any walkaway
15 clause in the netting agreement or qualified financial contract. Any
16 limited two-way payment or first method provision in a netting agreement
17 or qualified financial contract with an insurer that has defaulted shall
18 be deemed to be a full two-way payment or second method provision as
19 against the defaulting insurer. Any such property or amount shall be a
20 general asset of the insurer, except to the extent it is subject to one or
21 more secondary liens or encumbrances or rights of netting or offset. For
22 the purposes of this subsection, "walkaway clause" means a provision in a
23 netting agreement or a qualified financial contract that, after
24 calculation of a value of a party's position or an amount due to or from
25 one of the parties in accordance with its terms on termination,
26 liquidation or acceleration of the netting agreement or qualified
27 financial contract, either does not create a payment obligation of a party
28 or extinguishes a payment obligation of a party in whole or in part solely
29 because of the party's status as a nondefaulting party.

30 D. In making any transfer of a netting agreement or qualified
31 financial contract of an insurer subject to a proceeding under this
32 article, the receiver shall either:

33 1. Transfer to one party, other than an insurer subject to a
34 proceeding under this article, all netting agreements and qualified
35 financial contracts between a counterparty or any affiliate of the
36 counterparty and the insurer that is the subject of the proceeding
37 including:

38 (a) All rights and obligations of each party under each netting
39 agreement and qualified financial contract.

40 (b) All property, including any guarantees or other credit
41 enhancement, securing any claims of each party under each netting
42 agreement and qualified financial contract.

43 2. Transfer none of the netting agreements, qualified financial
44 contracts, rights, obligations or property referred to in paragraph 1 of

1 this subsection with respect to the counterparty and any affiliate of the
2 counterparty.

3 E. If the receiver makes a transfer of one or more netting
4 agreements or qualified financial contracts, the receiver shall use its
5 best efforts to notify any person who is a party to the netting agreements
6 or qualified financial contracts of the transfer by noon in the receiver's
7 local time on the business day following the transfer. For the purposes
8 of this subsection, "business day" means a day other than a Saturday,
9 Sunday or other day on which either the New York stock exchange or the
10 federal reserve bank of New York is closed.

11 F. Notwithstanding any other provision of this article, the
12 receiver may not avoid a transfer of money or other property arising under
13 or in connection with a netting agreement or qualified financial contract
14 or any pledge, security, collateral or guarantee agreement or any other
15 similar security arrangement or credit support document relating to a
16 netting agreement or qualified financial contract that is made before the
17 commencement of a delinquency proceeding under this article. However, a
18 transfer may be avoided under section 20-636, subsection C if the transfer
19 was made with actual intent to hinder, delay or defraud the insurer, a
20 receiver appointed for the insurer or existing or future creditors.

21 G. In disaffirming or repudiating any netting agreement or
22 qualified financial contract to which an insurer is a party, the receiver
23 for the insurer shall either:

24 1. Disaffirm or repudiate all netting agreements and qualified
25 financial contracts between a counterparty or any affiliate of the
26 counterparty and the insurer that is the subject of the proceeding.

27 2. Disaffirm or repudiate none of the netting agreements and
28 qualified financial contracts referred to in paragraph 1 of this
29 subsection with respect to the person or any affiliate of the person.

30 H. Notwithstanding any other provision of this article, any claim
31 of a counterparty against the estate arising from the receiver's
32 disaffirmance or repudiation of a netting agreement or qualified financial
33 contract that has not been previously affirmed in the proceeding under
34 this article shall be determined and shall be allowed or disallowed as if
35 the claim had arisen before the date of the commencement of a proceeding
36 under this article. The amount of the claim shall be the actual direct
37 compensatory damages determined as of the date of the disaffirmance or
38 repudiation of the netting agreement or qualified financial contract. For
39 the purposes of this subsection, "actual direct compensatory damages":

40 1. Does not include punitive or exemplary damages, damages for lost
41 profit or lost opportunity or damages for pain and suffering.

42 2. Includes normal and reasonable costs of cover or other
43 reasonable measures of damages used in the derivatives, securities or
44 other market for the contract and agreement claims.

