



**Department of Insurance**

**State of Arizona**

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**CHRISTINA URIAS**

Director of Insurance

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REGULATORY BULLETIN 2007-02 <sup>1</sup>

To: Insurance Producers, Surplus Lines Brokers, Insurance Industry Representatives, Insurance Trade Associations, Life & Disability Insurers, Property & Casualty Insurers, and other interested parties

From: Christina Urias, Director of Insurance

Date: July 12, 2007

Re: **2007 Arizona Insurance Laws**

This Regulatory Bulletin summarizes the major, newly enacted legislation affecting the Department, its licensees, and insurance consumers. This summary is not meant as an exhaustive list or a detailed 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. The Department may follow this bulletin with other, more detailed bulletins related to implementation 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 <http://www.azleg.state.az.us>. Please direct any questions regarding this bulletin to Karlene Wenz, Executive Assistant for Policy Affairs, 602/364-3471.

Arizona's Forty-eighth Legislature, First Regular Session, adjourned *sine die* on, June 20, 2007. Except as otherwise noted, all insurance related legislation has a general effective date of September 19, 2007.

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<sup>1</sup>This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the Agency, and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the Statement.

## **INSURANCE-RELATED BILLS ENACTED IN 2007:**

### **HB 2134: small business; uniform health questionnaire (Ch. 67)**

The bill requires the creation of a uniform health questionnaire for small groups applying to accountable health plans for health insurance.

Enacts A.R.S. §20-2305:

- Establishes the Uniform Employee Health Status Questionnaire Committee at the Department, requiring the Director to appoint the eight members (four representatives of accountable health plans (AHPs), two insurance producers working primarily in the small business health insurance market, and two small business representatives who are knowledgeable about health insurance) and to either chair the Committee herself or appoint a designee.
- Charges the committee with developing the questionnaire after reviewing those used currently by AHPs, and requires it to be useable in both written and electronic formats.
- Requires the Director to prescribe the questionnaire by April 1, 2008, and requires AHPs to begin using the questionnaire by Jan. 1, 2009.
- Permits the Director to reconvene the committee as necessary to revise the questionnaire and requires AHPs to begin using the new questionnaire beginning 180 days after the Director prescribes the new version.
- Specifies that committee members serve at the pleasure of the Director and are not eligible to receive compensation or reimbursement of expenses.
- Defines “employee health status questionnaire” as a “questionnaire that poses questions about an individual employee or covered dependent’s health history and that is to be compiled by the individual employee or covered dependent of a small group that seeks health insurance coverage from an accountable health plan.”

Enacts A.R.S. §20-2306:

- Requires AHPs to use the questionnaire for all small groups for which the AHPs require employees and covered dependents to complete such a questionnaire.
- Permits AHPs to add questions to the questionnaire that pertain to eligibility for coverage or that are for underwriting purposes, and permits AHPs to ask the producer, employees and dependents follow-up questions about responses to the uniform employee health status questionnaire.

**\*\*\*NOTE:** The Director has selected the committee members, however, the committee will not meet until after the effective date of the legislation.

### **HB 2139: insurance; disability; prohibited practices (Ch. 113)**

This bill permits disability insurers to offer wellness programs to enrollees.

Amends A.R.S. §20-450:

- Permits group and individual disability insurers to offer and provide rewards and incentives to enrollees participating in a wellness program without violating A.R.S. §§20-448 or 20-452.
- Requires the wellness program to satisfy the requirements for an exception from the general prohibition against discrimination based on a health factor under the Health Insurance Portability and Accountability Act of 1996 (for individual coverage, the wellness program must satisfy the equivalent of the HIPAA requirements).

\*\*\*NOTE: See also the summary of related legislation, SB 1098.

**HB 2188: insurance guaranty fund; board membership (Ch. 115)**

This bill updates the statute governing the property and casualty insurance guaranty fund board.

Amends A.R.S. §20-661:

- Revises the definition of “insolvent insurer” by requiring such an insurer to have had an order of liquidation with a finding of insolvency entered by a court with jurisdiction after the effective date of the bill; and that the order of liquidation was not stayed or was not the subject of a writ of supersedeas or another comparable order.

Amends A.R.S. §20-663:

- Eliminates language related to the terms of the board’s initial members and language requiring members to represent certain associations of insurers.
- Requires nine of the board members appointed by the governor to be representatives of a cross section of the insurers authorized to transact property or casualty insurance in Arizona.

