

House Engrossed

foreign captive insurers; definition

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2005

AN ACT

AMENDING SECTIONS 20-1098, 20-1098.01, 20-1098.08, 20-1098.15, 20-1098.19
AND 20-1098.21, ARIZONA REVISED STATUTES; RELATING TO CAPTIVE INSURERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 20-1098, Arizona Revised Statutes, is amended to
3 read:
4 20-1098. Definitions
5 In this article, unless the context otherwise requires:
6 1. "Affiliate" has the same meaning prescribed in section 20-481.
7 2. "Agency captive insurer" means a captive insurer that is owned
8 by one or more business entities that are licensed in any state as
9 insurance producers or managing general agents and that only insure risks
10 on policies placed through their owners.
11 3. "Alien captive insurer" means any insurer that is formed to
12 write insurance business for its affiliates and that is licensed pursuant
13 to the laws of an alien jurisdiction that imposes statutory or regulatory
14 standards that are acceptable to the director on companies transacting the
15 business of insurance in such a jurisdiction.
16 4. "Association" means any lawfully formed association of
17 individuals or business entities that has been in existence for at least
18 one year and that is organized for a primary purpose other than procuring
19 or providing insurance for its members.
20 5. "Association captive insurer" means a captive insurer that is
21 completely under the direct or indirect voting control of an association.
22 6. "Branch business" means any insurance business that is
23 transacted by a branch captive insurer in this state.
24 7. "Branch captive insurer" means an alien captive insurer OR A
25 FOREIGN CAPTIVE INSURER that ESTABLISHES A BUSINESS UNIT WITH A PRINCIPAL
26 PLACE OF BUSINESS IN THIS STATE AND THAT is licensed pursuant to this
27 chapter to transact the business of insurance through ~~a~~ THE business
28 unit. ~~with a principal place of business in this state.~~
29 8. "Branch operations" means any business operations of a branch
30 captive insurer in this state.
31 9. "Business entity" means any legal entity other than an
32 individual or sole proprietorship.
33 10. "Captive insurer" means any pure captive insurer, agency
34 captive insurer, group captive insurer or protected cell captive insurer
35 that is domiciled in this state and that is formed and licensed under this
36 article.
37 11. "Controlled unaffiliated business" means an individual or
38 business entity that satisfies all of the following:
39 (a) Is not an affiliate of the captive insurer providing coverage
40 or reinsurance.
41 (b) Has a contractual relationship with an affiliate of the captive
42 insurer providing coverage or reinsurance.
43 (c) Whose risk management function that is related to the covered
44 risk of loss is controlled by an affiliate of the captive insurer
45 providing coverage or reinsurance.

1 12. "Deductible reimbursement" means insurance coverage that
2 reimburses the insured for the deductible it paid under a separate
3 commercial insurance policy issued to the same insured, without other
4 conditions related to the underlying loss.

5 13. "Direct or directly", when used in this article to describe the
6 transaction of insurance business by a captive insurer, means a
7 transaction in which the captive insurer issues an insurance policy that
8 provides primary coverage to the insured under the policy and that does
9 not provide reinsurance coverage to another insurer.

10 14. "FOREIGN CAPTIVE INSURER" MEANS ANY CAPTIVE INSURER THAT IS
11 DOMICILED IN AND LICENSED UNDER THE LAWS OF ANOTHER STATE THAT IMPOSES
12 STATUTORY OR REGULATORY STANDARDS ON CAPTIVE INSURANCE COMPANIES IN THAT
13 STATE THAT ARE ACCEPTABLE TO THE DIRECTOR.

14 ~~14.~~ 15. "Group captive insurer" means any of the following:

- 15 (a) A risk retention group.
- 16 (b) An industry group captive insurer.
- 17 (c) An association captive insurer.

18 ~~15.~~ 16. "Industry group" means two or more business entities or
19 persons that are engaged in businesses or activities similar or related
20 with respect to the liability that they are exposed to by virtue of any
21 related, similar or common business, trade, product, services, premises or
22 operations.

23 ~~16.~~ 17. "Industry group captive insurer" means a captive insurer
24 that is completely under the direct or indirect voting control of an
25 industry group.

26 ~~17.~~ 18. "Manager" means a person who is experienced in the field
27 of captive insurance and who maintains all documents relating to a captive
28 insurer's operations, transactions and affairs in this state and assists
29 the captive insurer in its management and compliance with this article.

30 ~~18.~~ 19. "Member" means any individual or business entity that
31 belongs to a group captive insurer.

