



STATE OF ARIZONA
DEPARTMENT OF INSURANCE

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REGULATORY BULLETIN 2001-3

To: Insurance Agents and Brokers, Insurance Industry Representatives, Insurance Trade Associations, Life & Disability Insurers, Property & Casualty Insurers, And Other Interested Parties

From: Charles R. Cohen
Director of Insurance

Date: May 24, 2001

Re: **2001 Arizona Insurance Laws**

This Regulatory Bulletin summarizes the major pieces of newly enacted legislation affecting the Department, its licensees, and insurance consumers. This summary is not meant as an exhaustive list or a detailed legal analysis of all insurance related bills. It generally describes the substantive content, but does not capture all details or necessarily cover all bills that may be of interest to a particular reader. Please do not regard this summary as a legal opinion or a binding interpretation of the legislation. All interested persons are encouraged to obtain copies of the enacted bills by contacting the Arizona Secretary of State's Office at (602) 542-4086 or from the Arizona legislative web site at the following internet address: <http://www.azleg.state.az.us>. Please direct any questions regarding this bulletin to Vista Thompson Brown, Executive Assistant for Policy Affairs, 602/912-8456.

The 2001 Arizona Forty-fifth Legislature, First Regular Session, adjourned *sine die* on May 10, 2001. Except as otherwise noted below, all insurance related legislation has a general effective date of August 9, 2001.

The Department initiated the following bills, which are described first: HB 2117, HB 2430, SB 1020, SB 1021, SB 1022, SB 1288, and SB 1366.

DEPARTMENT BILLS

HB 2117. Health Care Services Organizations; Insolvency (Ch. 328) (Due to an emergency clause, bill was effective on signature - May 4, 2001)

This bill amends laws governing the administration of an insolvency of a health care services organization (HMO). The bill:

- Amends A.R.S. § 20-629 governing the priority of distribution of the general assets of an insolvent estate:
 - Treats providers' post-receivership claims for covered services as administrative claims, to the extent not reimbursed through the HMO's statutory plan for risk of insolvency.
 - Clarifies that HMO enrollee claims are the equivalent of "policyholder" claims for priority purposes.
 - Elevates contract providers (who must hold enrollees harmless from any balance billing) to the priority immediately superior to general creditors.
- Amends A.R.S. § 20-1069 to expressly require the Receiver for an insolvent HMO to provide the Receivership Court ("Court") with an initial and periodic reports on the adequacy of the HMO's statutory plan for risk of insolvency, and to immediately notify the Court and contract providers if it is determined that the plan is inadequate to fully pay post receivership claims.
- Amends A.R.S. § 20-1069.01(A) to excuse a carrier who participated in the last open enrollment with the insolvent HMO from the obligation to offer coverage to the insolvent HMO's affected enrollees if the Director finds that the carrier lacks adequate health service delivery resources.
- Requires HMOs' provider contracts to require providers to continue serving enrollees at the contract rates and terms from the declaration of insolvency until the earliest of the following :
 - the end of the statutory continuation of benefits period;
 - the Receiver notifies the court, or the court finds, that the statutory plan for risk of insolvency is inadequate to pay providers' post-receivership claims;
 - the court finds that continuation of a provider's contract would pose an undue hardship to the provider; or
 - the court finds that the HMO has satisfied its obligations to enrollees.
- Amends A.R.S. § 20-1379 to provide guaranteed issue rights for displaced individual enrollees who would otherwise lack guaranteed issue rights under the Health Insurance Portability and Accountability Act, by classifying them as "eligible individuals" if their coverage terminates during the insolvency, and they would otherwise qualify as eligible individuals, but for the required period of creditable coverage.
- Amends A.R.S. § 20-1072 to change the penalty for a provider who violates prohibitions against balance billing an HMO enrollee, or sends an enrollee a bill

without certain language indicating that the billing was for “information only” from mandatory treble damages to an amount “up to” treble damages.

- Amends A.R.S. § 20-120 regarding payment bonds/cash deposits required for third party intermediaries (TPI) to exempt, from the statutory bonding/deposit requirements, a TPI:
 - To which an insurer has not delegated responsibility to process and pay claims of providers for which the TPI has assumed risk; or
 - To which an insurer has delegated responsibility to process and pay claims of providers contracted with the TPI, if the providers agree to hold harmless the insurer and its insureds if the TPI fails to pay claims.

