

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# HOUSE BILL 2081

AN ACT

AMENDING SECTIONS 20-1098, 20-1098.01, 20-1098.04, 20-1098.19 AND 29-609,  
ARIZONA REVISED STATUTES; 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 by  
8 one or more business entities that are licensed in any state as insurance  
9 producers or managing general agents and that only insure risks on policies  
10 placed through their owners.  
11 3. "Alien captive insurer" means any insurer that is formed to write  
12 insurance business for its affiliates and that is licensed pursuant to the  
13 laws of an alien jurisdiction that imposes statutory or regulatory standards  
14 that are acceptable to the director on companies transacting the business of  
15 insurance in such a jurisdiction.  
16 4. "Association" means any lawfully formed association of individuals  
17 or business entities that has been in existence for at least one year and  
18 that is organized for a primary purpose other than procuring or providing  
19 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 transacted  
23 by a branch captive insurer in this state.  
24 7. "Branch captive insurer" means an alien captive insurer that is  
25 licensed pursuant to this chapter to transact the business of insurance  
26 through a business unit with a principal place of business in this state.  
27 8. "Branch operations" means any business operations of a branch  
28 captive insurer in this state.  
29 9. "Business entity" means any legal entity other than an individual  
30 or sole proprietorship.  
31 10. "Captive insurer" means any pure captive insurer, agency captive  
32 insurer, group captive insurer or protected cell captive insurer that is  
33 domiciled in this state and that is formed and licensed under this article.  
34 11. "Controlled unaffiliated business" means an individual or business  
35 entity that satisfies all of the following:  
36 (a) Is not an affiliate of the captive insurer providing coverage or  
37 reinsurance.  
38 (b) Has a contractual relationship with an affiliate of the captive  
39 insurer providing coverage or reinsurance.  
40 (c) Whose risk management function that is related to the covered risk  
41 of loss is controlled by an affiliate of the captive insurer providing  
42 coverage or reinsurance.  
43 12. "Deductible reimbursement" means insurance coverage that reimburses  
44 the insured for the deductible it paid under a separate commercial insurance  
45 policy issued to the same insured, without other conditions related to the  
46 underlying loss.

- 1           13. "Direct or directly", when used in this article to describe the  
2 transaction of insurance business by a captive insurer, means a transaction  
3 in which the captive insurer issues an insurance policy that provides primary  
4 coverage to the insured under the policy and that does not provide  
5 reinsurance coverage to another insurer.
- 6           14. "Group captive insurer" means any of the following:  
7           (a) A risk retention group.  
8           (b) An industry group captive insurer.  
9           (c) An association captive insurer.
- 10          15. "Industry group" means two or more business entities **OR PERSONS**  
11 that are engaged in businesses or activities similar or related with respect  
12 to the liability that they are exposed to by virtue of any related, similar  
13 or common business, trade, product, services, premises or operations.
- 14          16. "Industry group captive insurer" means a captive insurer that is  
15 completely under the direct or indirect voting control of an industry group.
- 16          17. "Manager" means a person who is experienced in the field of captive  
17 insurance and who maintains all documents relating to a captive insurer's  
18 operations, transactions and affairs in this state and assists the captive  
19 insurer in its management and compliance with this article.
- 20          18. "Member" means any individual or business entity that belongs to a  
21 group captive insurer.
- 22          19. "Participant" means an entity and any affiliates of the entity that  
23 are insured by a protected cell captive insurer pursuant to a participant  
24 contract.
- 25          20. "Participant contract" means a contract by which a protected cell  
26 captive insurer insures risks of one or more participants and limits losses  
27 under the contract to the assets of a protected cell.
- 28          21. "Protected cell" means a separate account that is established and  
29 maintained by a protected cell captive insurer pursuant to a participant  
30 contract.
- 31          22. "Protected cell captive insurer" means a captive insurer:  
32           (a) In which the minimum capital and surplus required by applicable  
33 law is provided by one or more sponsors.  
34           (b) That is formed and licensed under this article.  
35           (c) That insures the risks of participants through participant  
36 contracts.  
37           (d) That segregates liability under a participant contract through one  
38 or more protected cells.
- 39          23. "Pure captive insurer" means a captive insurer that insures only  
40 the risks of its affiliates and controlled unaffiliated business.
- 41          24. "Risk retention group" means a captive insurer that is organized  
42 pursuant to the liability risk retention act of 1986 (15 United States Code  
43 sections 3901 and 3902) and chapter 14 of this title.

