

House Engrossed

captive insurers; certificate of dormancy

State of Arizona  
House of Representatives  
Fifty-seventh Legislature  
First Regular Session  
2025

# **HOUSE BILL 2193**

AN ACT

AMENDING SECTIONS 20-1098, 20-1098.01, 20-1098.03 AND 20-1098.04, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 4, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-1098.24; 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 the business unit.

28 8. "Branch operations" means any business operations of a branch  
29 captive insurer in this state.

30 9. "Business entity" means any legal entity other than an  
31 individual or sole proprietorship.

32 10. "Captive insurer" means any pure captive insurer, agency  
33 captive insurer, group captive insurer or protected cell captive insurer  
34 that is domiciled in this state and that is formed and licensed under this  
35 article.

36 11. "Controlled unaffiliated business" means an individual or  
37 business entity that satisfies all of the following:

38 (a) Is not an affiliate of the captive insurer providing coverage  
39 or reinsurance.

40 (b) Has a contractual relationship with an affiliate of the captive  
41 insurer providing coverage or reinsurance.

42 (c) Whose risk management function that is related to the covered  
43 risk of loss is controlled by an affiliate of the captive insurer  
44 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. "DORMANT CAPTIVE INSURER":

11       (a) MEANS A CAPTIVE INSURER THAT HAS BOTH:

12        (i) CEASED TRANSACTING THE BUSINESS OF INSURANCE, INCLUDING ISSUING  
13 INSURANCE POLICIES.

14        (ii) NO OUTSTANDING LIABILITIES ASSOCIATED WITH THE BUSINESS OF  
15 INSURANCE OR HAS NOT ISSUED ANY INSURANCE POLICY BEFORE FILING AN  
16 APPLICATION FOR A CERTIFICATE OF DORMANCY.

17       (b) DOES NOT INCLUDE A CAPTIVE RISK RETENTION GROUP.

18       ~~14.~~ 15. "Foreign captive insurer" means any captive insurer that  
19 is domiciled in and licensed under the laws of another state that imposes  
20 statutory or regulatory standards on captive insurance companies in that  
21 state that are acceptable to the director.

22       ~~15.~~ 16. "Group captive insurer" means any of the following:

23       (a) A risk retention group.

24       (b) An industry group captive insurer.

25       (c) An association captive insurer.

26       ~~16.~~ 17. "Industry group" means two or more business entities or  
27 persons that are engaged in businesses or activities similar or related  
28 with respect to the liability that they are exposed to by virtue of any  
29 related, similar or common business, trade, product, services, premises or  
30 operations.

31       ~~17.~~ 18. "Industry group captive insurer" means a captive insurer  
32 that is completely under the direct or indirect voting control of an  
33 industry group.

34       ~~18.~~ 19. "Manager" means a person who is experienced in the field  
35 of captive insurance and who maintains all documents relating to a captive  
36 insurer's operations, transactions and affairs in this state and assists  
37 the captive insurer in its management and compliance with this article.

38       ~~19.~~ 20. "Member" means any individual or business entity that  
39 belongs to a group captive insurer.

40       ~~20.~~ 21. "Participant" means an entity and any affiliates of the  
41 entity that are insured by a protected cell captive insurer pursuant to a  
42 participant contract.

43       ~~21.~~ 22. "Participant contract" means a contract by which a  
44 protected cell captive insurer insures risks of one or more participants  
45 and limits losses under the contract to the assets of a protected cell.

1        ~~22.~~ **23.** "Protected cell" means a separate account that is  
2 established and maintained by a protected cell captive insurer pursuant to  
3 a participant contract.

4        ~~23.~~ **24.** "Protected cell captive insurer" means a captive insurer:

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

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

8            (c) That insures the risks of participants through participant  
9 contracts.

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

12        ~~24.~~ **25.** "Pure captive insurer" means a captive insurer that  
13 insures only the risks of its affiliates and controlled unaffiliated  
14 business.

15        ~~25.~~ **26.** "Risk retention group" means a captive insurer that is  
16 organized pursuant to the liability risk retention act of 1986 (15 United  
17 States Code sections 3901 and 3902) and chapter 14 of this title.

18        ~~26.~~ **27.** "Sponsor" means an entity that meets the requirements of  
19 section 20-1098.06 and that the director has approved to provide all or  
20 part of the capital and surplus required by applicable law to operate a  
21 protected cell captive insurer.

