

State of Arizona  
Senate  
Fifty-first Legislature  
Second Regular Session  
2014

# SENATE BILL 1089

AN ACT

AMENDING SECTIONS 20-481, 20-481.01, 20-481.02, 20-481.03, 20-481.06, 20-481.07, 20-481.09, 20-481.10, 20-481.12, 20-481.13, 20-481.18, 20-481.19, 20-481.20, 20-481.21, 20-481.23, 20-481.25 AND 20-481.26, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 2, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 20-481.31 AND 20-481.32; AMENDING SECTION 20-510, ARIZONA REVISED STATUTES; RELATING TO INSURANCE HOLDING COMPANY SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-481, Arizona Revised Statutes, is amended to  
3 read:

4 20-481. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Affiliate" or person "affiliated" with a specific person means a  
7 person that directly, or indirectly through one or more intermediaries,  
8 controls, is controlled by or is under common control with the person  
9 specified.

10 2. "Continuing proxies" means proxies that are valid for more than one  
11 annual or special meeting of security holders and any adjournments thereof.

12 3. "Control" and "controlling" means the possession, direct or  
13 indirect, of the power to direct or cause the direction of the management and  
14 policies of a person, whether through the ownership of voting securities, by  
15 contract other than a commercial contract for goods or nonmanagement  
16 services, or otherwise, unless the power is the result of an official  
17 position with or corporate office held by the person. Control shall be  
18 presumed to exist if any person, directly or indirectly, owns, controls,  
19 holds with the power to vote or holds proxies representing ten per cent or  
20 more of the voting securities of any other person. This presumption may be  
21 rebutted by a showing made in the manner provided by section 20-481.18 that  
22 control does not exist in fact. The director may determine, after furnishing  
23 all persons in interest notice and opportunity to be heard and making  
24 specific findings of fact to support such determination, that control exists  
25 in fact, notwithstanding the absence of a presumption to that effect.

26 4. "ENTERPRISE RISK" MEANS ANY ACTIVITY, CIRCUMSTANCE, EVENT OR SERIES  
27 OF EVENTS INVOLVING ONE OR MORE AFFILIATES OF AN INSURER THAT IF NOT REMEDIED  
28 PROMPTLY IS LIKELY TO HAVE A MATERIAL ADVERSE EFFECT ON THE FINANCIAL  
29 CONDITION OR LIQUIDITY OF THE INSURER OR ITS INSURANCE HOLDING COMPANY SYSTEM  
30 AS A WHOLE, INCLUDING CAUSING THE INSURER'S RISK-BASED CAPITAL TO DECREASE TO  
31 OR BELOW A COMPANY ACTION LEVEL UNDER SECTION 20-488.02 OR WOULD CAUSE AN  
32 INSURER TO BE IN HAZARDOUS FINANCIAL CONDITION PURSUANT TO SECTION 20-220.01.

33 ~~4.~~ 5. "Insurance holding company system" means two or more affiliated  
34 persons, one or more of whom is an insurer.

35 ~~5.~~ 6. "Insurer" means every person engaged in the business of making  
36 contracts of insurance except:

37 (a) Agencies, authorities or instrumentalities of the United States,  
38 its possessions and territories, the Commonwealth of Puerto Rico, the  
39 District of Columbia or a state or political subdivision of a state.

40 ~~(b) Fraternal benefit societies.~~

41 ~~(e)~~ (b) Nonprofit medical and hospital service associations.

42 ~~(d)~~ (c) Credit life and disability reinsurers as defined in section  
43 20-1082 that are not affiliated with another insurer as defined in section  
44 20-104.

1           ~~6-~~ 7. "Person" means an individual, a corporation, a partnership, an  
2 association, a joint stock company, a trust, an unincorporated organization  
3 and any similar entity or any combination of the foregoing acting in concert  
4 but does not include any ~~securities broker performing no more than the usual~~  
5 ~~and customary broker's function~~ JOINT VENTURE PARTNERSHIP EXCLUSIVELY ENGAGED  
6 IN OWNING, MANAGING, LEASING OR DEVELOPING REAL OR TANGIBLE PERSONAL  
7 PROPERTY.

8           ~~7-~~ 8. "Security holder of a specified person" means a person who owns  
9 any security of such person, including common stock, preferred stock, debt  
10 obligations, and any other security convertible into or evidencing the right  
11 to acquire any of the foregoing.

12           ~~8-~~ 9. "Subsidiary of a specified person" means an affiliate  
13 controlled by such person directly or indirectly through one or more  
14 intermediaries.

15           10. "SUPERVISORY COLLEGE" MEANS A TEMPORARY OR PERMANENT FORUM FOR  
16 COMMUNICATION AND COOPERATION BETWEEN REGULATORS CHARGED WITH THE SUPERVISION  
17 OF ENTITIES THAT BELONG TO AN INSURANCE HOLDING COMPANY SYSTEM THAT HAS  
18 INTERNATIONAL OPERATIONS.