Amends A.R.S. §20-667:

- Revises obligations of the fund by requiring covered claims to be in amounts of more than \$100 but less than \$300,000, and in the instance of covered claims for unearned premiums, for the claim to be more than \$25 but not exceed \$10,000.

Amends A.R.S. §20-680:

- Adds to the types of insurance to which the article does not apply, “Insurance of warranties or service contracts, including insurance that provides for the repair, replacement or service of goods or property , or indemnification for the repair, replacement or service, of the operation or structural failure of the goods or property due to a defect in materials, workmanship or normal wear and tear, or reimbursement for the liability incurred by the issuer of agreements or service contract that provide these benefits.”

\*\*\*NOTE: Session law permits the current guaranty fund board members to serve on the board until the expiration of their terms.

**HB 2189: insurance; actuarial opinion; memorandum requirements (Ch. 69)**

Repeals the existing A.R.S. §§20-696 through 20-696.07 and establishes the updated actuarial opinion and memorandum requirements for life and disability insurers in accordance with the National Association of Insurance Commissioners (NAIC) 2004 revision. The new law requires *all* life and disability insurers to perform asset adequacy analysis, as opposed to the prior requirement, which only required insurers with more than \$100 million in assets to perform such an analysis in formulating reserves. For complete details, please see the bill's text.

**HB 2294: captive insurer amendments (Ch. 122)**

The bill amends and updates the laws governing captive insurance in Arizona.

Amends A.R.S. §20-1098:

- Defines new terms and amends others, including “alien captive insurer,” “association captive insurer,” “branch business,” “branch captive insurer,” “branch operations,” “deductible reimbursement,” “industry group captive insurer,” and “risk retention group.”

Amends A.R.S. §20-1098.01:

- Clarifies restrictions on direct business, prohibiting pure captives from providing direct coverage of workers' compensation or employers' liability unless as a self-insured program approved by the Industrial Commission of Arizona, permitting a captive insurer to directly insure deductible reimbursement risk, and permitting direct commercial auto coverage.

Amends A.R.S. §20-1098.03:

- Reduces the protected cell captive minimum capital requirement from \$1 million to \$500,000.

Amends A.R.S. §20-1098.04:

- Requires each owner of an agency captive insurer to be licensed as an insurance producer or as a managing general agent.
- Permits a pure captive to be formed as a limited liability corporation.
- Permits the number of directors of a group captive to equal the number of members.
- Requires a captive insurer formed as a corporation to have at least one member of the board of directors who is a resident of Arizona, and requires captives formed as reciprocal insurers to have at least one member of the subscribers' advisory committee who is a resident of Arizona.

Amends A.R.S. §20-1098.16:

- Eliminates the requirement that a captive manager be a resident of Arizona.

Enacts A.R.S. §20-1098.19:

- Permits branch captive insurers to write only insurance or reinsurance of employees benefits other than workers' compensation or employers' liability insurance, of the

branch captive's parent and affiliated companies that are subject to the Employee Retirement Income Security Act.

- Requires a branch captive to maintain its principal place of business for its Arizona business in Arizona.
- Requires a branch captive to be a pure captive with respect to operations and minimum capitalization in Arizona unless otherwise permitted by the Director.

Enacts A.R.S. §20-1098.20:

- Prescribes the required security for branch business and branch operations.

Enacts A.R.S. §20-1098.21:

- Requires branch captives to file copies of all reports and statements required by the jurisdiction in which the alien captive insurer is formed within 60 days of the captive's fiscal year end.
- Requires the aforementioned documents to be verified by oath of two of the captive's executive officers.

Enacts A.R.S. §20-1098.22:

- Requires captive insurers to obtain written approval of the Director prior to implementing any material change in the plan of operation.

Enacts A.R.S. §20-1098.23:

- Establishes confidentiality provisions.

**HB 2405: workers' compensation; premium reduction (Ch. 148)**

The bill authorizes credit of up to 5% to employers with certain drug testing programs.

Amends A.R.S. §23-961:

- Permits workers' compensation insurers to reduce premiums by up to 5% if: the employer complies with the drug testing policy requirements of §23-493.04; the employer conducts drug testing of potential employees; the employer tests employees for drugs after an employee has been injured; and the employer allows the insurer access to these drug testing results.