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

24        **20-1098.01. Licensing; authority**

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

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

30            2. A group captive insurer, other than a risk retention group,  
31 shall not insure risks other than the risks of its group members, its  
32 affiliates and controlled unaffiliated business. A risk retention group  
33 shall insure only the risks of its group members.

34            3. An agency captive insurer shall not:

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

37            (b) Directly insure life or disability insurance risks without the  
38 approval of the director. The insurance risks that the director may  
39 approve are limited to employer group term life insurance, employer group  
40 disability income insurance and reimbursement of employer health plan  
41 deductibles. The director may require the business written by an agency  
42 captive insurer to be any of the following:

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

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

(iii) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the director. The director may require the agency captive insurer to increase the funding of any security arrangement established under this item. If the form of security is a letter of credit, the letter of credit shall be issued or confirmed by a bank approved by the director. A trust maintained pursuant to this item shall be established in a form and on terms approved by the director.

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

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

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

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

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

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

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

- (e) Business of title insurance as defined in section 20-1562.
- (f) Personal motor vehicle or homeowner's insurance coverage or any component of that insurance coverage.

(g) Mortgage guaranty insurance as defined in section 20-1541.  
(h) Workers' compensation or employment liability insurance.

(ii) workers' compensation or employers' liability insurance policies except in connection with a self-insurance program as prescribed in this subsection.

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

3. A pure captive insurer shall not provide direct coverage of workers' compensation or employers' liability insurance in another state unless the coverage is provided under a self-insurance program that is qualified as a self-insurance program under the applicable state or

1       federal law, as determined by the agency or other entity that has  
2 jurisdiction over the self-insurance program.

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

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

8               This policy is issued by an insurer that is not a member  
9 of an Arizona insurance guaranty fund. If the insurer that  
10 issued this policy becomes insolvent, insureds or claimants  
11 will not be eligible for insurance guaranty fund protection  
12 pursuant to title 20, Arizona Revised Statutes.

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

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

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

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

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

26               (ii) The agency captive insurer insures only the risks of employer  
27 group term life insurance, employer group disability income insurance and  
28 reimbursement of employer health plan deductibles that are placed by or  
29 through an insurance producer or managing general agent that owns the  
30 agency captive insurer and, if required by the director, provides the  
31 director the form of such policies.

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

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

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

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

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

1       E. A captive insurer shall:

2       1. Hold at least one meeting of its board of directors **OR ITS BOARD**  
3 **OF MANAGERS** or, for reciprocal insurers, its subscribers' advisory  
4 committee each year in this state.

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

6       3. Appoint a resident statutory agent to accept service of process  
7 and to otherwise act on its behalf in this state and shall file the  
8 appointment with the director. In the case of a captive insurer formed as  
9 a reciprocal insurer, if the statutory agent cannot with reasonable  
10 diligence be found at the registered office of the captive insurer, the  
11 director is an agent of the captive insurer on whom any process, notice or  
12 demand may be served.

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

15       1. If formed as a corporation, a certified copy of its articles of  
16 incorporation, articles of organization or other organizational document,  
17 a copy of its duly adopted bylaws or other governance rules, a statement  
18 under oath of its president and secretary showing its financial condition  
19 and any other statement or document required by the director.

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

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

28       1. The amount and liquidity of its assets relative to the risks to  
29 be assumed.

30       2. The adequacy of the expertise, experience and character of the  
31 directors and officers of the captive insurer.

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

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

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

36       6. The establishment of business relationships with any  
37 accountants, banks, attorneys and other professionals that are acceptable  
38 to the department.

39       7. The ability of the captive insurer's owners or members to pay  
40 claims to third parties if the captive insurer is unable to pay those  
41 claims.

42       8. Other factors deemed relevant by the director in ascertaining  
43 whether the proposed captive insurer will be able to meet its policy  
44 obligations.

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

4       1. A business plan that demonstrates, in a manner acceptable to the  
5 director, how the applicant will account for the loss and expense  
6 experience of each protected cell and report that information to the  
7 director.

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

12       3. Its form for all participant contracts.