19           ~~9-~~ 11. "Voting security" means a security that carries with it a  
20 right to vote in decisions and also includes securities that are convertible  
21 into or evidence a right to acquire a security that includes such right to  
22 vote.

23           Sec. 2. Section 20-481.01, Arizona Revised Statutes, is amended to  
24 read:

25           20-481.01. Investment limitations; exemptions

26           A. Any domestic insurer, either by itself or in cooperation with one  
27 or more persons, may organize or acquire one or more subsidiaries subject to  
28 the limitations of this article. Such subsidiaries may conduct any kind of  
29 business or businesses and the authority to do so shall not be limited by  
30 reason of the fact that such subsidiaries are subsidiaries of a domestic  
31 insurer.

32           B. In addition to investments in common stock, preferred stock, debt  
33 obligations and other securities permitted under all other sections of this  
34 title, a domestic insurer ~~may~~, pursuant to subsection A of this section, MAY:

35           1. Invest in common stock, preferred stock, debt obligations and other  
36 securities of one or more subsidiaries in amounts ~~which~~ THAT do not exceed  
37 the lesser of ten per cent of such insurer's assets or fifty per cent of such  
38 insurer's surplus as regards policyholders, provided that after such  
39 investments the insurer's surplus as regards policyholders will be reasonable  
40 in relation to the insurer's outstanding liabilities and adequate to its  
41 financial needs. In calculating the amount of such investments, investments  
42 in domestic or foreign insurance subsidiaries and health care service  
43 organizations shall be excluded, and there shall be included total net monies  
44 or other consideration expended and obligations assumed in the acquisition or  
45 formation of a subsidiary including all organizational expenses and

1 contributions to capital and surplus of such subsidiary whether or not  
2 represented by the purchase of capital stock or issuance of other securities,  
3 and all amounts expended in acquiring additional common stock, preferred  
4 stock, debt obligations, and other securities and all contributions to the  
5 capital or surplus, of a subsidiary subsequent to its acquisition or  
6 formation.

7 2. Invest any amount in common stock, preferred stock, debt  
8 obligations and other securities of one or more subsidiaries that is engaged  
9 or organized to engage exclusively in the ownership and management of assets  
10 authorized as investments for the insurer if each subsidiary agrees to limit  
11 its investments in any asset so that such investments will not cause the  
12 amount of the total investment of the insurer to exceed any of the investment  
13 limitations specified in paragraph 1 of this subsection or in chapter 3,  
14 article 2 of this title, applicable to the insurer. For the purpose of this  
15 paragraph, "the total investment of the insurer" includes any direct  
16 investment by the insurer in an asset and the insurer's proportionate share  
17 of the investment in an asset by any subsidiary of the insurer, which shall  
18 be calculated by multiplying the amount of the subsidiary's investment by the  
19 percentage of the insurer's ownership of such subsidiary.

20 3. With the approval of the director, invest any GREATER amount in  
21 common stock, preferred stock, debt obligations or other securities of one or  
22 more subsidiaries, provided that after such investment the insurer's surplus  
23 as regards policyholders will be reasonable in relation to the insurer's  
24 outstanding liabilities and adequate to its financial needs.

25 C. Investments in common stock, preferred stock, debt obligations or  
26 other securities of subsidiaries made pursuant to subsection B of this  
27 section ~~shall~~ ARE not be subject to any of the otherwise applicable  
28 restrictions or prohibitions contained in this title applicable to such  
29 investment of insurers.

30 D. Whether any investment pursuant to subsection B of this section  
31 meets the applicable requirements is to be determined before the investment  
32 is made by calculating the applicable investment limitations as if the  
33 investment had already been made, taking into account the then outstanding  
34 principal balance on all previous investments in debt obligations, and the  
35 value of all previous investments in equity securities as of the date they  
36 were made, NET OF ANY RETURN OF CAPITAL INVESTED, NOT INCLUDING DIVIDENDS.

37 E. If an insurer ceases to control a subsidiary, it shall dispose of  
38 any investment in the subsidiary made pursuant to this section within three  
39 years from the time of the cessation of control or within such further times  
40 as the director may prescribe, unless at any time after such investment has  
41 been made, such investment has met the requirements for investment under any  
42 other section of this title, and the insurer has so notified the director.

43 F. For THE purposes of this section, in determining whether an  
44 insurer's surplus as regards policyholders is reasonable in relation to the

1 insurer's outstanding liabilities and adequate to its financial needs, the  
2 following factors shall be considered:

3 1. ~~The minimum expendable surplus amount required by section 20-211.~~  
4 THE QUALITY AND LIQUIDITY OF INVESTMENTS IN AFFILIATES. THE DIRECTOR MAY  
5 TREAT ANY INVESTMENT AS A DISALLOWED ASSET FOR PURPOSES OF DETERMINING THE  
6 ADEQUACY OF SURPLUS AS REGARDS POLICYHOLDERS IF IN THE JUDGMENT OF THE  
7 DIRECTOR THE INVESTMENT WARRANTS IT.

