

REGULATORY BULLETIN 2011-04<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: May 27, 2011

Re: **2011 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-ninth Legislature, Second Regular Session, adjourned *sine die* on April 20, 2011. Except as otherwise noted, all insurance-related legislation has a general effective date of July 20, 2011.

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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 2011:**

### **HB 2109: bail bond agents; civil; licensing (Ch. 171)**

Amends ARS § 20-340 by defining “bail bond” as “any contract that is executed by a surety insurer for the release of a person who is arrested or confined for any actual or alleged violation of any federal, state or local criminal law where the released person’s attendance in court when required by law and obedience to orders and judgment of any court is guaranteed.”

Amends ARS § 20-340.01:

- Requires bail bond agent license applicants to provide an affidavit that the applicant has resided in Arizona for at least one year immediately preceding the date of application.
- Requires applicants for a bail bond agent license to submit their fingerprints to the Arizona Department of Insurance (ADOI) for a state and federal criminal background check and requires the ADOI to withhold issuance of the license until the background check is complete and the applicant is qualified for licensure.
- Requires bail bond agents to also be licensed as property and casualty producers in order to transact civil bonds.

### **HB 2110: insurance; risk retention groups (Ch. 135)**

Amends ARS § 20-487 by applying the Producer Controlled Property and Casualty Insurance provisions to risk retention groups.

Amends ARS § 20-698:

- Clarifies which insurers may be exempt from filing annual audited financial reports with the ADOI.
- Specifies that insurers with “direct premiums written of less than one million dollars nationwide in any calendar year and less than one thousand policyholders or certificate holders of direct written policies nationwide at the end of the calendar year” are exempt from such requirements.
- Specifies that foreign or alien insurers may be exempt from some or all of the annual financial reporting requirements if the insurer’s domiciliary jurisdiction has a similar law and the insurer has filed its audited financial report and other required documents with the ADOI.

Amends ARS § 20-1098.15 by applying the state holding company statutes to risk retention groups.

### **HB 2112: insurance; surplus lines (Ch. 136)**

Amends ARS §20-401 by adding definitions of terms related to unauthorized insurance, including “clearinghouse,” “home state,” and “multistate risk.”

Amends ARS §20-401.07:

- Requires industrial insureds contracting with unauthorized insurers to pay insurance premium tax either to the Director, if the coverage is for single-state risks, or to the clearinghouse for coverage of multistate risks.
- Deletes language detailing tax payable on a contract that covers risks partially based in Arizona.
- Amends definition of “industrial insured” to mean an insured whose home state is Arizona and has aggregate annual gross premiums on all property and casualty risks totaling at least \$100,000 as of the insured’s preceding fiscal year, and that meets one, instead of two, of the following:
  - Possesses a net worth of more than \$20 million, rather than \$10 million.
  - Has net revenues or sales exceeding \$50 million, rather than \$25 million.
  - Has more than 500 full-time employees, instead of 80, or equivalent per company or is a member of an affiliated group employing more than 1,000 employees in the aggregate, rather than 100 full-time employees, or the equivalent per holding company as of the date the policy is issued.
  - Is a municipality with a population of more than 50,000.
  - Is a nonprofit organization or public entity generating annual budgeted expenditures of at least \$30 million.
- Stipulates that starting January 1, 2015 and every 5 years thereafter, the amounts listed above relating to net worth and annual budgeted expenditures must be adjusted to reflect the percentage change for the five-year period in the consumer price index for all urban consumers.
- States that “qualified risk manager” has the same meaning as in the federal Nonadmitted and Reinsurance Reform Act of 2010.

Amends ARS §20-408, requiring surplus lines brokers to file a report showing the requirements of 20-401.07 have been met at the same time as they file the transaction statements due per 20-415.

Amends ARS §20-411:

- Prohibits a person from acting as a surplus lines broker in Arizona on behalf of an insured whose home state is Arizona, unless they have a current Arizona surplus lines broker license.
- Requires the Director to participate in the National Insurance Producer Registry (NIPR) of the National Association of Insurance Commissioners (NAIC), or any other equivalent database for the licensure and license renewal of surplus lines brokers on and after July 21, 2012, for the purposes of implementing the Nonadmitted and Reinsurance Reform Act of 2010.

Amends ARS §20-413:

- Prohibits a surplus lines broker from knowingly placing any surplus lines coverage on behalf of an insured whose home state is Arizona with an unauthorized insurer that does not meet the minimum financial requirements.
- Updates the minimum capital and surplus amounts required of an unauthorized foreign insurer authorized to transact surplus lines in at least one other state from at least \$5 million and a required minimum deposit of at least \$2.5 million to an amount that equals the greater of either the minimum capital and surplus requirements or \$15 million.