HB 2430. Fraud unit; peace officer status (Ch. 131)

This bill authorizes peace officer status for qualified investigators in the Department’s Fraud Unit. The bill amends A.R.S. § 20-466 as follows:

- Allows the Director to employ investigators who serve as peace officers only while acting in the course and scope of their employment for the Fraud Unit.
- Requires Fraud Unit investigators with peace officer status to have the qualifications established by the Arizona Peace Officer Standards and Training Board.
- Provides that Fraud Unit investigators are not eligible for participation in the Public Safety Personnel Retirement System solely as a result of their employment as Fraud Unit investigators.
- Requires the Director to adopt investigative guidelines that are modeled after DPS investigative policy and procedural guidelines.
- Prohibits Fraud Unit investigators from preempting the authority or jurisdiction of other law enforcement agencies of this state.

SB 1021. Insurance solicitation materials; approval; repeal (Ch. 79)

Last year’s HMO reform bill (HB 2600) eliminated prior review and approval of life and health advertising materials, but left two statutes related to pre-approval of solicitation materials submitted by HMOs or prepaid dental plans. Because prior approval of advertising materials is no longer required, these statutes were repealed to avoid confusion and inconsistency.

- Repeals A.R.S. § 20-1017 (prepaid dental plans) and A.R.S. § 20-1067(HMOs).

SB 1022. Benefit insurers; repeal (Ch. 58)

- Repeals Title 20, Chapter 4, Articles 5 and 6, respectively governing Benefit Insurers and Benefit Stock Insurers, two antiquated forms of insurance company that no longer exist in Arizona.
- Makes conforming changes in other sections.

DEPARTMENT BILLS RELATED TO GRAMM LEACH BLILEY

Three of the Department's proposed bills are related to enactment of the federal Gramm Leach Bliley Act (GLB): (1) SB 1020 Information sharing; (2) SB 1288 Insurance information; privacy protection; and (3) SB 1366 Insurance producer licensing.

SB 1020. Insurance department; information sharing (Ch. 162)

This bill furthers GLB's scheme of functional regulation and coordination of regulatory activities among the numerous state and federal agencies responsible for regulatory oversight of the financial services industries. (GLB § 307; 15 USC § 6716).

- Enacts parallel changes in A.R.S. §§ 20-158 (examination reports); 20-466 (insurance fraud investigation materials); 20-481.21 (holding company transactional filings); 20-485.03 (records of third party administrators); and 20-488.07 (RBC reports and related information) to codify the Department's authority to:
 - Share nonpublic documents, materials, and regulatory information with international, federal, and other state regulators, law enforcement officials, and the National Association of Insurance Commissioners (NAIC) if the receiving organization warrants that it is authorized to maintain confidentiality of the shared materials;
 - Receive such information from those same entities and maintain the confidentiality of any information designated as confidential by the sender; and
 - Enter into agreements with other regulators and officials as necessary to preserve confidentiality of nonpublic regulatory information.

Further provides that such disclosure and sharing does not waive any existing claim of confidentiality or privilege.

- Amends A.R.S. § 20-481.21 to provide that "Form D" filings (mandatory prior notifications of material transactions within an insurance holding company system) are confidential. (The Director retains authority to release information after giving the affected insurer notice and the opportunity for a hearing.

SB 1288. Insurance information; privacy protection (Ch. 220)

Amends Arizona's existing law governing privacy of personal information gathered in the context of an insurance transaction (A.R.S. §§ 20-2101 et seq., the Insurance Information and Privacy Protection Act) to ensure that it complies with all minimum standards for privacy protection established in Gramm Leach Bliley.

- Amends A.R.S. § 20-2101 governing the scope of the privacy laws to make technical changes that conform Arizona's law to the 1982 NAIC model privacy act.
- Amends A.R.S. § 20-2104 governing privacy notices by:
 - Requiring insurers and producers to provide notices:
 - At least annually during the continuation of the policyholder relationship (prior statute allowed for notice every 24 months); and