1 I. This section does not apply to persons who are affiliates of the
2 insurer that is the subject of the proceeding.

3 J. All rights of counterparties under this article apply to netting
4 agreements and qualified financial contracts entered into on behalf of the
5 general account or separate accounts if the assets of each separate
6 account are available only to counterparties to netting agreements and
7 qualified financial contracts entered into on behalf of that separate
8 account.

9 K. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A FEDERAL
10 HOME LOAN BANK MAY NOT BE STAYED, ENJOINED OR PROHIBITED FROM EXERCISING
11 OR ENFORCING ANY RIGHT OR CAUSE OF ACTION AGAINST COLLATERAL PLEDGED BY AN
12 INSURER MEMBER UNDER ANY FEDERAL HOME LOAN BANK SECURITY AGREEMENT OR ANY
13 PLEDGE, SECURITY, COLLATERAL OR GUARANTEE AGREEMENT OR OTHER SIMILAR
14 ARRANGEMENT OR CREDIT ENHANCEMENT RELATING TO A SECURITY AGREEMENT TO
15 WHICH THAT FEDERAL HOME LOAN BANK IS A PARTY.

16 ~~K.~~ L. For the purposes of this section, "contractual right"
17 includes:

18 1. Any right set forth:

19 (a) In a rule or bylaw of a derivatives clearing organization as
20 defined in the commodity exchange act, a multilateral clearing
21 organization as defined in the federal deposit insurance corporation
22 improvement act of 1991 (12 United States Code section 4421), a national
23 securities exchange, a national securities association, a securities
24 clearing agency, a contract market designated under the commodity exchange
25 act, a derivatives transaction execution facility registered under the
26 commodity exchange act or a board of trade as defined in the commodity
27 exchange act.

28 (b) In a resolution of the governing board of any entity described
29 in subdivision (a) of this paragraph.

30 2. Any right, whether or not evidenced in writing, arising under
31 statutory or common law, or under law merchant or by reason of normal
32 business practice.

33 Sec. 14. Section 20-676, Arizona Revised Statutes, is amended to
34 read:

35 20-676. Stay of proceedings

36 A. All proceedings in which the insolvent insurer or the insolvent
37 insurer's insured is a party in any court of this state shall be stayed
38 for six months from the date the insolvency is determined or an ancillary
39 proceeding is instituted in this state, whichever is later, to permit
40 proper defense by the fund of all pending causes of action as to any
41 covered claim. At the request of any party and on a showing of good
42 cause, the court may shorten or lengthen the stay prescribed in this
43 section. This subsection does not apply to proceedings in which the
44 insolvent insurer is a party to a proceeding before the industrial
45 commission regarding an employee's entitlement to benefits under title 23,

1 chapter 6, except that, on a showing of good cause, the industrial
2 commission shall grant up to a ninety-day continuance of any scheduled
3 hearing to allow the fund to assume the defense and investigate the claim.

4 B. On application of the fund, either on the fund's own behalf or
5 on the insured's behalf, the court may set aside any judgment, order,
6 decision, verdict, finding or award arising from the default of the
7 insolvent insurer or the insurer's failure to defend the insured and the
8 fund shall be ~~permitted~~ ALLOWED to defend the claim on the merits.

9 C. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A FEDERAL
10 HOME LOAN BANK MAY NOT BE STAYED, ENJOINED OR PROHIBITED FROM EXERCISING
11 OR ENFORCING ANY RIGHT OR CAUSE OF ACTION AGAINST COLLATERAL PLEDGED BY AN
12 INSURER MEMBER UNDER ANY FEDERAL HOME LOAN BANK SECURITY AGREEMENT OR ANY
13 PLEDGE, SECURITY, COLLATERAL OR GUARANTEE AGREEMENT OR OTHER SIMILAR
14 ARRANGEMENT OR CREDIT ENHANCEMENT RELATING TO A SECURITY AGREEMENT TO
15 WHICH THAT FEDERAL HOME LOAN BANK IS A PARTY.

