

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.

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

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

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

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

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

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

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

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

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

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

20-1098.01. Licensing; authority

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

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

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

3. An agency captive insurer shall not:

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

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

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

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

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

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

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

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

18 (a) Hospital service corporations, medical service corporations,
19 dental service corporations, optometric service corporations or hospital,
20 medical, dental and optometric service corporations as defined in section
21 20-822.

22 (b) Health care services organizations as defined in section
23 20-1051.

24 (c) Prepaid dental plan organizations as defined in section
25 20-1001.

26 (d) Prepaid legal insurance contracts as defined in section
27 20-1097.

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

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

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

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

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

42 3. A pure captive insurer shall not provide direct coverage of
43 workers' compensation or employers' liability insurance in another state
44 unless the coverage is provided under a self-insurance program that is
45 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**
33 **SHALL HAVE AT LEAST ONE MEMBER OF ITS BOARD OF MANAGERS WHO IS A RESIDENT**
34 **OF THIS STATE.** A captive insurer that is formed as a reciprocal insurer
35 shall have at least one member of the subscribers' advisory committee who
36 is a resident of this state.

37 H. The articles of incorporation or bylaws of a captive insurer
38 that is formed as a corporation with more than one director may authorize
39 a quorum of a board of directors to consist of at least one-third of the
40 fixed or prescribed number of directors, but at least two directors. The
41 subscribers' agreement or other organizing document of a captive insurer
42 formed as a reciprocal insurer may authorize a quorum of a subscribers'
43 advisory committee to consist of at least one-third of the number of its
44 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.