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

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

18       J. An applicant for a captive insurer license shall pay to the  
19 director a nonrefundable fee for the issuance of a captive insurance  
20 license pursuant to section 20-167. The captive insurer shall pay the  
21 license renewal fee pursuant to section 20-167 ~~when the captive insurer~~  
22 ~~files the annual report prescribed in section 20-1098.07 NOT EARLIER THAN~~  
23 ~~JULY 1 AND NOT LATER THAN SEPTEMBER 1 OF EACH YEAR.~~

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

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

31       Sec. 3. Section 20-1098.03, Arizona Revised Statutes, is amended to  
32 read:

33       20-1098.03. Minimum capital and surplus; letter of credit;  
34                    borrowed surplus

35       A. The director shall not issue a license to a captive insurer  
36 unless the insurer possesses and thereafter maintains minimum unimpaired  
37 paid-in capital and surplus in combination as follows:

38       1. In the case of a pure captive insurer, at least \$250,000.  
39       2. In the case of a group captive insurer, at least \$500,000.  
40       3. In the case of an agency captive insurer, at least \$500,000.  
41       4. In the case of a protected cell captive insurer, at least  
42 ~~\$500,000~~ ~~\$250,000~~.

43       5. In the case of a captive insurer that is organized as a  
44 reciprocal insurer, at least \$500,000.

1       6. In the case of a pure or group captive insurer that transacts  
2 only reinsurance, one-half of the applicable amount prescribed in  
3 paragraph 1 or 2 of this subsection.

4       B. All minimum capital and surplus requirements shall be in the  
5 form of cash or an irrevocable and unconditional letter of credit that  
6 contains an evergreen clause, that is payable to, filed with and held by  
7 the director in trust for the protection of all policyholders, ceding  
8 insurers and related expenses and that meets the following conditions:

9       1. The letter of credit shall be issued or confirmed by a qualified  
10 United States financial institution as defined in section 20-3601,  
11 subsection A and shall comply with the requirements prescribed by the  
12 director.

13       2. The captive insurer shall not be directly or contingently liable  
14 for any letter of credit comprising its capital or surplus, and its assets  
15 shall not be pledged as security for the letter of credit.

16       C. The director may prescribe additional capital and surplus  
17 requirements based on the type, volume and nature of insurance. The  
18 captive insurer may pledge, with the approval of the department, any  
19 additional prescribed capital and surplus, whether in the form of cash,  
20 another allowable asset or any irrevocable and unconditional letter of  
21 credit that contains an evergreen clause.

22       D. Notwithstanding any other provision of this title, a written  
23 agreement under which a captive insurer borrows monies that are required  
24 to be repaid only out of the insurer's surplus in excess of that  
25 stipulated in the agreement may provide for interest at any rate agreed on  
26 and approved by the director.

27       E. A captive insurer that is established solely for the purpose of  
28 reinsuring risks as part of a program filed and approved by the director  
29 to facilitate the securitization of risks ceded to the captive insurer may  
30 be a party to contracts that provide that subsequent purchasers of  
31 interests in the program assume the interests on a nonrecourse basis, both  
32 as to the captive insurer and any affiliate.

33       Sec. 4. Section 20-1098.04, Arizona Revised Statutes, is amended to  
34 read:

35       20-1098.04. Formation of captive insurers; redomestication

36       A. An agency captive insurer or protected cell captive insurer  
37 shall be incorporated as a stock insurer with its capital divided into  
38 shares and held by the stockholders. Each owner of an agency captive  
39 insurer shall be licensed as an insurance producer.

40       B. A group captive insurer may be formed in any of the following  
41 ways:

42       1. Incorporated as a stock insurer with its capital divided into  
43 shares and held by the stockholders.

1       2. Incorporated as a mutual insurer without capital stock, the  
2 governing body of which is elected by the member organizations of its  
3 association.

4       3. Organized as a reciprocal insurer pursuant to article 2 of this  
5 chapter.

6       4. Incorporated as a nonprofit corporation pursuant to title 10,  
7 chapter 25.

8       C. A pure captive insurer may be formed in any of the following  
9 ways:

10      1. Incorporated as a stock insurer with its capital divided into  
11 shares and held by the stockholders.

12      2. Incorporated as a nonprofit corporation pursuant to title 10,  
13 chapter 25.

14      3. Incorporated as a limited liability company **THAT IS**  
15 **MANAGER-MANAGED** pursuant to title 29.

16      D. The capital stock of a captive insurer that is incorporated as a  
17 stock insurer may be authorized with no par value.

18      E. A captive insurer that is formed as a corporation shall have at  
19 least three incorporators, at least one of whom shall be a resident of  
20 this state. Notwithstanding subsection B, paragraph 3 of this section, a  
21 captive insurer that is formed as a reciprocal insurer may be organized by  
22 three or more subscribers, none of whom shall be required to be a resident  
23 of this state.