16 Sec. 15. Section 20-694, Arizona Revised Statutes, is amended to
17 read:

18 20-694. Stay of proceedings; reopening default judgments

19 A. All proceedings in which the impaired insurer or insolvent
20 insurer or the impaired insurer's or insolvent insurer's insured is a
21 party in any court in this state shall be stayed sixty days from the date
22 an order of liquidation, rehabilitation or conservation is final to permit
23 proper legal action by the board on any matters germane to its powers or
24 duties. At the request of the board and on a showing of good cause, the
25 court may lengthen the stay prescribed in this section. As to a judgment
26 under any decision, order, verdict or finding based on default, the board
27 may apply to have such judgment set aside by the same court that made such
28 judgment and shall be permitted to defend against such suit on the merits.

29 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION OR ANY OTHER
30 PROVISION OF THIS CHAPTER, A RECEIVER, REHABILITATOR, LIQUIDATOR OR
31 CONSERVATOR MAY NOT VOID ANY TRANSFER OF, OR ANY OBLIGATION TO TRANSFER,
32 MONEY OR OTHER PROPERTY ARISING UNDER OR IN CONNECTION WITH ANY FEDERAL
33 HOME LOAN BANK SECURITY AGREEMENT WITH AN INSURER MEMBER, OR ANY PLEDGE,
34 SECURITY, COLLATERAL OR GUARANTEE AGREEMENT OR ANY OTHER SIMILAR
35 ARRANGEMENT OR CREDIT ENHANCEMENT RELATING TO A FEDERAL HOME LOAN BANK
36 SECURITY AGREEMENT WITH AN INSURER MEMBER UNLESS THE TRANSFER WAS MADE
37 WITH ACTUAL INTENT TO HINDER, DELAY OR DEFRAUD EITHER EXISTING OR FUTURE
38 CREDITORS.

39 Sec. 16. Section 20-1095, Arizona Revised Statutes, is amended to
40 read:

41 20-1095. Definitions

42 In this article, unless the context otherwise requires:

43 1. "Consumer":

44 (a) Means a buyer other than for purposes of resale of any consumer
45 product, any person to whom the product is transferred during the duration

1 of an implied or written warranty or service contract applicable to the
2 product and any other person who is entitled by the terms of the warranty
3 or service contract or under applicable federal or state law to enforce
4 against the warrantor or service company the obligations of the warranty
5 or service contract. ~~Consumer also means the~~

6 (b) INCLUDES A buyer, owner, lessor, LESSEE or seller of
7 residential property.

8 2. "Consumer product" means any ~~tangible personal~~ property that is
9 distributed in commerce, ~~and~~ that is normally used ~~solely~~ for personal,
10 family or household purposes, including any such property intended to be
11 attached to or installed in any real property without regard to whether it
12 is so attached or installed, AND THAT BECOMES PART OF THE INTENDED
13 USEFULNESS OF REAL PROPERTY OR THAT IS TYPICALLY TRANSFERRED WITH REAL
14 PROPERTY AS AN INTEGRAL FUNCTIONING UTILITY APPLIANCE OR SYSTEM.

15 3. "Home warranty or home protection contract" means a service
16 contract as defined in paragraph 7, subdivision (b), item (i) of this
17 section.

18 4. "Mechanical reimbursement insurance" means an insurance policy
19 issued to an obligor to either provide reimbursement to the obligor under
20 the terms of the insured service contracts issued or sold by the obligor
21 or, in the event of the obligor's nonperformance, to pay on behalf of the
22 obligor all covered contractual obligations incurred by the obligor under
23 the terms of the insured service contracts issued or sold by the obligor.

24 5. "Residential property" means a house, townhouse, condominium or
25 other habitable structure that is used principally as a residence.

26 6. "Service company" or "obligor" means any person that is
27 contractually obligated to the contract holder under the terms of the
28 service contract. Service company does not include a service contract
29 ~~administration~~ ADMINISTRATOR or seller if the person is not contractually
30 obligated to the contract holder under the terms of the service contract.

31 7. "Service contract":

32 (a) Means a written contract or agreement for a separately stated
33 consideration for any duration to perform, IN WHOLE OR IN PART, the
34 repair, replacement or maintenance, ~~of a consumer product~~ or
35 indemnification for repair, replacement or maintenance, for the
36 operational or structural failure of a consumer product due to a defect in
37 materials, workmanship, accidental damage from handling, a power surge or
38 interruption or normal wear and tear, with or without additional
39 provisions for ~~incidental~~ payment of indemnity ~~under limited~~
40 ~~circumstances~~, including towing, rental and emergency road service, and
41 road hazard protection OR ROOF LEAK.

