



Forty-eighth Legislature - First Regular Session

[change session](#) | [printer friendly version](#) | [site map](#) | [email](#)
[Senate](#) | [House](#) | [Legislature](#) | [Bills](#) | [Committees](#) | [Statutes](#) | [Executive](#) | [Calendars](#) | [News](#)

## House of Representatives

### HB 2294

#### **captive insurer amendments**

**Sponsor: Representative Konopnicki**

---

**DPA** Committee on Financial Institutions and Insurance

**DPA** Caucus and COW

**X** As Transmitted to Governor

---

HB 2294 allows the establishment of branch captive insurers and makes various changes to the Arizona Revised Statutes pertaining to captive insurers.

#### History

Captive insurance is a form of self-insurance whereby a company insures all or part of the risks of its parent company. A captive insurer can be established by a business or group of businesses to insure or reinsure their own risks and generally function as risk bearing entities that perform the same role as traditional insurers. Coverage may include such risks as property, liability or workers' compensation and may be for primary or excess layers of risk. Typical coverage includes a primary policy, some type of excess coverage and a stop-loss policy.

Arizona Revised Statutes (A.R.S.) Title 20, Chapter 4, Article 14 governs the captive insurance program that enabled the formation and licensure of captive insurance companies in Arizona. In 2003, Article 14 was amended by modifying Arizona's captive insurance laws to permit the formation of protected cell, group and agency captive insurers. In addition, a Captive Insurance Fund consisting of collected fees to support the administration of the captive insurance program was established.

Since the implementation of the captive insurance program by the Department of Insurance (DOI) in July 2002, 85 captive

insurers were licensed in Arizona and 75 of those licensed are still active.

### Provisions

- Clarifies that a group captive insurer must not insure risks other than those of its affiliates and controlled unaffiliated business and specifies that a risk retention group must only insure the risks of its group members.
- Allows the Director to approve transactions of insurance by a captive insurer on a direct basis.
- Removes commercial motor vehicle insurance policies from the list of insurance businesses that a captive insurer must not directly insure.
- Clarifies that a pure captive insurer must not provide direct coverage of workers' compensation or employers' liability in this state unless the coverage is provided under a self-insurance program that is approved by the Industrial Commission of Arizona.
- Clarifies that a pure captive insurer must not provide direct coverage of workers' compensation or employers' liability insurance in another state unless the coverage is provided under a qualified self-insurance program.
- Specifies that captive insurers are not prohibited from directly insuring deductible reimbursement risk.
- Requires that if a captive insurer is formed as a corporation, articles of organization, a copy of its duly adopted bylaws or governance rules be filed with the Director prior to licensure.
- Eliminates the requirement that the copies of the power of attorney of its attorney-in-fact and the subscribers' agreement that a reciprocal insurer must file with the Director prior to licensure be certified and requires a copy of its duly adopted bylaws or other governance rules.
- Requires that the manager of a captive insurer do business at a location in this state instead of reside in this state.
- Requires that a captive insurer applicant notify the Director promptly of any material change before the issuance of a license.
- Removes the ability for the Director to provide the Industrial Commission with an opportunity to review a captive's plan of operation that includes the reinsurance of workers' compensation or employers' liability risks.
- Decreases the minimum unimpaired paid-in capital and surplus amount a protected cell captive insurer must maintain for licensure from \$1 million to \$500 thousand and removes the requirement that the amount a captive insurer organized as a reciprocal maintain be free surplus.
- Stipulates that a written agreement under which a captive insurer borrows monies that are required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement may provide for interest at any rate agreed on and approved by the Director.