1           25. "Sponsor" means an entity that meets the requirements of section  
2 20-1098.06 and that the director has approved to provide all or part of the  
3 capital and surplus required by applicable law to operate a protected cell  
4 captive insurer.

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

7           20-1098.01. Licensing: authority

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

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

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

17           3. An agency captive insurer shall not:

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

19           (b) Directly insure life or disability insurance risks.

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

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

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

26           (a) Hospital service corporations, medical service corporations,  
27 dental service corporations, optometric service corporations or hospital,  
28 medical, dental and optometric service corporations as defined in section  
29 20-822.

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

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

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

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

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

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

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

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

1           3. A pure captive insurer shall not provide direct coverage of  
2 workers' compensation or employers' liability insurance in another state  
3 unless the coverage is provided under a self-insurance program that is  
4 qualified as a self-insurance program under the applicable state or federal  
5 law, as determined by the agency or other entity that has jurisdiction over  
6 the self-insurance program.

7           4. This subsection does not prohibit a captive insurer from directly  
8 insuring deductible reimbursement risk.

9           5. THIS SUBSECTION DOES NOT PROHIBIT A CAPTIVE INSURER FROM DIRECTLY  
10 INSURING EMPLOYMENT PRACTICES LIABILITY RISK.

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

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

15          E. A captive insurer shall:

16           1. Hold at least one meeting of its board of directors or, for  
17 reciprocal insurers, its subscribers' advisory committee each year in this  
18 state.

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

20           3. Appoint a resident statutory agent to accept service of process  
21 and to otherwise act on its behalf in this state and shall file the  
22 appointment with the director. In the case of a captive insurer formed as a  
23 corporation or reciprocal insurer, if the statutory agent cannot with  
24 reasonable diligence be found at the registered office of the captive  
25 insurer, the director is an agent of the captive insurer on whom any process,  
26 notice or demand may be served.

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

29           1. If formed as a corporation, a certified copy of its articles of  
30 incorporation, articles of organization or other organizational document, a  
31 copy of its duly adopted bylaws or other governance rules, a statement under  
32 oath of its president and secretary showing its financial condition and any  
33 other statement or document required by the director.

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

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

42           1. The amount and liquidity of its assets relative to the risks to be  
43 assumed.

44           2. The adequacy of the expertise, experience and character of the  
45 directors and officers of the captive insurer.

- 1           3. The overall soundness of its plan of operation.  
2           4. The adequacy of the loss prevention programs of its insureds.  
3           5. The engagement of a competent manager that does business at a  
4 location in this state.  
5           6. The establishment of business relationships with any accountants,  
6 banks, attorneys and other professionals that are acceptable to the  
7 department.  
8           7. The ability of the captive insurer's owners or members to pay  
9 claims to third parties if the captive insurer is unable to pay those claims.  
10          8. Other factors deemed relevant by the director in ascertaining  
11 whether the proposed captive insurer will be able to meet its policy  
12 obligations.  
13          H. In addition to the information required by subsections F and G of  
14 this section, if the applicant is seeking authority as a protected cell  
15 captive insurer, the applicant shall file:  
16           1. A business plan that demonstrates, in a manner acceptable to the  
17 director, how the applicant will account for the loss and expense experience  
18 of each protected cell and report that information to the director.  
19           2. A statement acknowledging that all financial records of the  
20 protected cell captive insurer, including records pertaining to protected  
21 cells, shall be available for inspection or examination by the director or  
22 the director's designee.  
23           3. Its form for all participant contracts.  
24           4. Evidence that the protected cell captive insurer will allocate  
25 expenses fairly and equitably to each protected cell.  
26          I. Before the issuance of a license, an applicant shall promptly  
27 notify the director of any material change in the information filed pursuant  
28 to this section.  
29          J. An applicant for a captive insurer license shall pay to the  
30 director a nonrefundable fee for the issuance of a captive insurance license  
31 pursuant to section 20-167. The captive insurer shall pay the license  
32 renewal fee pursuant to section 20-167 when the captive insurer files the  
33 annual report prescribed in section 20-1098.07.  
34          K. If the director is satisfied that the documents and statements that  
35 the applicant has filed comply with this article, the director may grant the  
36 applicant a captive insurer license that authorizes the captive insurer to  
37 transact captive insurance business in this state.  
38          L. The director shall approve or deny an application for a license to  
39 transact captive insurance business within thirty days after the director  
40 deems the application complete.  
41          Sec. 3. Section 20-1098.04, Arizona Revised Statutes, is amended to  
42 read:  
43          20-1098.04. Formation of captive insurers; redomestication  
44          A. An agency captive insurer or protected cell captive insurer shall  
45 be incorporated as a stock insurer with its capital divided into shares and