42 (b) Includes a contract or agreement THAT IS sold for a separately
43 stated consideration for any duration AND that provides for any of the
44 following:

1 (i) The service, maintenance or repair, including replacement, of
2 all or any part of structural components, appliances, electrical,
3 plumbing, heating, cooling or air conditioning systems of residential
4 property or indemnification for the service, maintenance, repair or
5 replacement.

6 (ii) The repair or replacement of tires or wheels on a motor
7 vehicle damaged as a result of coming into contact with road hazards
8 including potholes, rocks, wood debris, metal parts, glass, plastic, curbs
9 or composite scraps.

10 (iii) The removal of dents, dings or creases on a motor vehicle
11 that can be repaired using the process of paintless dent removal without
12 affecting the existing paint finish and without replacing vehicle body
13 panels, sanding, bonding or painting.

14 (iv) The replacement of a motor vehicle key or key fob ~~in the event~~
15 ~~that~~ IF the key or key fob becomes inoperable or is lost or stolen.

16 (v) Other services or products approved by the director.

17 8. "Service contract administrator" means a person who is
18 responsible for the administration of the service contracts or the service
19 contracts plan or who is responsible for any submission required under
20 this article.

21 9. "Warranty" means:

22 (a) Any written affirmation by a manufacturer or seller of fact or
23 written promise made in connection with the sale of a consumer product
24 that relates to the nature of the material or workmanship and affirms or
25 promises that the material or workmanship is free of defects or will meet
26 a specified level of performance over a specified period of time.

27 (b) Any undertaking by a manufacturer or seller in writing in
28 connection with the sale of a consumer product to refund, repair, replace
29 or take other remedial action with respect to such a product if the
30 product fails to meet the specifications set forth in the undertaking,
31 which written affirmation, promise or undertaking becomes part of the
32 basis of the bargain for purposes other than resale of such product and if
33 there is no separate identifiable charge to the consumer.

34 Sec. 17. Section 20-1095.02, Arizona Revised Statutes, is amended
35 to read:

36 20-1095.02. Exemptions: definition

37 A. This article, except for section 20-1095.09, does not apply to
38 the following:

39 1. Warranties issued by manufacturers, builders or sellers on the
40 actual items, structures or improvements that they manufacture, build or
41 sell.

42 2. Service contract programs if a motor vehicle manufacturer or
43 motor vehicle dealer has financial responsibility for performance.

1 3. Warranties and service contracts issued by a corporation other
2 than a manufacturer or seller in connection with consumer products that
3 are distributed by the corporation if the issuing corporation:

4 (a) Is an affiliate of a consumer products manufacturer.

5 (b) By March 1 of each year submits to the director ~~an~~
6 ~~independently audited~~ A financial statement in which at least one officer
7 of the issuing corporation attests ~~and a certified public accountant~~
8 ~~certifies~~ that the issuing corporation has and maintains a net worth in
9 excess of ~~one hundred million dollars~~ \$25,000,000. Any information,
10 documents and copies that are obtained by or disclosed to the director or
11 any other person pursuant to this subdivision are not available for public
12 inspection, except that the director may use this information in any
13 proceeding relating to this article.

14 4. A service company that issues a service contract to persons
15 other than a consumer.

16 5. A service company that is in the business of selling or
17 servicing any one of the following, if the service contract only covers
18 the actual item the service company sells:

19 (a) Appliances or electronic equipment, or both.

20 (b) Residential heating, cooling or air conditioning systems.

21 (c) Mechanical equipment, other than motor vehicles or their
22 components.

23 6. A service company only to the extent that it is in the business
24 of selling or servicing directly, or through other retailers, cell phones
25 and other electronic personal communications devices and accessories.

26 7. Any person licensed pursuant to title 32, chapter 10, or not
27 required to be licensed because exempt pursuant to section 32-1121,
28 subsection A, paragraph 13 whose service contract only covers the actual
29 items, structures or improvements that the person installs, constructs or
30 builds.