24      F. A pure captive insurer shall have at least one director. Any  
25 other kind of corporate captive insurer shall have at least three  
26 directors. Any group captive insurer formed as a reciprocal insurer shall  
27 have at least three subscribers' advisory committee members. In addition  
28 to independent directors, a group captive insurer may have as many  
29 directors as it has members.

30      G. A captive insurer that is formed as a corporation shall have at  
31 least one member of the board of directors who is a resident of this  
32 state. **A CAPTIVE INSURER THAT IS FORMED AS A LIMITED LIABILITY COMPANY**  
**SHALL HAVE AT LEAST ONE MEMBER OF ITS BOARD OF MANAGERS WHO IS A RESIDENT**  
**OF THIS STATE.** A captive insurer that is formed as a reciprocal insurer  
33 shall have at least one member of the subscribers' advisory committee who  
34 is a resident of this state.

35      H. The articles of incorporation or bylaws of a captive insurer  
36 that is formed as a corporation with more than one director may authorize  
37 a quorum of a board of directors to consist of at least one-third of the  
38 fixed or prescribed number of directors, but at least two directors. The  
39 subscribers' agreement or other organizing document of a captive insurer  
40 formed as a reciprocal insurer may authorize a quorum of a subscribers'  
41 advisory committee to consist of at least one-third of the number of its  
42 members, but at least two members.

1       I. Any foreign or alien insurer may become a domestic captive  
2 insurer by complying with the requirements of this article relating to the  
3 licensing of a domestic captive insurer and by complying with all  
4 applicable requirements of the laws of this state relating to the  
5 domestication of a corporation to this state. The effective date of a  
6 license that is issued to a foreign or alien insurer domesticated to this  
7 state shall be the date of filing its articles of domestication with the  
8 corporation commission.

9       Sec. 5. Title 20, chapter 4, article 14, Arizona Revised Statutes,  
10 is amended by adding section 20-1098.24, to read:

11       20-1098.24. Dormant captive insurers; certificate of  
12 dormancy; report; fee; rules

13       A. A CAPTIVE INSURER THAT IS DOMICILED IN THIS STATE AND THAT MEETS  
14 THE DEFINITION OF DORMANT CAPTIVE INSURER MAY APPLY FOR A CERTIFICATE OF  
15 DORMANCY BY SUBMITTING AN APPLICATION TO THE DIRECTOR ON A FORM PRESCRIBED  
16 BY THE DIRECTOR. THE CERTIFICATE OF DORMANCY IS SUBJECT TO RENEWAL EVERY  
17 FIVE YEARS AND EXPIRES UNLESS RENEWED.

18       B. A DORMANT CAPTIVE INSURER THAT IS ISSUED A CERTIFICATE OF  
19 DORMANCY SHALL:

20       1. POSSESS AND THEREAFTER MAINTAIN UNIMPAIRED, PAID-IN CAPITAL AND  
21 SURPLUS OF AT LEAST \$125,000.

22       2. NOT LATER THAN NINETY DAYS AFTER THE END OF THE DORMANT CAPTIVE  
23 INSURER'S FISCAL YEAR, SUBMIT TO THE DIRECTOR A REPORT OF ITS FINANCIAL  
24 CONDITION THAT IS VERIFIED BY OATH OF TWO OF ITS EXECUTIVE OFFICERS.

25       3. PAY A CERTIFICATE RENEWAL FEE AS PRESCRIBED IN SECTION 20-167.

26       C. A DORMANT CAPTIVE INSURER MAY SURRENDER ITS CERTIFICATE OF  
27 DORMANCY BY SUBMITTING AN APPLICATION TO SURRENDER TO THE DIRECTOR. THE  
28 DORMANT CAPTIVE INSURER MAY NOT ISSUE INSURANCE POLICIES OR CONDUCT THE  
29 BUSINESS OF INSURANCE UNTIL THE DIRECTOR APPROVES THE APPLICATION TO  
30 SURRENDER.

31       D. THE DIRECTOR SHALL REVOKE A CERTIFICATE OF DORMANCY IF A DORMANT  
32 CAPTIVE INSURER NO LONGER MEETS THE DEFINITION OF DORMANT CAPTIVE INSURER.

33       E. THE DIRECTOR MAY ADOPT GUIDELINES, PROCEDURES AND RULES TO  
34 IMPLEMENT THIS SECTION.