32 ~~19.~~ 20. "Participant" means an entity and any affiliates of the
33 entity that are insured by a protected cell captive insurer pursuant to a
34 participant contract.

35 ~~20.~~ 21. "Participant contract" means a contract by which a
36 protected cell captive insurer insures risks of one or more participants
37 and limits losses under the contract to the assets of a protected cell.

38 ~~21.~~ 22. "Protected cell" means a separate account that is
39 established and maintained by a protected cell captive insurer pursuant to
40 a participant contract.

41 ~~22.~~ 23. "Protected cell captive insurer" means a captive insurer:

- 42 (a) In which the minimum capital and surplus required by applicable
43 law is provided by one or more sponsors.

1 (b) That is formed and licensed under this article.

2 (c) That insures the risks of participants through participant
3 contracts.

4 (d) That segregates liability under a participant contract through
5 one or more protected cells.

6 ~~23.~~ 24. "Pure captive insurer" means a captive insurer that
7 insures only the risks of its affiliates and controlled unaffiliated
8 business.

9 ~~24.~~ 25. "Risk retention group" means a captive insurer that is
10 organized pursuant to the liability risk retention act of 1986 (15 United
11 States Code sections 3901 and 3902) and chapter 14 of this title.

12 ~~25.~~ 26. "Sponsor" means an entity that meets the requirements of
13 section 20-1098.06 and that the director has approved to provide all or
14 part of the capital and surplus required by applicable law to operate a
15 protected cell captive insurer.

16 Sec. 2. Section 20-1098.01, Arizona Revised Statutes, is amended to
17 read:

18 20-1098.01. Licensing; authority

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

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

24 2. A group captive insurer, other than a risk retention group,
25 shall not insure risks other than the risks of its group members, its
26 affiliates and controlled unaffiliated business. A risk retention group
27 shall insure only the risks of its group members.

28 3. An agency captive insurer shall not:

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

31 (b) Directly insure life or disability insurance risks without the
32 approval of the director. The insurance risks that the director may
33 approve are limited to employer group term life insurance, employer group
34 disability income insurance and reimbursement of employer health plan
35 deductibles. The director may require the business written by an agency
36 captive insurer to be any of the following:

37 (i) Fronted by an insurer that holds a certificate of authority
38 under the laws of any state.

39 (ii) Reinsured by a reinsurer authorized, accredited or approved by
40 the director.

41 (iii) Secured by a trust fund in the United States for the benefit
42 of policyholders and claimants or funded by an irrevocable letter of
43 credit or other arrangement that is acceptable to the director. The
44 director may require the agency captive insurer to increase the funding of
45 any security arrangement established under this item. If the form of

1 security is a letter of credit, the letter of credit shall be issued or
2 confirmed by a bank approved by the director. A trust maintained pursuant
3 to this item shall be established in a form and on terms approved by the
4 director.

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

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

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

11 (a) Hospital service corporations, medical service corporations,
12 dental service corporations, optometric service corporations or hospital,
13 medical, dental and optometric service corporations as defined in section
14 20-822.

15 (b) Health care services organizations as defined in section
16 20-1051.

17 (c) Prepaid dental plan organizations as defined in section
18 20-1001.

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

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

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

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

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

28 2. A pure captive insurer shall not provide direct coverage of
29 workers' compensation or employers' liability in this state unless the
30 coverage is provided under a self-insurance program that is approved by
31 the industrial commission of Arizona pursuant to section 23-961. A
32 captive insurance program that is authorized by section 23-961 is subject
33 to and shall comply with all requirements of title 23, chapter 6 that are
34 applicable to self-insurance.

35 3. A pure captive insurer shall not provide direct coverage of
36 workers' compensation or employers' liability insurance in another state
37 unless the coverage is provided under a self-insurance program that is
38 qualified as a self-insurance program under the applicable state or
39 federal law, as determined by the agency or other entity that has
40 jurisdiction over the self-insurance program.

41 4. An agency captive insurer directly insuring life or disability
42 income insurance risk as specified in subsection A, paragraph 3 of this
43 section:

44 (a) Shall mark each policy and certificate with a conspicuously
45 stamped or written notice in bold-faced type that states the following:

1 This policy is issued by an insurer that is not a member
2 of an Arizona insurance guaranty fund. If the insurer that
3 issued this policy becomes insolvent, insureds or claimants
4 will not be eligible for insurance guaranty fund protection
5 pursuant to title 20, Arizona Revised Statutes.