- Permits a surplus lines broker to place insurance with an alien insurer that is listed on the quarterly listing of alien insurers produced by the NAIC.

Amends ARS §20-415:

- Requires surplus lines brokers to file a statement of all their surplus lines transactions on behalf of Arizona single-state risks by February 15 of each year for the preceding July through December, and on or before August 15 of each year for the preceding January through June.
- Requires surplus lines brokers to “file quarterly, with the clearinghouse responsible for administering the compact or multistate agreement entered into by the Director pursuant to 20-416.01, a notarized statement of all surplus lines insurance business covering multistate risks transacted by the broker on behalf of insureds whose home state is Arizona during the calendar quarter for which the statement is being filed.”
- Requires the above statement to be on a form prescribed by the clearinghouse and to be filed before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30.

Amends ARS §20-416:

- Requires surplus lines brokers to “remit to the clearinghouse responsible for administering the compact or multistate agreement entered into by the Director pursuant to section 20-416.01 a tax on the premiums, exclusive of the sums collected to cover federal and state taxes, examination fees and stamping fees collected pursuant to section 20-167, on surplus lines insurance covering multistate risks subject to tax for insureds whose home state is Arizona transacted by the broker during the preceding reporting period, as shown by the statement of surplus lines business filed with the clearinghouse.”
- Provides that all “surplus lines tax on coverage procured for an insured whose home state is Arizona that would otherwise be payable to another state as the other state’s portion of a multistate risk shall constitute monies of this state and a debt to this state if the other state has not entered into a compact or multistate agreement to which Arizona is a party to effectuate” the Nonadmitted and Reinsurance Reform Act of 2010.

Enacts ARS §20-416.01:

- Permits the Director to enter a compact or multistate agreement for the reporting, payment, collection and allocation of premium taxes on unauthorized surplus lines coverage of multistate risks, following a hearing to determine whether such action would be “in the best interests of the state.”
- Permits the Director to adopt rules to implement the Nonadmitted and Reinsurance Reform Act of 2010.

**HB 2113: qualified financial contracts; receivership (Ch. 46)**

Amends ARS § 20-611, defining terms, including “netting agreement” and “qualified financial contract.”

Amends ARS § 20-614, preventing an injunction from prohibiting the netting, liquidation, setoff, termination, acceleration or close out of obligations or other arrangements related to a netting agreement or qualified financial contract.

Amends ARS § 20-637:

- States that the statutes related to the rehabilitation and liquidation of insurance companies shall not prohibit a person from taking otherwise lawful actions related to netting agreements or qualified financial contracts.
- Requires a counterparty to pay any net payment due to the defaulting insurer even if a walkaway provision was included in the contract.
- Requires a receiver to either transfer all netting agreements or qualified financial contracts between an insurer and a counterparty to one party, or to transfer none of them.
- Prohibits a receiver from avoiding any transfers of money or property related to netting agreements or qualified financial contracts entered into before the commencement of the delinquency hearing unless the transfer was made to hinder, delay or defraud the insurer.

### **SB 1102: state compensation fund; conforming changes (Ch. 157)**

Makes necessary conforming changes to the Arizona Revised Statutes for the State Compensation Fund's (SCF) establishment as a private mutual insurer, including the following changes to Title 20:

Amends ARS § 20-156 by removing the subsection establishing the Director's specific authority to examine the SCF and eliminates an additional reference to SCF.

Amends ARS § 20-363, eliminating references to SCF with regards to the services of rating organizations.

Amends ARS § 20-367, eliminating references to SCF and reestablishing the State's workers' compensation appeals board, effective retroactively to July 1, 2010. Provides for membership on the workers' compensation appeals board for a representative of the insurer with the largest Arizona workers' compensation market share as reported by the ADOI in its latest annual report.

### **SB 1122: insurance; health care sharing ministries (Ch. 184)**

Adds ARS § 20-122 to specify that the activities of health care sharing ministries do not constitute the transaction of insurance and are not subject to Title 20.

Defines "health care sharing ministry" as "a faith-based, nonprofit organization that is exempt from federal income tax under section 501 of the internal revenue code" that also: limits participation to "those who are of a similar faith;" facilitates matching of participants with financial/medical needs with participants able to assist; provides for participants' financial/medical needs through contributions of other participants; does not assume risk or promise to pay for such needs; provides a monthly statement to participants that summarizes such needs and contributions; provides a specific disclaimer on the above with application and guideline materials.