31 8. A maintenance agreement of limited duration that provides for
32 scheduled maintenance only and does not include repair or replacement.

33 B. The director may employ independent examiners pursuant to
34 section 20-156 to review and analyze the financial statements that are
35 submitted pursuant to subsection A, paragraph 3 of this section.

36 C. The types of agreements referred to in subsection A of this
37 section are not insurance and are not required to comply with the
38 insurance laws of this state unless a provision is made expressly
39 applicable in this article.

40 D. For the purposes of this section, "affiliate" means a
41 corporation that is owned or controlled by or is under common control with
42 a manufacturer.

1 Sec. 18. Section 20-1095.06, Arizona Revised Statutes, is amended
2 to read:

3 20-1095.06. Required service contract disclosures

4 A. Each service company holding a service company permit shall
5 submit all service contract forms to the director for approval at least
6 thirty days before the proposed effective date of the form. A form may
7 not be used until it is approved by the director or has been on file with
8 the director **FOR** more than thirty days.

9 B. The director may not approve a service contract if:

10 1. The service contract may be canceled or voided due to acts or
11 omissions of the service company or its assignees or subcontractors for
12 their failure to provide correct information or their failure to perform
13 the services or repairs provided in a timely, competent and workmanlike
14 manner.

15 2. Parts or components repaired or replaced under the service
16 contract are excluded.

17 3. The service contract may be canceled ~~or voided~~ by the service
18 company or its representatives for any of the following reasons:

19 (a) **THE SERVICE CONTRACT FAILS TO STATE THE EXTENT TO WHICH**
20 preexisting conditions ~~that were known or that reasonably should have been~~
21 ~~known by the service company or the person selling the service contract on~~
22 ~~the service company's behalf~~ **WILL OR WILL NOT BE COVERED.**

23 ~~(b) Prior use or unlawful acts relating to the product.~~

24 ~~(c)~~ (b) Misrepresentation by either the service company or the
25 person selling the service contract on the service company's behalf.

26 C. Service contracts may not be issued, sold or offered for sale in
27 this state unless the service company has provided both:

28 1. A receipt for or other written evidence of the purchase of the
29 service contract to the contract holder.

30 2. A copy of the service contract to the service contract holder
31 within a reasonable period of time ~~from~~ **AFTER** the date of purchase.

32 D. Service contracts that are marketed, sold, offered for sale,
33 issued, made, proposed to be made or administered in this state shall be
34 written, printed or typed in clear, understandable language that is easy
35 to read and shall disclose the following, as applicable:

36 1. Service contracts that are insured under a mechanical
37 reimbursement insurance policy pursuant to section 20-1095.03, subsection
38 A, paragraph 3, subdivision (b) shall state the name and address of the
39 insurer and contain a statement in substantially the following form:
40 "Obligations of the obligor under this service contract are insured under
41 a mechanical service contract reimbursement insurance policy".

42 2. Service contracts that are not insured under a reimbursement
43 insurance policy pursuant to section 20-1095.03, subsection A, paragraph
44 3, subdivision (b) shall contain a statement in substantially the

1 following form: "Obligations of the obligor under this service contract
2 are backed by the full faith and credit of the obligor".

3 3. Service contracts shall state the name and address of the
4 obligor and shall identify an administrator if different from the obligor,
5 the service contract seller and the service contract holder to the extent
6 that the name of the service contract holder has been furnished by the
7 service contract holder. The identities of these parties are not required
8 to be preprinted on the service contract and may be added to the service
9 contract at the time of sale.

10 4. Service contracts shall state the total purchase price of the
11 service contract. The purchase price is not required to be preprinted on
12 the service contract and may be negotiated at the time of sale with the
13 service contract holder.

14 5. Service contracts shall state the existence of a deductible
15 amount, if applicable.

16 6. Service contracts shall specify the merchandise and services to
17 be provided and any limits, exceptions or exclusions. Exclusions from
18 coverage shall be in bold-faced type. Service contracts may, but are not
19 required to, cover damage resulting from rust, corrosion or damage caused
20 by a noncovered part or system.