- Upon reinstatement or change in the policy unless notice was given within the preceding 12 months.
- Allowing electronic notice if the policyholder agrees.
- Allowing use of a notice that contains the information required by Gramm Leach Bliley (15 USC § 1603) as an alternative to the information required by A.R.S. § 20-2104(C).
- Prohibiting use of a short form notice for policyholders, but continuing to allow use of a short form notice for applicants.
- Permitting an entity that is required to give notice, to give that notice to the sponsor of an employee benefit plan, group policyholder, group annuity contract holder, or workers' compensation plan participant, instead of giving notice to the individuals covered under such group plans, if the notifying entity does not disclose information about the individuals, except pursuant to an exception listed in A.R.S. § 20-2113. *(This language conforms to a provision in the recent NAIC model privacy regulation.)*
- Excusing an entity from the obligation to give notice to policyholders:
 - Who have invalid addresses (mail is returned as undeliverable); or
 - Who have policies that have lapsed, expired, or become inactive if the entity has not communicated with the policyholder in 12 months, other than to provide legally required notices.
(This language conforms to a provision in the recent NAIC model privacy regulation.)
- Amends A.R.S. § 20-2113 listing exceptions to the general rule prohibiting an insurer, producers, or insurance support organization (insurance entity) from disclosing an individual's personal or privileged information, by:
 - Permitting the insurance entity to disclose information to an affiliate for the purpose of marketing financial products (current law allows disclosure to market only insurance products); and
 - Prohibiting the insurance entity from disclosing medical record information to an affiliate for marketing purposes, without the individual's written consent.
- Enacts A.R.S. § 20-2121 permitting the Department to enforce the privacy provisions of Gramm Leach Bliley (15 USC §§ 6801-6809) and allowing the Director to adopt rules needed for enforcement.

SB 1366. Insurance producer licensing (Ch. 205) (Delayed effective date: October 1, 2001)

This bill is based on the Uniform Producer Licensing Model, adopted by the National Association of Insurance Commissioners, as the means for the states to achieve uniformity and reciprocity in licensure of nonresident agents and brokers. A majority of states must achieve GLB's standards for uniformity or, at least, reciprocity in insurance producer licensing by November of 2002 to forestall implementation of the National Association of Registered Agents and Brokers (NARAB) contemplated under GLB, Title III, Subtitle C.

Effective October 1, 2001, this bill repeals current law governing licensure of insurance agents, brokers, service representatives, and certain other insurance professionals (Title 20, Chapter 2, Article 3), and adopts a new Article 3 governing licensure of producers. The bill provides for conversion of most agent and broker licenses to producer licenses, and results in expiration of all service representative licenses in force on that date. The bill also enacts new articles governing other insurance related professionals such as bail bond agents, rental car agents, and adjusters who were previously regulated under the repealed Article 3. The bill renumbers and reorganizes current law governing these other professionals, and leaves the substantive provisions largely unchanged.

New Article 3 governing insurance producers is based on the NAIC model, but blends in repealed provisions from current law that are not inconsistent with the model and that enhance consumer protection and licensing administration. Some of the substantive provisions that add to or deviate from the NAIC model are noted below. For the convenience of the reader, there are cross-references to the applicable sections of the NAIC model.

Article 3. Insurance Producer Licensing

- Repeals A.R.S. § 20-229(B) requiring a resident agent to countersign policies solicited in Arizona by a nonresident agent, if the nonresident's home state requires such countersignatures on policies that Arizona resident agents solicit in the nonresident's home state.
- Repeals Title 20, chapter 2, article 3 entitled: "Agents, Brokers, Solicitors and Adjusters." Note, this includes a repeal of the provision authorizing licensure of "service representatives." **All service representative licenses will expire as of October 1, 2001.** Any person currently licensed as a service representative must obtain a producer license in order to sell, solicit, or negotiate insurance, unless the person fits within one of the exceptions listed in new A.R.S. § 20-283.
- Enacts A.R.S. § 20-281 which includes definitions for the following terms: Business entity; designated producer; health or sickness insurance; home state; insurance producer; limited line credit insurance; limited line insurance; major line insurance; member; negotiate; nonresident; person; resident; sell; solicit; and travel accident ticket and baggage insurance producer. (*NAIC model § 2*).
- Enacts A.R.S. § 20-282 requiring a person to be appropriately licensed to sell, solicit, or negotiate insurance. (*NAIC model § 3*).
- Enacts A.R.S. § 20-283 listing exceptions to the requirement for licensure in A.R.S. § 20-282. (*NAIC model § 4*). Arizona's law includes a specific exception for an officer or employee of an insurer if individual does not receive commission; does not negotiate or sell insurance; and merely confers with existing policyholders in order to respond to policyholders' requests to transact matters arising out of their existing policies. (*See new A.R.S. § 20-281(B)(1)(c)(ii)*).