8 2. The size of the insurer as measured by its assets, capital and  
9 surplus, reserves, premium writings, insurance in force and other appropriate  
10 criteria.

11 3. The extent to which the insurer's business is diversified among the  
12 several lines of insurance.

13 4. The number and size of risks insured in each line of business.

14 5. The extent of the geographical dispersion of the insurer's insured  
15 risks.

16 6. The nature and extent of the insurer's reinsurance program.

17 7. The quality, diversification and liquidity of the insurer's  
18 investment portfolio.

19 8. The recent past and projected future trend in the size of the  
20 insurer's surplus as regards policyholders.

21 9. The surplus as regards policyholders maintained by other comparable  
22 insurers.

23 10. The adequacy of the insurer's reserves.

24 Sec. 3. Section 20-481.02, Arizona Revised Statutes, is amended to  
25 read:

26 20-481.02. Tender offers; required statements; disclosures;  
27 approval or disapproval by director; definition

28 A. No person other than the issuer shall make a tender for or a  
29 request or invitation for tenders of a voting security of a domestic insurer  
30 or enter into any agreement to exchange securities or seek to acquire in the  
31 open market or in any other place any voting security of a domestic insurer  
32 if, after the consummation thereof, such person would, directly or  
33 indirectly, by conversion or by the exercise of any right to acquire, be in  
34 control of such insurer. No person may enter into an agreement to merge with  
35 or to otherwise acquire control of a domestic insurer or a person who  
36 controls a domestic insurer unless, at the time the offer, request or  
37 invitation is made or the agreement is entered into or ~~prior to~~ BEFORE the  
38 acquisition of the securities, if no offer or agreement is involved, such  
39 person has filed with the director and has sent to such insurer a statement  
40 containing the information required by section 20-481.03 and the offer,  
41 request, invitation, agreement or acquisition has been approved by the  
42 director. ~~For purposes of this section, a "domestic insurer" shall include~~  
43 ~~any other person controlling a domestic insurer, unless such other person, as~~  
44 ~~determined by the director, is either directly, or through its affiliates,~~  
45 ~~primarily engaged in business other than the business of insurance.~~

1 B. With respect to the acquisition of a domestic insurer by a person,  
2 directly or indirectly through an affiliate or affiliates, who is not  
3 required to file a statement pursuant to subsection A of this section because  
4 such person is not primarily engaged in the business of insurance, such  
5 person ~~shall~~, at least thirty days ~~prior to~~ BEFORE the effective date of the  
6 acquisition of the domestic insurer, SHALL file with the director a statement  
7 containing the information required by section 20-481.03. If the director  
8 finds that the acquisition does not meet the requirements of section  
9 20-481.07, subsection A, the director shall issue an order disapproving the  
10 acquisition of the domestic insurer and shall require the person to make an  
11 expeditious divestiture of such insurer. The director shall have the  
12 authority to take such actions as are necessary to assure such divestiture.

13 C. A CONTROLLING PERSON OF A DOMESTIC INSURER THAT SEEKS TO DIVEST ITS  
14 CONTROLLING INTEREST IN THE DOMESTIC INSURER SHALL FILE WITH THE DIRECTOR,  
15 WITH A COPY TO THE INSURER, A CONFIDENTIAL NOTICE OF ITS PROPOSED DIVESTITURE  
16 AT LEAST THIRTY DAYS BEFORE THE CESSATION OF CONTROL. THE DIRECTOR SHALL  
17 DETERMINE IF THE PARTY SEEKING TO DIVEST OR TO ACQUIRE A CONTROLLING INTEREST  
18 IN THE INSURER WILL BE REQUIRED TO FILE FOR AND OBTAIN APPROVAL OF THE  
19 TRANSACTION. THE INFORMATION SHALL REMAIN CONFIDENTIAL UNTIL THE CONCLUSION  
20 OF THE TRANSACTION UNLESS THE DIRECTOR DETERMINES THAT CONFIDENTIAL TREATMENT  
21 WILL INTERFERE WITH ENFORCEMENT OF THIS SECTION. THIS SUBSECTION DOES NOT  
22 APPLY IF THE STATEMENT REFERRED TO IN SUBSECTION A OF THIS SECTION IS FILED.

23 ~~C.~~ D. The director may employ insurance analysts, hearing examiners  
24 and such other staff as necessary to ~~insure~~ ENSURE compliance with this  
25 section. Such costs shall be paid by the insurance examiners' revolving fund  
26 in accordance with section 20-159.

27 ~~D.~~ E. The filing requirements provided in subsection A of this  
28 section shall not be deemed in conflict with federal securities acts where  
29 such federal securities acts apply. No offer, transaction, proposed  
30 transaction, agreement or acquisition subject to approval of the director  
31 pursuant to subsection A of this section shall become effective until  
32 approved by the director.