\*\*\* NOTE: The National Council on Compensation Insurance will make a filing with the Department for the credit authorized in this legislation.

**HB 2789: health and welfare; budget reconciliation**

Part of the 2007 budget package, this bill directs the Department to conduct a financial audit of the state-operated health insurance plan, Health Care Group, and establishes a study committee to review whether or not Healthcare Group should continue operation.

**SB 1073: deferred annuities; cash surrender; payment (Ch. 28)**

The bill amends the standard nonforfeiture law for individual deferred annuities.

Amends A.R.S. §20-1232:

- Requires companies to notify the owner of the owner's rights under the contract within 30 days of maturity, including the right to receive a lump sum cash payment where applicable.
- Requires companies to pay the amount due within 30 days of the date the amount becomes payable.
- Changes the period for which a company may reserve the right to defer payment of the cash surrender benefit to a period not to exceed 180 days.
- Requires companies to notify owners within 15 days of the date the Director receives a deferral request that a company has made such a request.
- Requires the written deferral request to include the reason the payment cannot take place within the required 30 days.
- Requires the transfer of money to another annuity company to take place within 30 days of the original annuity company receiving all the required forms for the transfer.

\*\*\*NOTE: Amends A.R.S. §20-1232(A) stipulates that no annuity contract "shall be delivered or issued for delivery in this state" unless the contract contains the substance of the provisions of §20-1232. As a result, the requirements established by this bill will apply to contracts and policies issued on or after the effective date. Insurers do not need to wait until the effective date to revise forms, or prepare endorsements, riders or amendments and file them with the Department for approval. Contracts and policies issued before the effective date are not affected. Insurers are not required to file forms exempted by the Director's Order of October 21, 2003.

**SB 1098: insurance: wellness programs; discriminatory practices (Ch. 48)**

This bill permits group disability insurers to offer wellness programs to enrollees.

Amends A.R.S. §20-450:

- Stipulates that neither §20-448 or §20-452 prohibits a person from providing rewards or incentives under a wellness program that meets the requirements for an exception from the general prohibition against discrimination based on a health factor under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and any federal regulations adopted pursuant to HIPAA.

Amends A.R.S. §20-2310:

- Stipulates that the section does not prohibit a health benefits plan from providing rewards or incentives under a wellness program that meets the requirements for an exception from the general prohibition against discrimination based on a health factor under HIPAA, and any federal regulations adopted pursuant to HIPAA.

\*\*\*NOTE: See also the summary of related legislation, HB 2139.

**SB 1155: insurance; self-service storage agent; license (Ch. 50)**

The bill establishes the self-service storage agent license within Title 20.

Amends A.R.S. §20-288:

- Adds the self-service storage agent license applicant to the list of the types of licensees not required to take an exam prior to licensure.

Amends A.R.S. §20-292:

- Authorizes the Director to take action against persons violating the self-service storage agent license provisions.

Enacts A.R.S. §20-332:

- Authorizes the Director to license self-service storage operators to offer or sell personal property insurance providing coverage to occupants at the self-service storage facility where the insurance is transacted for the loss of or damage to stored personal property when loss or damage occurs at the facility.
- Requires an application for the self-service storage agent license and requires application to specify proposed sale locations.
- Requires notification to DOI within 30 days of the date that a self-service storage agent begins offering coverage at an additional location or ceases to offer coverage at a given location.
- Specifies that the self-service storage agent is not required to have an individual licensee at each self-storage facility where coverage is offered.
- Prohibits a self-service storage agent from offering or selling coverage unless consumers are provided materials that: summarize the policy's material terms; disclose that the coverage may duplicate the consumer's homeowner's policy or other insurance policy; notes that if insurance is required to rent storage space, that the requirement may be met by presenting evidence of the other applicable coverage; and describes the process for filing a claim.
- Prohibits a self-service storage agent from offering or selling coverage unless all costs related to the insurance are clearly itemized in writing.
- Prohibits a self-service storage agent from offering or selling coverage unless evidence of coverage in a form approved by the insurer is provided to every occupant who purchases the coverage.
- Prohibits a self-service storage agent from offering or selling coverage unless the insurance is provided by an insurer authorized in Arizona to transact the applicable kinds of insurance or by a surplus lines insurer.
- Authorizes an employee or agent of the self-service storage agent to act on the self-service storage agent's behalf and under the supervision of the self-service storage agent, and deems the conduct of such an employee/agent to be the conduct of the self-service storage agent.
- Requires self-service storage agents to provide employees with basic instruction on offering and selling this type of coverage.