- Enacts A.R.S. § 20-284 requiring a resident individual to pass an examination to qualify for an insurance producer license, and specifying the requirements for the examination process and procedures. (*NAIC model § 5*).
- Enacts A.R.S. § 20-285 specifying application procedures for residents seeking an insurance producer license and criteria for licensure as a resident individual or business entity. (*NAIC model § 6*). The Director may require a business entity to provide background information on each individual serving as an officer, director, member, or designated producer. The bill also permits criminal background checks and fingerprinting of individual producers and a business entity's controlling individuals.
- Enacts A.R.S. § 20-286 requiring the Director to issue a producer license, consistent with the lines of authority specified in the section, to persons who satisfy the criteria for licensure. Also requires licensees to notify the Director of changes in address or members, officers, directors, or designated producers of a business entity. Permits the Director to contract with third parties for performance of ministerial licensing functions. (*NAIC model § 7*).
- Enacts A.R.S. § 20-287 specifying the criteria and process for licensure of nonresident producers. This section requires the Director to issue a producer license to nonresidents who are licensed in good standing in their home state, if their home state extends reciprocal treatment to Arizona resident producers. (*NAIC model § 8*).
- Enacts A.R.S. § 20-288 listing exemptions from the examination requirements in A.R.S. § 20-284. (*NAIC model § 9*).
- Enacts A.R.S. § 20-289 specifying the term of a producer license and the requirements and process for renewal, including fingerprinting. The bill also establishes procedures for late renewals and voluntary surrender of a license.
- Enacts A.R.S. § 20-290 specifying record keeping requirements for producers and requiring business entities to have at least one individually licensed producer at each Arizona office in which the business entity transacts insurance.
- Enacts A.R.S. § 20-291 appointing the Insurance Director agent for service of process on any licensed nonresident producer and specifying procedures for service of process.
- Enacts A.R.S. § 20-292 allowing the Director to issue an administrative cease and desist order against unlicensed persons engaged in unauthorized activity and to pursue legal action to stop such behavior.
- Enacts A.R.S. § 20-293 governing the operation of insurance vending machines.

- Enacts A.R.S. § 20-294 allowing the Director to issue a temporary insurance producer license in certain listed circumstances, subject to any conditions or limitations the Director may impose. (*NAIC model § 11*).
- Enacts A.R.S. § 20-295 permitting the Director to deny, suspend, refuse to renew, or revoke a license, and to impose civil penalties and restitution orders, for any of the grounds listed in the section. The listed grounds include those from the NAIC model, as well as grounds previously listed in A.R.S. § 20-316 that were not otherwise captured by the model. Grants the Director authority to take enforcement action even in cases where the license has expired or been surrendered. Provides due process so a licensee may challenge any adverse action taken against the licensee. (*NAIC model § 12*).
- Enacts A.R.S. § 20-296 specifying the procedures and restrictions following suspension or revocation of a producer license, for both individuals and business entities.
- Enacts A.R.S. § 20-297 specifying the procedures for doing business under an assumed business name or trade name, including the requirement to obtain the Director's approval. (*NAIC model § 10*).
- Enacts A.R.S. § 20-298 governing payment of commissions. Prohibits payment of commission to unlicensed persons who are required to be licensed, except for certain renewal and deferred commissions; allows for payment of regular salaries and distribution of compensation and profits in the regular course of business. (*NAIC model § 13*).
- Enacts A.R.S. § 20-299 containing information-sharing language similar to the provisions in SB 1020 discussed above. Permits the Director to exchange nonpublic regulatory information with other regulators, the NAIC, and law enforcement officials, without compromising the confidentiality of the information. (*NAIC model § 15(F)*).
- Enacts A.R.S. § 20-300 establishing reciprocity in licensure and continuing education requirements for nonresident producers. (*NAIC model § 16*).
- Enacts A.R.S. § 20-301 requiring a producer to notify the Director of administrative action taken against the producer or criminal prosecution of the producer. (*NAIC model § 17*).
- Enacts A.R.S. § 20-302 permitting the Director to adopt rules needed to effectuate the Article. (*NAIC model § 18*).