33 F. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, THE ACQUIRING PERSON  
34 SHALL FILE A PREACQUISITION NOTIFICATION WITH THE DIRECTOR THAT CONTAINS THE  
35 INFORMATION PRESCRIBED IN SECTION 20-481.25, SUBSECTION C FOR ALL  
36 TRANSACTIONS UNDER THIS SECTION.

37 G. FOR THE PURPOSES OF THIS SECTION:

38 1. "DOMESTIC INSURER" INCLUDES ANY PERSON CONTROLLING A DOMESTIC  
39 INSURER, UNLESS THE DIRECTOR DETERMINES THAT THE PERSON IS EITHER DIRECTLY OR  
40 THROUGH ITS AFFILIATES PRIMARILY ENGAGED IN BUSINESS OTHER THAN THE BUSINESS  
41 OF INSURANCE.

42 2. PERSON DOES NOT INCLUDE ANY SECURITIES BROKER IN THE USUAL AND  
43 CUSTOMARY BROKER'S FUNCTION HOLDING LESS THAN TWENTY PER CENT OF THE VOTING  
44 SECURITIES OF AN INSURANCE COMPANY OR OF ANY PERSON THAT CONTROLS AN  
45 INSURANCE COMPANY.

1           Sec. 4. Section 20-481.03, Arizona Revised Statutes, is amended to  
2 read:

3           20-481.03. Contents of statement

4           A. The statement to be filed with the director as provided in section  
5 20-481.02 shall be made under oath or affirmation and shall contain the  
6 following ~~information~~:

7           1. The name and address of each person by whom or on whose behalf the  
8 tender offer, merger or other acquisition of control referred to in section  
9 20-481.02 is to be effected.

10           2. If the acquiring party is an individual, his principal occupation  
11 and all offices and positions held during the past five years and any  
12 convictions of crimes other than minor traffic violations during the past ten  
13 years.

14           3. If the acquiring party is not an individual:

15           (a) A report of the nature of its business operations during the past  
16 five years or for such lesser period as such person and any predecessors  
17 thereof shall have been in existence.

18           (b) An informative description of the business intended to be done by  
19 such person and such person's subsidiaries.

20           (c) A list of all individuals who are or who have been selected to  
21 become directors or executive officers of such person, or who perform or will  
22 perform functions appropriate to such positions. Such list shall include for  
23 each such individual the information required by paragraph 2 of this  
24 subsection.

25           4. The source, nature and amount of the consideration used or to be  
26 used in effecting the ~~tender offer~~, merger or other acquisition of control, a  
27 description of any transaction wherein funds were or are to be obtained for  
28 any such purpose including a pledge of the insurer's stocks or the stock of  
29 any of its subsidiaries or controlling affiliates, and the identity of  
30 persons furnishing such consideration, provided that if a source of such  
31 consideration is a loan made in the lender's ordinary course of business, the  
32 identity of the lender shall remain confidential, if the person filing such  
33 statement so requests.

34           5. Fully audited financial information as to the earnings and  
35 financial condition of each acquiring party for the preceding five fiscal  
36 years of each such acquiring party or for such lesser period as such  
37 acquiring party and any predecessors thereof have been in existence and  
38 similar unaudited information as of a date not earlier than ninety days ~~prior~~  
39 ~~to~~ BEFORE the filing of the statement. If audited financial information is  
40 unavailable, unaudited financial information may be substituted if such  
41 information is acceptable to the director.

42           6. Any plans or proposals ~~which~~ THAT each acquiring party may have to  
43 liquidate such insurer, to sell its assets or merge or consolidate it with  
44 any person or to make any other material change in its business or corporate  
45 structure or management.

1           7. The number of shares of any security referred to in section  
2 20-481.02 ~~which~~ THAT each acquiring party proposes to acquire, and the terms  
3 of the offer, request, invitation, agreement or acquisition referred to in  
4 section 20-481.02 and a statement as to the method by which the fairness of  
5 the proposal was arrived at.

6           8. The amount of each class of any security referred to in section  
7 20-481.02 ~~which~~ THAT is beneficially owned or about which there is a right to  
8 acquire beneficial ownership by each acquiring party or ~~which~~ THAT each  
9 acquiring party has the right to acquire.

10          9. A full description of any contracts, arrangements or understandings  
11 with respect to any security referred to in section 20-481.02 in which any  
12 acquiring party is involved, including but not limited to transfer of any of  
13 the securities, joint ventures, loan or option arrangements, puts or calls,  
14 guarantees of loans, guarantees against loss or guarantees of profits,  
15 division of losses or profits or the giving or withholding of proxies. Such  
16 description shall identify the persons with whom such contracts, arrangements  
17 or understandings have been entered into.

18          10. A description of the purchase of any security referred to in  
19 section 20-481.02 during the twelve calendar months preceding the filing of  
20 the statement, by any acquiring party, including the dates of purchases,  
21 names of the purchasers and consideration paid or agreed to be paid therefor.