**SB 1184: rate services organizations; examinations (Ch. 45)**

Amends ARS § 20-370 by removing the requirement that the ADOI examine each rating organization and advisory organization at least once every five years, leaving the examination schedule to the Director’s discretion.

Amends ARS § 20-394 by removing the requirement that the ADOI examine each rate service organization, joint underwriting organization and joint reinsurance organization at least once every five years, leaving the examination schedule to the Director’s discretion.

**SB 1238: auto glass repair (Ch. 161)**

Enacts ARS § 20-469.01:

- Requires a third party administrator (TPA) to inform a customer of the customer’s right to choose any glass repair facility per 20-469, if the TPA recommends or provides information about a glass repair facility.
- Prohibits “an independent adjuster or a third party administrator’s automotive physical damage appraiser or claims inspector for automotive glass repair or replacement work in connection with an inspection limited to automotive glass repair or replacement” from recommending a particular glass repair facility.
- Specifies that this section does not apply to “any employee or insurance producer of an insurer,” and that this section does not create a private right of action.
- Establishes the penalty for a person who knowingly violates this section for the first time as a petty offense, and a fine of \$1,500 for a second violation within 18 months of the first offense, and a fine of \$3,000 for any subsequent violations within 18 months of a previous violation.
- States that “for the purposes of determining whether a defendant acted knowingly, it may be presumed that the person had knowledge if the person was engaged in a regular and consistent pattern of the prohibited activity.”
- Defines “third party administrator” as “any person who provides administrative service or adjusts or settles claims in connection with automobile glass repair insurance coverage.”

**SB 1400: insurance adjusters; licensure; examination (Ch. 237)**

Amends ARS § 20-321:

- Specifies that an “adjuster” does not include a person who collects claim information from or furnishes claim information to insureds or claimants, and who conducts data entry, including entering data into an automated claims adjudication system, if not more than 25 persons are supervised by a single licensed adjuster or licensed producer.
- Stipulates that a licensed insurance producer who supervises or adjusts claim pursuant to this item, is not required to have an adjuster’s license.
- Defines “automated claims adjudication system” as “a preprogrammed computer system that is designed for the collection, data entry, calculation and final resolution of portable electronic products insurance claims” that:
  - May be used only by a licensed adjuster, licensed producer or supervised individuals;

- Must comply with all claims payment requirements under this title and be certified as compliant by a licensed adjuster.
- Defines “portable consumer electronic products” as “electronic devices and related accessories that are portable in nature.”

Amends ARS § 20-321.01:

- Eliminates from the qualifications to be an adjuster the requirement that an adjuster have a public office in Arizona and keep records from Arizona transactions there.
- Eliminates the provision permitting a firm or corporation to be licensed as an adjuster “if each individual who is to exercise the license powers is qualified for an individual license as an adjuster.”
- Permits the Director to require fingerprints and a fingerprinting fee per ARS § 20-285, and to contract with nongovernmental entities to perform administrative functions as the Director finds to be appropriate.
- Stipulates that “a resident of Canada may not be licensed as a nonresident adjuster unless the person has obtained a resident adjuster license in another state and designated that state as the person’s home state”, and further stipulates that a Canadian resident “who qualifies for licensure as an adjuster under this section need not comply with section 25-320, subsection P.”

Amends ARS § 20-321.02, providing licensing reciprocity and exemption of the Arizona adjuster licensing examination to nonresident adjusters.

**SB 1461: life settlements (Ch. 297)**

Enacts ARS § 20-3201, which defines terms related to the transaction of life settlements, including “financing entity,” “life settlement contract,” and “premium finance loan.”

Enacts ARS § 20-3202, establishing the licensure requirements for life settlement providers and life settlement brokers:

- Requires applicants for a life settlement provider certificate of authority to complete an application and pay a fee as established by the Director.
- Provides that members, officers and employees of a life settlement provider with a certificate of authority in Arizona may act as a provider under the certificate if they are named in the application or supplementary material.
- Requires the Director to collect a plan of operation from each life settlement provider and to require that the providers either be organized according to the laws of Arizona, authorized to transact business in Arizona, or that the provider submit a certificate of good standing from its state of domicile.
- Requires applicants for a life settlement provider certificate of authority to provide a detailed anti-fraud plan.
- Stipulates that Arizona licensed producers with a life line of authority meet the requirements for a life settlement license and may operate as a broker, and requires such producers to notify the Director within the first 30 days of operating as a broker.
- Permits the Director to establish a life settlement broker fee and to require renewal of life settlement broker licenses every four years.