6 (b) May insure only life and disability income insurance risks as
7 specified in subsection A, paragraph 3 of this section for employers that
8 maintain their principal place of business within this state.

9 (c) May not be owned or controlled by an insurer that is granted
10 authority by the director to transact insurance in this state.

11 (d) Shall have its financial statements audited by an independent
12 certified public accountant pursuant to section 20-1098.07, subsection B.

13 (e) May not directly insure life or disability income insurance
14 risks as specified in subsection A, paragraph 3 of this section in this
15 state unless all of the following apply:

16 (i) An insurance producer or managing general agent that owns the
17 agency captive insurer remains in regulatory good standing in all states
18 in which it is licensed.

19 (ii) The agency captive insurer insures only the risks of employer
20 group term life insurance, employer group disability income insurance and
21 reimbursement of employer health plan deductibles that are placed by or
22 through an insurance producer or managing general agent that owns the
23 agency captive insurer and, if required by the director, provides the
24 director the form of such policies.

25 (iii) The agency captive insurer discloses to the original
26 policyholder or policyholders, in a form or manner approved by the
27 director, all limitations, rights and obligations held by the agency
28 captive insurer as a result of its affiliation with an insurance producer
29 or managing general agent.

30 5. This subsection does not prohibit a captive insurer from
31 directly insuring deductible reimbursement risk.

32 6. This subsection does not prohibit a captive insurer from
33 directly insuring employment practices liability risk.

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

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

38 E. A captive insurer shall:

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

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

43 3. Appoint a resident statutory agent to accept service of process
44 and to otherwise act on its behalf in this state and shall file the
45 appointment with the director. In the case of a captive insurer formed as

1 a ~~corporation or~~ reciprocal insurer, if the statutory agent cannot with
2 reasonable diligence be found at the registered office of the captive
3 insurer, the director is an agent of the captive insurer on whom any
4 process, notice or demand may be served.

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

7 1. If formed as a corporation, a certified copy of its articles of
8 incorporation, articles of organization or other organizational document,
9 a copy of its duly adopted bylaws or other governance rules, a statement
10 under oath of its president and secretary showing its financial condition
11 and any other statement or document required by the director.

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

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

20 1. The amount and liquidity of its assets relative to the risks to
21 be assumed.

22 2. The adequacy of the expertise, experience and character of the
23 directors and officers of the captive insurer.

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

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

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

28 6. The establishment of business relationships with any
29 accountants, banks, attorneys and other professionals that are acceptable
30 to the department.

31 7. The ability of the captive insurer's owners or members to pay
32 claims to third parties if the captive insurer is unable to pay those
33 claims.

34 8. Other factors deemed relevant by the director in ascertaining
35 whether the proposed captive insurer will be able to meet its policy
36 obligations.

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

40 1. A business plan that demonstrates, in a manner acceptable to the
41 director, how the applicant will account for the loss and expense
42 experience of each protected cell and report that information to the
43 director.

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

5 3. Its form for all participant contracts.

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

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

11 J. An applicant for a captive insurer license shall pay to the
12 director a nonrefundable fee for the issuance of a captive insurance
13 license pursuant to section 20-167. The captive insurer shall pay the
14 license renewal fee pursuant to section 20-167 when the captive insurer
15 files the annual report prescribed in section 20-1098.07.

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

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

23 Sec. 3. Section 20-1098.08, Arizona Revised Statutes, is amended to
24 read:

25 20-1098.08. Examinations

26 A. Whenever the director determines it to be prudent, the director
27 may examine the business, transactions and affairs of each captive insurer
28 to ascertain the captive insurer's financial condition and ability to
29 fulfill its obligations and whether the captive insurer has complied with
30 this article.

31 B. Section 20-1098.23 applies to all examination reports,
32 preliminary examination reports or results, working papers, recorded
33 information, documents and copies of any of those reports, results,
34 papers, information or documents produced by, obtained by or disclosed to
35 the director in the course of an examination made under this section.

36 C. The director may use independent contractor examiners pursuant
37 to sections 20-148 and 20-159 to conduct examinations pursuant to this
38 section. All examinations and examination related expenses shall be borne
39 by the captive insurer and shall be paid by the insurance examiners'
40 revolving fund pursuant to section 20-159.