22          11. A description of any recommendations to purchase any security  
23 referred to in section 20-481.02 made during the twelve calendar months  
24 preceding the filing of the statement, by any acquiring party, or by anyone  
25 based ~~upon~~ ON interviews or at the suggestion of such acquiring party.

26          12. Copies of all tender offers for, requests or invitations for  
27 tenders of exchange offers for and agreements to acquire or exchange any  
28 securities referred to in section 20-481.02 and any additional soliciting  
29 material relating thereto.

30          13. The terms of any **PROPOSED OR EXECUTED** agreement, contract or  
31 understanding made with any broker-dealer as to solicitation of securities  
32 referred to in section 20-481.02 for tender, and the amount of any fees,  
33 commissions or other compensation to be paid to broker-dealers with regard  
34 thereto.

35          14. **AN AGREEMENT BY THE PERSON REQUIRED TO FILE THE STATEMENT REFERRED**  
36 **TO IN SECTION 20-481.02 THAT THE PERSON WILL FILE WITH THE DIRECTOR THE**  
37 **ANNUAL ENTERPRISE RISK REPORT PURSUANT TO SECTION 20-481.10, SUBSECTION D**  
38 **WHILE IN CONTROL OF THE INSURER.**

39          15. **AN ACKNOWLEDGEMENT BY THE PERSON REQUIRED TO FILE THE STATEMENT**  
40 **REFERRED TO IN SECTION 20-481.02 THAT THE PERSON AND ALL SUBSIDIARIES IN ITS**  
41 **CONTROL IN THE INSURANCE HOLDING COMPANY SYSTEM WILL PROVIDE ALL INFORMATION**  
42 **REQUESTED BY THE DIRECTOR FOR THE DIRECTOR TO EVALUATE ENTERPRISE RISK TO THE**  
43 **INSURER.**



1 ~~14.~~ 16. Such additional information as the director may by rule  
2 prescribe as necessary or appropriate for the protection of policyholders and  
3 security holders of the insurer or in the public interest.

4 B. The director may require each statement to be accompanied by the  
5 fingerprints of any individual named in such statement as an acquiring party  
6 or as directors or executive officers of an acquiring party. Such  
7 fingerprints shall be taken in an approved manner and certified by a  
8 municipal police department, a sheriff's office or ~~other~~ ANOTHER recognized  
9 authority acceptable to the director.

10 Sec. 5. Section 20-481.06, Arizona Revised Statutes, is amended to  
11 read:

12 20-481.06. Use of other statements

13 If any ~~tender offer, for or request, or invitation, for tenders~~  
14 AGREEMENT OR ACQUISITION referred to in section 20-481.02 is proposed to be  
15 made by means of a registration statement under the securities act of 1933 or  
16 in circumstances requiring the disclosure of similar information under the  
17 securities exchange act of 1934, or under a state law requiring similar  
18 registration or disclosure, the person required to file the statement  
19 referred to in section 20-481.02 may ~~utilize such~~ USE THE documents in  
20 furnishing the information ~~called for by~~ PROVIDED IN that statement.

21 Sec. 6. Section 20-481.07, Arizona Revised Statutes, is amended to  
22 read:

23 20-481.07. Approval and issues; notice; hearings

24 A. ~~The tender offer for or request or invitation for tenders, merger~~  
25 ~~or other acquisition of control may not be consummated until it is approved~~  
26 ~~by the director.~~ The director shall approve ~~the transaction~~ ANY MERGER OR  
27 OTHER ACQUISITION OF CONTROL DESCRIBED IN SECTION 20-481.02 unless the  
28 director finds THAT:

29 1. The ~~tender offer for or request or invitation for tenders,~~ merger  
30 or other acquisition of control:

31 ~~1.~~ (a) Is contrary to law.

32 ~~2.~~ (b) Is inequitable to the shareholders of any domestic insurer  
33 involved.

34 ~~3.~~ (c) Would substantially reduce the security of and service to be  
35 rendered to policyholders of the domestic insurer in this state or elsewhere.

36 ~~4.~~ 2. After the change of control the domestic insurer would not be  
37 able to satisfy the requirements for the reissuance of a certificate of  
38 authority to write the line or lines of insurance for which it is presently  
39 licensed.

40 ~~5.~~ 3. The effect of ~~which~~ THE MERGER OR OTHER ACQUISITION OF CONTROL  
41 would substantially lessen competition in insurance in this state or tend to  
42 create a monopoly. In applying the competitive standard in this paragraph:

43 (a) The informational requirements of section 20-481.25, subsection C  
44 and the standards of section 20-481.25, subsection D apply.

1 (b) The merger or other acquisition shall not be disapproved if the  
2 director finds that any of the situations meeting the criteria provided by  
3 section 20-481.25 exist.

4 (c) The director may condition the approval of the merger or other  
5 acquisition on the removal of the basis of disapproval within a specified  
6 period of time.

7 ~~6-~~ 4. The financial condition of any acquiring party might jeopardize  
8 the financial stability of the insurer or prejudice the interest of its  
9 policyholders.