Other Insurance Professionals

Articles 3.1, 3.2, 3.3, and 3.4 are renumbered versions of existing law governing managing general agents, adjusters, rental car agents, bail bond agents, and bail

recovery agents. Because the substantive provisions are generally unchanged from current law, those provisions are not described in this bulletin. The new sections are cross-referenced to the repealed A.R.S. sections; any substantive differences are noted.

Article 3.1. Managing General Agents

- A.R.S. § 20-311. Definition of managing general agent; exceptions; adjustment or payment of claims. (*Previously A.R.S. § 20-284*).
- A.R.S. § 20-311.01. Licensing of managing general agents; surety deposit; definition. (*Previously A.R.S. § 20-288*).
- A.R.S. § 20-311.02. Requirements for managing general agent agreements. (*Previously A.R.S. § 20-301.01*).
- Enacts A.R.S. § 20-311.03 listing provisions of Article 3 applicable to MGAs. (*Certain sections of old Article 3 that were of general applicability to all licensees had to be incorporated as a result of the renumbering.*)

Article 3.2. Adjusters

- A.R.S. § 20-321. Definition of adjuster; exception. (*Previously A.R.S. § 20-281*).
- A.R.S. § 20-321.01. Licensing of adjusters; qualifications; exemption. (*Previously A.R.S. § 20-312*). Eliminates a licensing exception of six months duration for apprentices.
- Enacts A.R.S. § 20-311.02 listing provisions of Article 3 applicable to adjusters. (*Certain sections of old Article 3 that were of general applicability to all licensees had to be incorporated as a result of the renumbering.*)

Article 3.3. Other Insurance Professionals

- A.R.S. § 20-331. Rental car agents; definition. (*Previously A.R.S. § 20-295.01*).
- A.R.S. § 20-331.01 Political subdivision employees; risk management consultant license. (*Previously A.R.S. § 20-289*).

Article 3.4. Bail Bond Agents and Bail Recovery Agents

- A.R.S. § 20-341. Definitions. (*Previously A.R.S. §§ 20-282.01 & 20-383(E)*).
- A.R.S. § 20-341.01. Bail bond agents; business entities; place of business; receipts; maintenance of records. (*Previously A.R.S. § 20-319*).
- A.R.S. § 20-341.02. Bond of bail bond agents. (*Previously A.R.S. § 20-320*).
- A.R.S. § 20-341.03. Bail bond agent prohibitions. (*Previously A.R.S. § 20-321*).
- A.R.S. § 20-341.04. Bail recovery agent prohibitions; criminal records checks. (*Previously A.R.S. § 20-323*).
- A.R.S. § 20-341.01. Rules. (*Previously A.R.S. § 20-322*).
- Enacts A.R.S. § 20-341.06 listing provisions of Article 3 applicable to bail bond agents. (*Certain sections of old Article 3 that were of general applicability to all licensees had to be incorporated as a result of the renumbering.*)

Article 5. Unauthorized Insurers

- Amends A.R.S. § 20-408 to eliminate the requirement that a “408 Affidavit” (now the “408 report”) be notarized and filed in duplicate, but requires a surplus lines (S/L) broker to verify the information in the report. Amends the information required on a 408 report form to eliminate the name of the person designated for service of process under A.R.S. § 20-419. Permits the Director to impose a civil penalty of up to \$25.00 for each day the report is late.
- Amends A.R.S. § 20-411 to clarify that it applies to resident S/L brokers (individuals and business entities); repeals the requirement to post a bond; clarifies that business entities licensed as S/L brokers must comply with the requirements of A.R.S. § 20-285(D) and (E); repeals subsections governing use of trade names (because S/L brokers are subject to the provisions of A.R.S. § 20-297); and specifies the provisions of Article 3 that apply to S/L brokers.
- Amends A.R.S. § 20-411.01 to eliminate the bond requirement for Mexican insurance S/L brokers and to clarify that both residents and nonresidents may be licensed under this section to sell Mexican insurance.
- Amends A.R.S. § 20-411.02 governing nonresident S/L brokers to provide for reciprocal licensure in the same manner specified for nonresident insurance producers in A.R.S. § 20-287.
- Amends A.R.S. § 20-414 to require that a S/L broker must maintain business records at the S/L broker’s principal place of business.