21 7. Service contracts covering ~~automobiles~~ MOTOR VEHICLES shall
22 state whether the use of nonoriginal manufacturers' parts is allowed.

23 8. Service contracts shall state any restrictions governing the
24 transferability of the service contract, if applicable.

25 9. Service contracts shall state the terms, restrictions or
26 conditions governing cancellation of the service contract before the
27 termination or expiration date of the service contract by either the
28 service company or the service contract holder. At a minimum, a service
29 contract shall provide for a pro rata refund after deducting for benefits
30 paid and administrative expenses associated with the cancellation. The
31 administrative expenses may not exceed \$75 OR ten percent of the ~~gross~~
32 ~~amount paid by the service contract holder for~~ PURCHASE PRICE OF the
33 service contract, WHICHEVER IS LESS. ANY ADMINISTRATIVE EXPENSE ASSESSED
34 MAY NOT EXCEED THE AMOUNT OF THE REFUND DUE TO THE SERVICE CONTRACT
35 HOLDER.

36 10. Service contracts shall set forth all of the obligations and
37 duties of the service contract holder, including the duty to protect
38 against any further damage and any requirement to follow THE owner's
39 manual.

40 11. Service contracts shall disclose the material acts or omissions
41 of the contract holder that cancel or void coverage, if any, AND MAY
42 INCLUDE:

43 (a) FRAUDULENT OR UNLAWFUL ACTS BY THE CONTRACT HOLDER ARISING OUT
44 OF OR RELATING TO THE SERVICE CONTRACT.

1 (b) THE CONTRACT HOLDER'S USE OF A COVERED CONSUMER PRODUCT IN A
2 MANNER OTHER THAN AS INTENDED BY THE MANUFACTURER THAT IS LIKELY TO
3 INCREASE THE LIKELIHOOD THAT THE CONSUMER PRODUCT WILL BE DAMAGED OR
4 REQUIRE REPAIRS.

5 ~~12. A service contract may not exclude preexisting conditions if~~
6 ~~such conditions were known or should reasonably have been known by the~~
7 ~~service company or the person selling the service contract on the service~~
8 ~~company's behalf.~~

9 12. SERVICE CONTRACTS SHALL DISCLOSE WHETHER THE CONTRACTS COVER OR
10 EXCLUDE PREEXISTING CONDITIONS. A SERVICE CONTRACT MAY EXCLUDE
11 PREEXISTING CONDITIONS ONLY IF THE CONDITIONS WERE EITHER KNOWN OR WOULD
12 HAVE BEEN KNOWN BY VISUALLY INSPECTING, OPERATING OR TESTING THE COVERED
13 PROPERTY.

14 E. Brochures and other advertising or marketing materials are not
15 required to be filed with or approved by the director.

16 Sec. 19. Section 20-1676, Arizona Revised Statutes, is amended to
17 read:

18 20-1676. Notice of nonrenewal

19 A. This article does not apply to the nonrenewal of insurance
20 policies except as provided in subsection B of this section.

21 B. A nonrenewal of any policy of insurance to which this article
22 applies is not effective unless the insurer sends a copy of the notice of
23 nonrenewal to the insured's agent AND TO THE NAMED INSURED at least
24 forty-five days before the end of the policy period of its intention not
25 to renew the policy. The transfer of a policyholder between companies
26 within the same insurance group or changes in deductibles, premium, amount
27 of insurance or coverage are not refusals to renew.

28 C. Notice of nonrenewal is not required if either of the following
29 occurs:

30 1. The insurer or a company within the same insurance group has
31 offered to issue a renewal policy.

32 2. The named insured has obtained replacement coverage or has
33 agreed in writing to obtain replacement coverage.

34 D. If an insurer provides the notice described in subsection B of
35 this section and the insurer subsequently extends the policy for ninety
36 days at the request of the policyholder, an additional notice of
37 nonrenewal is not required with respect to the extension.

38 E. If the notice of nonrenewal is sent less than forty-five days
39 before expiration, the coverage remains in effect until forty-five days
40 after the notice is sent. Earned premium for any period of coverage that
41 extends beyond the expiration date shall be considered pro rata based on
42 the previous year's rate.