10 ~~7-~~ 5. The plans or proposals that the acquiring party has to  
11 liquidate the insurer, sell its assets or consolidate or merge it with any  
12 person, or to make any other material change in its business or corporate  
13 structure or management, are unfair and unreasonable to policyholders of the  
14 insurer and are not in the public interest.

15 ~~8-~~ 6. The competence, experience and integrity of those persons who  
16 would control the operation of the insurer are such that it would not be in  
17 the interest of policyholders of the insurer and of the public to permit the  
18 merger or other acquisition of control.

19 ~~9-~~ 7. The acquisition is likely to be hazardous or prejudicial to the  
20 insurance buying public.

21 B. The director may conduct a hearing as prescribed in section 20-161  
22 ~~regarding~~ FOR any transaction **REQUIRING THE DIRECTOR'S APPROVAL** pursuant to  
23 section 20-481.02.

24 C. ~~Any public hearing conducted pursuant to subsection B of this~~  
25 ~~section shall be held within thirty days after the statement required by~~  
26 ~~section 20-481.02 is filed, and at least twenty days after the director gives~~  
27 ~~written notice of the hearing to the person filing the statement.~~ The person  
28 filing the statement **REQUIRED BY SECTION 20-481.02** shall give at least ten  
29 days' written notice of the hearing to the insurer and to any other persons  
30 designated by the director. The insurer shall give the written notice to its  
31 security holders.

32 D. If the director does not give notice of a hearing pursuant to  
33 ~~subsections~~ **SUBSECTION B** ~~and C~~ of this section, the person filing the  
34 statement shall give written notice of the filing on a form prescribed by the  
35 director to the insurer and to any other persons designated by the director.  
36 The insurer shall give the written notice to its security holders. The  
37 person filing the statement, the insurer, any designated recipient of the  
38 written notice of the filing and any person whose interests may be affected  
39 by the filing have ten days from the date of the written notice to request  
40 that the director hold a hearing on the filing pursuant to this section. The  
41 request shall specify the grounds for the hearing and the interests that  
42 would be affected by the filing.

43 E. If the director finds that the request is made in good faith, that  
44 the interests of the person requesting the hearing would be affected by the  
45 filing if the grounds are established, ~~and~~ and that the grounds otherwise

1 justify holding a hearing, the director shall grant the request for a hearing  
2 and issue a notice of hearing to all persons entitled to the notice pursuant  
3 to subsection C of this section. ~~The hearing shall be held no earlier than~~  
4 ~~twenty days from the date of the notice.~~

5 F. If a hearing is scheduled, the person filing the statement, the  
6 insurer, any person to whom written notice of hearing was sent and any other  
7 person whose interests may be affected shall have the right to present  
8 evidence, examine and cross-examine the witnesses and offer oral and written  
9 arguments at the hearing. ~~Prior to the hearing, persons shall be entitled to~~  
10 ~~take depositions upon oral examination in the same manner as is allowed in~~  
11 ~~the superior court of this state. All depositions shall be concluded not~~  
12 ~~later than three days prior to the commencement of the public hearing. The~~  
13 ~~director shall make a determination within thirty days after the conclusion~~  
14 ~~of the hearing. Except as otherwise provided in this subsection the~~  
15 ~~provisions of title 41, chapter 6, article 10 shall apply to hearings, orders~~  
16 ~~and appeals.~~

17 G. IF THE PROPOSED ACQUISITION OF CONTROL WILL REQUIRE THE APPROVAL OF  
18 OTHER STATES IN ADDITION TO THIS STATE, THE DIRECTOR MAY HOLD A PUBLIC  
19 HEARING ON A CONSOLIDATED BASIS FOR THE PURPOSE OF RECEIVING PUBLIC COMMENT  
20 ON A PROPOSED AGENCY ACTION ON REQUEST OF THE PERSON FILING THE STATEMENT  
21 REFERRED TO IN SECTION 20-481.02. THE PERSON SHALL FILE THE STATEMENT  
22 REFERRED TO IN SECTION 20-481.02 WITH THE NATIONAL ASSOCIATION OF INSURANCE  
23 COMMISSIONERS WITHIN FIVE DAYS AFTER MAKING THE REQUEST FOR A PUBLIC HEARING.  
24 THE DIRECTOR MAY OPT OUT OF A CONSOLIDATED HEARING AND SHALL PROVIDE NOTICE  
25 TO THE APPLICANT OF THE OPT OUT WITHIN TEN DAYS AFTER RECEIVING THE STATEMENT  
26 REFERRED TO IN SECTION 20-481.02. A HEARING HELD BY THE DIRECTOR AND  
27 CONDUCTED ON A CONSOLIDATED BASIS MUST BE PUBLIC AND HELD IN THE UNITED  
28 STATES.