- Amends A.R.S. § 20-415 to require that the S/L broker's semiannual report of S/L business be notarized rather than verified.
- Amends A.R.S. § 20-418 to permit the Director to impose a civil penalty and restitution, as well as license denial, revocation, suspension, or nonrenewal, for any grounds applicable to insurance producers.
- Amends A.R.S. § 20-422 to clarify that both residents and nonresidents may sell Mexican insurance.

Article 9. Title Insurers

- Amends A.R.S. § 20-1561 to specify that title insurance agents are subject to licensure under Title 20, Chapter 6, Article 9, rather than under Chapter 2, Article 3.
- Enacts A.R.S. § 20-1583(B) to permit a title insurance company to authorize a title insurance agency to use the title insurer's corporate name, subject to existing limitations in subsection (A).

Transition Provisions

Section 43 of the bill provides:

- A person holding a valid insurance agent or broker license on October 1, 2001 is deemed to hold an insurance producer license for the same lines of authority. Bail bond agents, adjusters, title insurance agents, rental car agents, managing general agents, surplus lines brokers, and Mexican insurance surplus lines brokers all retain their same form of license and authority.
- All licenses for services representatives expire on October 1, 2001. (Any individual who is currently licensed as a service representative, and who does not fall into one of the exceptions listed in A.R.S. § 20-283 must become licensed as an insurance producer to sell, solicit, or negotiate insurance.)

Section 44 requires legislative council staff to prepare conforming legislation for the next session. (This bill does not attempt to change the terms "agent" or "broker" to the term "producer" throughout all of Title 20. Legislative council will draft a technical corrections bill to make those changes next session. Until those changes are made, the Department will interpret provisions applicable to insurance agents and brokers as applying to insurance producers.)

Section 45 contains the delayed effective date of October 1, 2001.

ALL OTHER BILLS

SB 1010. Motor vehicle insurance; noncancellation (Ch. 239)

This bill amends various statutes to clarify which statutes govern cancellation or nonrenewal of an auto insurance policy for nonpayment of premium and which statutes govern cancellation/nonrenewal for reasons other than nonpayment. The bill makes other minor substantive changes to the noncancellation laws.

- Amends A.R.S. § 20-267(B), which refers to cancellation for nonpayment, to delete a reference to A.R.S. § 20-1632, which governs cancellation for reasons other than nonpayment.
- Amends A.R.S. § 20-1631(L) to permit an insurer to transfer, to an affiliated insurer, a driver who has had at least 2 at-fault accidents in a 36-month period under any motor vehicle insurance policy with the insurer. (This change parallels a change made last session to A.R.S. § 20-1631(E) regarding cancellation of an at-fault driver, and will allow an insurer to transfer the at fault driver even if the driver's accidents occurred in vehicles covered by different policies with that insurer, such as when an insurer covers multiple household vehicles under separate policies.)

Current law prohibits an insurer from transferring a named insured who agrees to exclude the at-fault driver from coverage, but does not allow one named insured to exclude an at-fault driver who is also a named insured. The amendments remove this latter prohibition and thus permit a named insured who is not at-fault to exclude another named insured who is an "at-fault driver."

The bill also prohibits an insurer from transferring persons other than the at-fault driver, or from using the at-fault driver's record in setting rates for any remaining insured who agrees to exclude the at-fault driver from coverage.

- Amends A.R.S. § 20-1632 to clarify that this section applies to cancellation/nonrenewal for reasons other than nonpayment of premium.
- Amends A.R.S. § 20-1632.01 to clarify that this section applies to cancellation/nonrenewal for nonpayment of premium.

SB 1144. Health professionals; definition (Ch. 10)

Amends A.R.S. § 20-3151 to simplify the definition of "health care professional" by referring only to specific A.R.S. title and chapter numbers rather than also listing the descriptive title of the profession.

SB 1164. Unfair claim settlement practices (Ch. 343)

Amends A.R.S. § 20-461 by adding a new subsection (A)(18) making it an unfair claim settlement practice for an insurer to deny liability for a claim under a motor vehicle liability policy for damages resulting from an accident caused by the insured, if the

denial is based “solely on a medical condition that could affect the insured’s driving ability” and the insurer fails to conduct a reasonable investigation of the claim.

SB 1196. Long term care council (Ch. 85)

Enacts A.R.S. § 41-3901 establishing an interagency council on long term care (LTC) for the purpose of helping Arizona achieve a coordinated LTC delivery system.