41 D. ~~As a condition of licensure,~~ An alien captive insurer OR FOREIGN
42 CAPTIVE INSURER THAT ESTABLISHES A BUSINESS UNIT IN THIS STATE AND THAT IS
43 LICENSED AS A BRANCH CAPTIVE INSURER shall consent to the examination by
44 the director of the affairs of the alien captive insurer OR FOREIGN
45 CAPTIVE INSURER in the jurisdiction in which the alien captive insurer OR

1 FOREIGN CAPTIVE INSURER is formed. The examination of a branch captive
2 insurer shall be of branch business and branch operations only, during the
3 period the branch captive insurer is formed, and must demonstrate to the
4 director's satisfaction that the alien captive insurer OR FOREIGN CAPTIVE
5 INSURER is operating in a sound financial condition pursuant to all the
6 applicable laws and regulations of the jurisdiction.

7 Sec. 4. Section 20-1098.15, Arizona Revised Statutes, is amended to
8 read:

9 20-1098.15. Applicability

10 A. Chapter 2, article 6 of this title relating to unfair trade
11 practices and frauds applies to captive insurers, except to the extent the
12 director determines the nature of captive insurance renders particular
13 provisions of chapter 2, article 6 of this title inappropriate.

14 B. All other provisions of this title that are not inconsistent
15 with this article apply to captive insurers, except to the extent the
16 director determines the nature of captive insurance renders particular
17 provisions of this title inappropriate.

18 C. A captive insurer that is formed as a corporation is subject to
19 the applicable provisions of title 10, except as otherwise prescribed in
20 this article.

21 D. A captive insurer that is formed as a limited liability company
22 is subject to the applicable provisions of title 29, except as otherwise
23 prescribed in this article.

24 E. The provisions of article 1 of this chapter relating to mergers,
25 consolidations, conversions, mutualizations and redomestications apply in
26 determining the procedures to be followed by captive insurers in carrying
27 out those transactions, except that the director may waive or modify the
28 requirements for a public notice and hearing prescribed in section 20-731.
29 NOTWITHSTANDING SECTION 20-731, A DOMESTIC CAPTIVE INSURER MAY MERGE OR
30 CONSOLIDATE WITH ANY OTHER DOMESTIC CAPTIVE INSURER, FOREIGN CAPTIVE
31 INSURER OR ALIEN CAPTIVE INSURER EVEN IF THE DOMESTIC CAPTIVE INSURER,
32 FOREIGN CAPTIVE INSURER OR ALIEN CAPTIVE INSURER WAS FORMED AS A LIMITED
33 LIABILITY COMPANY OR A STOCK CORPORATION.

34 F. Chapter 2, article 8 of this title relating to insurance holding
35 company systems applies to risk retention groups as defined in section
36 20-1098 or 20-2401.

37 G. Chapter 2, article 12 of this title relating to risk-based
38 capital, as modified by the national association of insurance
39 commissioners for risk retention groups, applies to risk retention groups
40 as defined in section 20-1098 or 20-2401. If a risk retention group is
41 subject to regulatory action as prescribed in section 20-488.02,
42 20-488.03, 20-488.04 or 20-488.05, the regulatory action shall be at the
43 discretion of the director.

44 H. Unless otherwise prescribed by the director based on a risk
45 retention group's business plan, remoteness of the risk and claim

1 frequency, section 20-260, subsection A, relating to individual risk
2 limitation, applies to risk retention groups as defined in section 20-1098
3 or 20-2401.

4 Sec. 5. Section 20-1098.19, Arizona Revised Statutes, is amended to
5 read:

6 20-1098.19. Establishment of branch captive insurer

7 A. AN ALIEN CAPTIVE INSURER OR FOREIGN CAPTIVE INSURER MAY
8 ESTABLISH A BUSINESS UNIT IN THIS STATE AND BECOME LICENSED AS a branch
9 captive insurer ~~may be established~~ in this state pursuant to this chapter
10 to write insurance or reinsurance in this state except as provided in
11 section 20-1098.01, subsection B and other than workers' compensation or
12 employers' liability insurance.

13 B. A branch captive insurer shall not conduct any ~~insurance~~ BRANCH
14 business in this state unless it maintains the principal place of business
15 for its branch operations in this state.

16 C. A branch captive insurer shall be a pure captive insurer with
17 respect to operations and minimum capitalization in this state unless
18 otherwise permitted by the director.

19 Sec. 6. Section 20-1098.21, Arizona Revised Statutes, is amended to
20 read:

21 20-1098.21. Branch captive insurer reports

22 Within sixty days after its fiscal year end, a branch captive
23 insurer shall file with the director a copy of all reports and statements
24 that are required to be filed under the laws of the jurisdiction in which
25 the alien captive insurer OR FOREIGN CAPTIVE INSURER is formed and that
26 are verified by oath of two of its executive officers.