- Prohibits self-service storage agents from: offering/selling insurance except in connection with the rental of space at a self-service storage facility; advertising or otherwise presenting the agent or employees as licensed insurers or insurance producers; paying a commission or other compensation dependent on the sale of this type of coverage.
- Clarifies that insurers are not prohibited from paying commissions, fees or other consideration to self-service storage agents for the sale of insurance.
- Clarifies that self-service storage agents may pay, and employees may receive, production or incentive payments that are not dependent on the sale of insurance.
- Clarifies that self-service storage facility operators are not required to be licensed as self-service storage agents to display or provide consumers with insurance materials from authorized insurers or surplus lines insurers.
- Specifies the sections of Title 20 that apply to self-service storage agent licensees.

**SB 1203: insurance; variable group annuities; regulation (Ch. 99)**

The legislation alters the licensure requirements for those selling variable group annuities.

Amends A.R.S. §20-2631:

- Clarifies the definition of “variable annuity” by noting that the policy or contract is for an individual.

Amends A.R.S. §20-2661:

- Differentiates between “variable annuity” and “variable group annuity” by defining “variable group annuity” as “a group policy or contract of two or more individuals that provides for annuity benefits that vary according to the investment experience of a separate account or accounts that the insurer maintains pursuant to section 20-651 or the corresponding insurance laws of a foreign insurer’s domiciliary state.”
- Defines “variable group contracts” as “a variable group annuity or a variable group life insurance policy.”

Amends A.R.S. §20-2662:

- Requires those selling variable group contracts in Arizona to be licensed as life insurance producers and to be authorized to sell variable group contracts by an insurer admitted to transact variable group contract business in Arizona.
- Requires producers selling variable group contracts in Arizona to report to the Director the suspension or revocation their license in another state or territory, any disciplinary actions against the producer by agencies with jurisdiction over securities or variable contracts, and any injunction or judgment against the producer involving fraud, deceit or misrepresentation or a violation of any insurance or securities law.

**SB 1204: insurance; group disability; eligibility (Ch. 158)**

The bill makes changes to the eligibility requirements for group disability coverage.

Amends A.R.S. §20-1401:

- Lowers the minimum number of employees required to participate in a group disability plan from 5 to 2.

Amends A.R.S. §20-2301:

- Deletes definition of “participating provider.”
- Amends definition of “small employer” by adding that the definition of “employee” as used in conjunction with that of “small employer” is the same as provided in §20-1401(A)(1).

**SB 1242: department of insurance; omnibus (Ch. 34)**

This bill contains a number of technical corrections to Title 20.

Amends A.R.S. §20-157.01:

- Clarifies that insurers’ claims records are continuously confidential, no matter which division of the department originally obtains the records.

Amends A.R.S. §20-223:

- Clarifies that foreign insurers may electronically file their annual financial statements with a repository designated by the Director and concurrently satisfy AZ filing requirements.

Repeals A.R.S. §20-269, the Quarterly Seat Belt Reporting law.

Amends A.R.S. §20-295:

- Clarifies the Director’s authority to deny, suspend, revoke or refuse to renew an Arizona insurance producer’s license or impose a civil penalty by removing the word “other” from A.R.S. § 20-295(A)(9).

Amends A.R.S. §§ 20-311.03, 20-321.02, 20-331, 20-331.01, and 20-340.06:

- Clarifies the Department’s licensure authority as it applies to managing general agents, adjusters, rental car agents, certain political subdivision employees, and bail bond agents for consistency with other types of licensees.
- Provides managing general agents, adjusters, rental car agents, certain political subdivision employees, and bail bond agents with inactive licensure/application status during active military service, as is already allowed for insurance producers.

Amends A.R.S. §20-466:

- Removes language made redundant by the changes to A.R.S. § 20-157.01.

Amends A.R.S. §20-1243.02:

- Corrects a typographical error within legislation enacted during the 2006 legislative session, establishing suitability requirements for the sale of annuities to Arizona consumers.

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