- Allows a captive insurer that is established solely for reinsuring risks be party to contracts that provide that subsequent purchasers of interest in the program assume the interests on a non-recourse basis, both as to the captive insurer and any affiliate [sic].
- Requires that each owner of an agency captive insurer be licensed as an insurance producer or managing general agent.
- Allows a pure captive insurer to incorporate as a limited liability corporation (LLC) and clarifies that a captive insurer that is formed as an LLC is subject to the applicable provisions relating to partnerships in A.R.S. Title 29.
- Requires a pure captive insurer to have at least one director and any other kind of corporate captive insurer to have at least three directors and clarifies that in addition to independent directors, a group captive insurer may have as many directors as it has members.
- Requires that a captive insurer formed as a corporation have at least one member of the Board of Directors who is a resident of this state and a captive insurer that is formed as a reciprocal insurer have at least one member of the subscribers' advisory committee who is a resident of this state.
- Clarifies that the articles of incorporation or bylaws of a captive insurer that is formed as a corporation with more than one director may authorize a quorum of a Board of Directors to consist of at least one-third of the fixed number of directors, but at least two directors.
- Requires that the quorum authorized by the subscribers' agreement of a captive insurer formed as a reciprocal insurer of a subscribers' advisory committee include at least two members.
- Removes the requirement that a captive insurer organized as a stock insurer have at least one member of the Board of Directors who is a resident of this state.
- Removes the domestic captive insurer entitlement to a license to continue its business in this state.
- Specifies that the effective date of a license that is issued to a foreign or alien insurer domesticated to this state must be the date of filing its articles of domestication with the Corporation Commission.
- Requires that each protected cell captive insurer comply with the restrictions prescribed in its participant contracts.
- Requires that the audit opinion conducted by an independent certified public accountant of the captive insurer's financial statements be filed with the Director no later than six months after the end of the captive insurer's fiscal year.
- Stipulates that an alien captive insurer must consent to the examination by the Director of the affairs of the alien captive insurer as a condition of licensure and that the examination of a branch captive insurer must be of branch business and operations only, during the period the branch captive insurer is formed and must demonstrate to the

Director's satisfaction that the alien captive insurer is operating in a sound financial condition.

- Eliminates the requirement that the DOI submit an annual report that contains a list of fees collected from captive insurers to the Governor, the President of the Senate and the Speaker of the House of Representatives.
- Allows a *branch captive insurer* to be established in this state to write only insurance or reinsurance of the employee benefit business other than workers' compensation or employers' liability insurance of its parent and affiliated companies that are subject to the provisions of the Employee Retirement Income Security Act of 1974.
- Prohibits a branch captive insurer from conducting any insurance business in this state unless it maintains the principal place of business in this state.
- Specifies that a branch captive insurer must be a pure captive insurer with respect to operations and minimum capitalization in this state unless otherwise permitted by the Director.
- Stipulates that as security for the payment of liabilities attributable to the branch operations, the Director must require a trust fund that is funded by assets acceptable to the Director or an irrevocable letter of credit be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurer through its branch operations.
- Requires that within 60 days after the end of its fiscal year, a branch captive insurer must file with the Director a copy of all reports and statements that are required to be filed under the laws of the jurisdiction in which the alien captive insurer is formed and that are verified by oath of two of its executive officers.
- Specifies that a captive insurer must obtain the written approval of the Director before implementing any material change in its plan of operations.
- Stipulates that information submitted relating to a captive insurer is confidential and the Director and the Director's employees and agents must not provide the information to any other person without the permission of the captive insurer and outlines exceptions.
- Defines *alien captive insurer*, *association captive insurer*, *branch business*, *branch captive insurer*, *branch operations*, *deductible reimbursement*, *direct or directly*, *group captive insurer*, *industry group captive insurer*, *member*, and *risk retention group*.
- Clarifies the definition of *association*, *business entity*, *controlled unaffiliated business*, *group captive insurer*, *participant contract*, *protected cell captive insurer*, and *pure captive insurer*.
- Makes technical and conforming changes.

----- DOCUMENT FOOTER -----

Forty-eighth Legislature

First Regular Session 2      April 18, 2007

----- DOCUMENT FOOTER -----