- Permits licensed attorneys and certified public accountants, who are retained by the policy owner and who are not paid directly by the provider or purchaser, to negotiate a life settlement contract without a life settlement broker license.
- Provides that the insurer that issued the policy is not responsible for any act or omission of a broker or provider in a life settlement transaction unless the insurer is compensated by the provider, broker or purchaser in connection with the transaction.

Enacts ARS § 20-3203, establishing contract requirements for life settlements:

- Prohibits insurers from requiring the policy owner, the insured, provider or broker to sign any form, disclosure, consent, waiver or acknowledgment, that has not been approved by the Director, as a condition to responding to a request for verification of coverage, or in connection with the transfer of a policy as part of a life settlement contract.
- Requires all life settlement contract forms and disclosure statement forms to be filed and approved by the Director before use.
- Permits the Director to disapprove a life settlement contract form or a disclosure statement form if the form provisions do not meet the requirements of this chapter, are unreasonable, against the public interest, or unfair or misleading to the owner.

Enacts ARS § 20-3204, establishing various disclosure requirements from providers and brokers to owners, including: disclosure of alternatives to life settlements; informing owners that the proceeds of a life settlement may be taxable; and that the owner may rescind the life settlement in certain circumstances.

Enacts ARS § 20-3205, outlining the privacy standards as applicable to life settlement transaction.

Enacts ARS § 20-3206, permitting the Director to adopt rules pertaining to life settlement transactions and to examine life settlement licensees and applicants. Also requires life settlement providers to “maintain records of all consummated transactions and life settlement contracts for three years after the death of the insured.”

Enacts ARS §§ 20-3207, 20-3208 and 20-3209, establishing the examination procedures and confidentiality requirements, including requiring the exams to be paid for by the life settlement providers.

Enacts ARS § 20-3210, requiring life settlement providers to file annual statements with the ADOI by March 1 of each year on a form prescribed by the Director.

Enacts ARS § 20-3211, stating the required process for the execution of a life settlement and defines “fraudulent life settlement.”

Enacts ARS § 20-3212, specifying that this chapter does not preempt other law enforcement agencies’ authority to investigate possible violations of law, including that of the Director. Further specifies that this chapter does not preempt or limit ARS Title 44, chapter 12 or any policy statements, bulletins, etc., issued by the Arizona Corporation Commission.

Enacts ARS § 20-3213, allowing those lawfully acting as either providers or brokers prior to the effective date of the law to continue to do so if they file an application with the Director no later than 30 days after the publication of the application. Also states that if the publication of the application form and instructions occurs before the effective date of this chapter, the broker (or provider) must file the application no later than 30 days after the effective date.

Enacts ARS § 20-3214, permitting the Director to seek an injunction or issue a cease and desist order against anyone violating this chapter or related rules.

Enacts ARS § 20-3215, outlining the penalties for committing a fraudulent life settlement act:

- Equates a fraudulent life settlement with insurance fraud, a class 6 felony per 20-466.01
- Permits the Director to levy a civil penalty, seek an injunction or order restitution per 20-466.02
- Allows the Director to deny a license to a person who committed a fraudulent life settlement, to revoke or refuse renewal of that license, or to suspend the license for up to 12 months.

\*\*Note: The provisions above are effective September 30, 2013.

### **SB 1567: insurance; notice of change; nonrenewal (Ch. 327)**

Amends ARS § 20-1674 to require insurers to mail written notice of the cancellation of a commercial policy 45 days in advance of the effective date of cancellation, rather than 60 days.

Amends ARS § 20-1676:

- Requires insurers to mail written notice of the nonrenewal of a commercial policy 45 days in advance of the effective date of nonrenewal, rather than 60 days.
- Specifies that if the insurer mails the notice of nonrenewal with less than 45 days advance notice, the coverage will remain in effect until 45 days after the notice is mailed.

Amends ARS § 20-1677:

- Requires insurers to mail written notice of a premium increase, a change in the deductible, a reduction in the limits, or a substantial reduction in the coverage of a commercial policy, 30 days in advance of the effective date of the change(s), rather than 60 days in advance.
- Specifies that the above notice is “considered given if an insurer delivers new policy terms and conditions thirty days before the expiration date of the policy.”

This summary is not an exhaustive list or a detailed analysis of all insurance-related bills enacted in this legislative session. 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

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