29 H. IN CONNECTION WITH A CHANGE OF CONTROL OF A DOMESTIC INSURER, THE  
30 DIRECTOR SHALL MAKE A DETERMINATION THAT THE PERSON ACQUIRING CONTROL OF THE  
31 INSURER IS REQUIRED TO MAINTAIN OR RESTORE THE CAPITAL OF THE INSURER TO THE  
32 LEVEL REQUIRED BY THE LAWS AND RULES OF THIS STATE WITHIN SIXTY DAYS AFTER  
33 THE DATE OF NOTIFICATION OF THE CHANGE IN CONTROL THAT IS SUBMITTED PURSUANT  
34 TO SECTION 20-481.03.

35 I. THE DIRECTOR MAY RETAIN AT THE ACQUIRING PERSON'S EXPENSE  
36 ATTORNEYS, ACTUARIES, ACCOUNTANTS AND OTHER EXPERTS NOT PART OF THE  
37 DIRECTOR'S STAFF AS MAY BE REASONABLY NECESSARY TO ASSIST THE DIRECTOR IN  
38 REVIEWING THE PROPOSED ACQUISITION OF CONTROL.

39 ~~G.~~ J. All statements, amendments or other material filed pursuant  
40 thereto, and all notices of public hearing held pursuant to this section,  
41 shall be mailed by the insurer to its shareholders within five business days  
42 after the insurer has received the statements, amendments, other material or  
43 notices. The ~~expenses of mailing shall be paid by the~~ person making the  
44 filing SHALL PAY THE EXPENSES OF MAILING. As security for the payment of the

1 expenses, the person shall file with the director an acceptable bond or other  
2 deposit in an amount to be determined by the director.

3 Sec. 7. Section 20-481.09, Arizona Revised Statutes, is amended to  
4 read:

5 20-481.09. Registration of insurers; deadline

6 A. Every insurer ~~which~~ THAT is authorized to do business in this state  
7 and ~~which~~ THAT is a member of an insurance holding company system shall  
8 register with the director, except a foreign insurer subject to registration  
9 requirements and standards adopted by statute or regulation in the  
10 jurisdiction of its domicile ~~which~~ THAT are substantially similar to those  
11 contained in this article.

12 B. Any insurer ~~which~~ THAT is subject to registration under this  
13 article shall register within fifteen days after the insurer becomes subject  
14 to registration and by March 31 of each year unless the director for good  
15 cause extends the time for registration.

16 C. The director may require any authorized insurer ~~which~~ THAT is a  
17 member of ~~a~~ AN INSURANCE holding company system ~~which~~ THAT is not subject to  
18 registration under this section to furnish a copy of the registration  
19 statement, THE SUMMARY PRESCRIBED IN SECTION 20-481.10 or other information  
20 filed by such insurance company with the insurance regulatory authority of  
21 its domiciliary jurisdiction.

22 Sec. 8. Section 20-481.10, Arizona Revised Statutes, is amended to  
23 read:

24 20-481.10. Form and content of registration statement;  
25 disclosure of information; enterprise risk filing

26 A. Every insurer subject to registration shall file a registration  
27 statement on a form provided by the director, which shall contain current  
28 information concerning:

29 1. The capital structure, general financial condition, ownership and  
30 management of the insurer and the identity of any person controlling the  
31 insurer.

32 2. The identity of every member of the insurance holding company  
33 system ~~which~~ THAT directly or indirectly controls the insurer.

34 3. The following agreements in force, relationships subsisting and  
35 transactions currently outstanding OR THAT HAVE OCCURRED DURING THE LAST  
36 CALENDAR YEAR between such insurer and its affiliates:

37 (a) Loans, other investments or purchases, sales or exchanges of  
38 securities of the affiliates by the insurer or of the insurer by its  
39 affiliates.

40 (b) Purchases, sales or exchanges of assets.

41 (c) Transactions not in the ordinary course of business.

42 (d) Guarantees or undertakings for the benefit of any affiliate ~~which~~  
43 THAT result in an actual contingent exposure of the insurer's assets to  
44 liability, other than insurance contracts entered into in the ordinary course  
45 of the insurer's business.

1 (e) All management and service contracts and all cost sharing  
2 arrangements, ~~other than cost allocation arrangements based upon generally~~  
3 ~~accepted accounting principles.~~

4 (f) Reinsurance agreements.

5 (g) Dividends and other distributions to shareholders.

6 (h) Consolidated tax allocation agreements.

7 4. A pledge of the insurer's stock, including stock of any subsidiary  
8 or controlling affiliate, for a loan made to a member of the insurance  
9 holding company system.

10 5. IF REQUESTED BY THE DIRECTOR, FINANCIAL STATEMENTS OF OR WITHIN AN  
11 INSURANCE HOLDING COMPANY SYSTEM, INCLUDING ALL AFFILIATES. FINANCIAL  
12 STATEMENTS MAY INCLUDE ANNUAL AUDITED FINANCIAL STATEMENTS FILED WITH THE  
13 UNITED STATES SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE SECURITIES  
14 ACT OF 1933 OR THE SECURITIES EXCHANGE ACT OF 1934. AN INSURER REQUIRED TO  
15 FILE FINANCIAL STATEMENTS PURSUANT TO THIS PARAGRAPH MAY SATISFY THE REQUEST  
16 BY PROVIDING THE DIRECTOR WITH THE MOST RECENT PARENT CORPORATION FINANCIAL  
17 STATEMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION.