1 held by the stockholders. Each owner of an agency captive insurer shall be  
2 licensed as an insurance producer or managing general agent.

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

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

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

9 3. Organized as a reciprocal insurer pursuant to article 2 of this  
10 chapter.

11 4. Incorporated as a nonprofit corporation pursuant to title 10,  
12 chapter 25.

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

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

16 2. Incorporated as a nonprofit corporation pursuant to title 10,  
17 chapter 25.

18 3. Incorporated as a limited liability corporation pursuant to  
19 title 29, chapter 4.

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

22 E. A captive insurer that is formed as a corporation shall have at  
23 least three incorporators, at least one of whom shall be a resident of this  
24 state. **NOTWITHSTANDING SUBSECTION B, PARAGRAPH 3 OF THIS SECTION,** a captive  
25 insurer that is formed as a reciprocal insurer ~~shall~~ **MAY** be organized by  
26 three or more subscribers, **NONE OF WHOM SHALL BE REQUIRED TO BE A RESIDENT OF**  
27 **THIS STATE** ~~, at least one of whom shall be a resident of this state.~~

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

34 G. A captive insurer that is formed as a corporation shall have at  
35 least one member of the board of directors who is a resident of this state.  
36 A captive insurer that is formed as a reciprocal insurer shall have at least  
37 one member of the subscribers' advisory committee who is a resident of this  
38 state.

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

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

8 Sec. 4. Section 20-1098.19, Arizona Revised Statutes, is amended to  
9 read:

10 20-1098.19. Establishment of branch captive insurer

11 A. A branch captive insurer may be established in this state pursuant  
12 to this chapter to write INSURANCE OR REINSURANCE in this state EXCEPT AS  
13 PROVIDED IN SECTION 20-1098.01, SUBSECTION B ~~only insurance or reinsurance of~~  
14 ~~the employee benefit business; AND~~ other than workers' compensation or  
15 employers' liability insurance, ~~of its parent and affiliated companies that~~  
16 ~~are subject to the provisions of the employee retirement income security act~~  
17 ~~of 1974 (29 United States Code sections 1001 through 1461).~~

18 B. A branch captive insurer shall not conduct any insurance business  
19 in this state unless it maintains the principal place of business for its  
20 branch operations in this state.

21 C. A branch captive insurer shall be a pure captive insurer with  
22 respect to operations and minimum capitalization in this state unless  
23 otherwise permitted by the director.

24 Sec. 5. Section 29-609, Arizona Revised Statutes, is amended to read:

25 29-609. Purpose; insurance business

26 A. Except as provided in subsection B of this section, a limited  
27 liability company may be organized under this chapter and may conduct or  
28 promote business and other activities for any lawful purpose, except banking  
29 ~~or insurance.~~

30 B. A limited liability company ~~may~~ SHALL NOT conduct OR PROMOTE ANY  
31 INSURANCE business UNLESS as a title insurance agent as defined in section  
32 20-1562 OR AS A PURE CAPTIVE INSURER AS DEFINED IN SECTION 20-1098 WHO IS  
33 EXPRESSLY AUTHORIZED BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE PURSUANT  
34 TO TITLE 20. For the purposes of title insurance transactions ~~only~~ OR PURE  
35 CAPTIVE INSURANCE BUSINESS, the members of the limited liability company are  
36 individually responsible, equally and ratably, and not one for another, for  
37 all contracts, debts and engagements of the limited liability company, to the  
38 extent of the amount of each member's initial investment in the limited  
39 liability company.