HB 2090. Industrial Commission; procedures (Ch. 201)

- Amends A.R.S. § 23-961 by adding a new subsection (B) to prohibit an employer from fulfilling the obligation to provide worker’s compensation through any means not expressly authorized in statute, such as insurance coverage other than worker’s compensation insurance. The amendment also prohibits anyone from marketing, offering, or selling worker’s compensation insurance that does not comply with all statutory requirements for such insurance.
- Amends A.R.S. § 23-961(G) (previously (F)) to repeal the employer’s obligation to notify the Industrial Commission of the employer’s new worker’s compensation carrier when the employer changes carriers. (The carrier remains obligated to give notice.)

HB 2116. Captive Insurance (Ch 327) (delayed effective date of July 1, 2002)

This bill establishes a captive insurance program in the state of Arizona.

- Amends A.R.S. § 20-167 to repeal a provision allowing domestic life and disability reinsurers a renewal fee credit against any premium taxes, and to require the Director to establish fees for issuance and renewal of certificates of authority for captive insurers.
- Enacts A.R.S. § 20-1098 defining terms applicable to the captive insurance program, including: affiliate; association; association captive insurer; captive insurer; controlled unaffiliated business; manager; member organization; and pure captive insurer.
- Enacts A.R.S. § 20-1098.01:
 - Allows the Director to license a captive insurer.
 - Allows a pure captive insurer to insure the risks of its affiliates and the risks of controlled unaffiliated businesses.
 - Allows an association captive insurer to insure the risks of its member organizations and their affiliates.
 - Prohibits a captive insurer from issuing (as a direct writer) health insurance; prepaid legal insurance; title insurance; personal lines; commercial auto (unless the insured affiliate qualifies under Title 28 to self-insure); mortgage guaranty insurance; and workers’ compensation and employer’s liability insurance.

- Allows a captive insurer to reinsure commercial motor vehicle, mortgage guaranty, worker's compensation, employer's liability, and other forms of insurance, in accordance with A.R.S. § 20-1098.09.
- Requires a licensed captive insurer to maintain its principal place of business in Arizona; to annually hold at least one Board meeting in Arizona; to appoint an Arizona statutory agent, (but allows for service of process on the Director if the agent cannot reasonably be located); to have a local captive manager and business relationships with local banks, attorneys, and other professionals; and to pay prescribed application and renewal fees.
- Establishes application requirements and required filings including incorporation documents, financial documents, background on the captive manager, a sound plan of operation, and other information specified by the Director. Provides for confidentiality of filed information, and limited exceptions permitting disclosure. Requires the Director to provide a copy of the captive insurer's plan of operation to the Industrial Commission if the captive insurer will reinsure workers compensation or employer's liability risks.
- Requires the Director to act on a complete application within 30 days.
- Enacts A.R.S. § 20-1098.02 requiring a captive insurer to include the term "captive" in its business name, and prohibiting use of a business name that may be confusing, misleading, or deceptive.
- Enacts A.R.S. § 20-1098.03 establishing the following minimum capital and surplus requirements in the form of an irrevocable, unconditional, & evergreen letter of credit drawn on a qualified U.S. financial institution:
 - \$250,000 for a pure captive;
 - \$500,000 for an association captive; and
 - half of those amounts for captives transacting only reinsurance.
- Enacts A.R.S. § 20-1098.04:
 - Requiring a pure captive to incorporate as a stock insurer, but allowing issuance of stock with no par value, and permitting an association captive to form as a stock or mutual insurer.
 - Requiring at least 3 incorporators, at least one must be an Arizona resident.
 - Providing that certain other applicable laws in Titles 10 and 20 apply to captives.
 - Specifying requirements for a quorum of the board of directors.
- Enacts A.R.S. § 20-1098.05 requiring a captive insurer to file an annual report of its financial condition within 90 days of its fiscal year end. The report may use generally accepted accounting principles. The annual report must be audited by an independent CPA, unless the Director finds the audit unnecessary.
- Enacts A.R.S. § 20-1098.06:
 - Giving the Director broad discretionary authority to examine a captive insurer's business, transactions, and affairs as the Director deems necessary.
 - Providing confidentiality for information resulting from an examination, subject to the same exceptions listed in A.R.S. § 20-1098.01.

- Allowing the Director to utilize contract examiners and to bill the captive for the cost of any examination.
- Enacts A.R.S. § 20-1098.07 allowing the Director to suspend, revoke, or refuse to renew a captive insurer's license for any reason listed in the statute, including impairment or insolvency, failure to file required reports or to comply with applicable laws, refusal to be examined or to reimburse the costs of examination, or conducting business in a way that is hazardous to the public or policyholders.
- Enacts A.R.S. § 20-1098.08:
 - Requiring association captive insurers to comply with the investment requirements in Chapter 3, Article 2.
 - Allowing the Director to approve alternative valuation methods and to prohibit or limit any investments the Director believes may threaten a captive insurer's solvency or liquidity.
 - Permitting a pure captive to make loans to affiliates with the Director's prior approval.
- Enacts A.R.S. § 20-1098.09 allowing a captive insurer to reinsure risks subject to other limitations prescribed in the Article, and to take credit for reinsurance lawfully ceded to other reinsurers.
- Enacts A.R.S. § 20-1098.10 providing that a captive insurer is not required to join a rating organization.
- Enacts A.R.S. § 20-1098.11 relieving a captive insurer from participating in or contributing to associations, guaranty funds, or similar arrangements.
- Enacts A.R.S. § 20-1098.12 permitting the Director to adopt rules.
- Enacts A.R.S. § 20-1098.13 making applicable, to captive insurers, both the unfair trade practices and frauds Article and all other laws in Title 20 not inconsistent with this Article, unless the Director deems such application inappropriate.
- Enacts A.R.S. § 20-1098.14 requiring a captive insurer to have a captive manager, who is an Arizona resident, and who maintains the insurer's books and records at an accessible Arizona location. The captive manager is required to notify the Director if the captive insurer fails to comply with this Article. The Director may require a captive insurer to terminate a captive manager for failure to perform.

Section 13 requires the Director to annually report on fees collected from captive insurers.

HB 2118. Insurers; examination; five years (Ch. 110) (Effective upon Governor's signature: April 11, 2001)

- Amends A.R.S. § 20-156(A) to extend the cycle for a mandatory financial examination of a domestic insurer from 3 to 5 years.
- Enacts A.R.S. § 20-156(F) and (G) establishing the financial surveillance fund, consisting of monies collected from an assessment on certain domestic insurers. The assessment is a scaled assessment that varies with the amount of the insurer's admitted assets; the amount of the assessment is based on ranges established in A.R.S. § 20-156(G). The Department must use the monies in the fund for the costs of employing financial analysts to conduct financial surveillance of insurers.

HB 2119. Insurers; acquisition; discretionary hearing (Ch. 16)

- Amends A.R.S. § 20-481.07 to eliminate the requirement for a mandatory hearing upon any merger or acquisition of a domestic insurer, and granting the Director discretion to hold a hearing if the Director deems it necessary.
- Enacts A.R.S. § 20-481.07(D) establishing a process for notice to interested persons who may wish to request a hearing. The person seeking to acquire an insurer must give notice to interested parties, as specified by the Director. The insurer must notify its security holders. Any person whose interests may be affected by the acquisition may request that the Director hold a hearing. The request must state the reasons for the hearing, and explain the affected interests. The Director must schedule a hearing if the Director finds good cause based on grounds listed in the statute.
- Amends A.R.S. § 20-731 to eliminate the requirement for a mandatory hearing upon any merger or consolidation of a domestic stock insurer, and granting the Director discretion to hold a hearing if the Director deems it necessary.

HB 2580. Title agents; limited liability companies (Ch. 57)

- Amends A.R.S. § 20-1562(9), the definition of "title insurance agent," to include "limited liability company."
- Amends A.R.S. § 20-1576 to delete the term "incorporated" in reference to title insurance agents.
- Amends A.R.S. § 20-1580 to include a reference to limited liability companies (LLC) in the section on granting a temporary title insurance license.
- Amends A.R.S. § 29-609 to permit an LLC to conduct business as a title insurance agent, but makes the LLC members individually responsible for the LLC's obligations arising out of insurance transactions, up to the amount of each member's initial investment in the LLC.

Any person may view this bulletin on the Department's web site at www.state.az.us/id. For questions regarding this bulletin, please contact Vista Thompson Brown, Executive Assistant for Policy Affairs at 602/912-8456 or vbrown@id.state.az.us.