18 ~~5-~~ 6. Other matters concerning transactions between registered  
19 insurers and any affiliates as may be included from time to time in any  
20 registration forms adopted or approved by the director.

21 7. A STATEMENT THAT THE INSURER'S BOARD OF DIRECTORS OVERSEES  
22 CORPORATE GOVERNANCE AND INTERNAL CONTROLS OF THE INSURER AND THAT THE  
23 INSURER'S OFFICERS OR SENIOR MANAGEMENT HAVE APPROVED, IMPLEMENTED AND  
24 MAINTAIN AND MONITOR CORPORATE GOVERNANCE AND INTERNAL CONTROL PROCEDURES.

25 8. ANY OTHER INFORMATION REQUIRED BY THE DIRECTOR BY RULE.

26 B. All registration statements shall contain a summary outlining all  
27 items in the current registration statement representing changes from the  
28 prior registration statement.

29 C. A person within an insurance holding company system subject to  
30 registration shall provide complete and accurate information to an insurer if  
31 this information is reasonably necessary to enable the insurer to comply with  
32 ~~the provisions of~~ this article.

33 D. THE ULTIMATE CONTROLLING PERSON OF EACH INSURER SUBJECT TO  
34 REGISTRATION SHALL FILE AN ANNUAL ENTERPRISE RISK REPORT THAT TO THE BEST OF  
35 THE ULTIMATE CONTROLLING PERSON'S KNOWLEDGE AND BELIEF IDENTIFIES THE  
36 MATERIAL RISKS WITHIN THE INSURANCE HOLDING COMPANY SYSTEM THAT COULD POSE  
37 ENTERPRISE RISK TO THE INSURER. THE ULTIMATE CONTROLLING PERSON SHALL FILE  
38 THE REPORT ACCORDING TO THE PROCEDURES OF THE NATIONAL ASSOCIATION OF  
39 INSURANCE COMMISSIONERS' FINANCIAL ANALYSIS HANDBOOK.

40 Sec. 9. Section 20-481.12, Arizona Revised Statutes, is amended to  
41 read:

42 20-481.12. Standards

43 A. Transactions within ~~a~~ AN INSURANCE holding company system to which  
44 an insurer subject to registration is a party are subject to the following  
45 standards:

1           1. The terms are fair and reasonable.

2           2. **AGREEMENTS FOR COST SHARING OR MANAGEMENT SERVICES AND MANAGEMENT**  
3 **MUST INCLUDE PROVISIONS THAT ARE REQUIRED BY RULE.**

4           ~~2-~~ 3. Charges or fees for services performed are reasonable.

5           ~~3-~~ 4. Expenses incurred and payment received are allocated to the  
6 insurer in conformity with customary insurance accounting practices  
7 consistently applied.

8           ~~4-~~ 5. The books, accounts and records of each party to all  
9 transactions clearly and accurately disclose the nature and details of the  
10 transactions including any accounting information that is necessary to  
11 support the reasonableness of the charges or fees to the respective parties.

12           ~~5-~~ 6. The insurer's surplus as regards policyholders following any  
13 dividends or distributions to shareholder affiliates is reasonable in  
14 relation to the insurer's outstanding liabilities and adequate to its  
15 financial needs.

16           B. The following transactions involving a domestic insurer and any  
17 person in its **INSURANCE** holding company system, **INCLUDING AMENDMENTS AND**  
18 **MODIFICATIONS OF AFFILIATE AGREEMENTS PREVIOUSLY FILED PURSUANT TO THIS**  
19 **SECTION THAT ARE SUBJECT TO ANY MATERIALITY STANDARDS CONTAINED IN PARAGRAPHS**  
20 **1, 2, 3, 4 AND 5 OF THIS SUBSECTION,** may not be entered into unless the  
21 insurer notifies the director in writing not less than thirty days before  
22 entering the transaction, unless the director permits a shorter notification  
23 period, of its intention to enter into the transaction and the director does  
24 not disapprove the transaction within that period:

25           1. Sales, purchases, exchanges, loans or extensions of credit,  
26 guarantees or investments if the transactions equal or exceed, with respect  
27 to nonlife insurers, the lesser of three per cent of the insurer's admitted  
28 assets or twenty-five per cent of surplus as regards policyholders as of  
29 December 31 next preceding or, with respect to life insurers, three per cent  
30 of the insurer's admitted assets as of December 31 next preceding.

31           2. Loans or extensions of credit to any person who is not an affiliate  
32 if the insurer makes the loans or extensions of credit with the agreement or  
33 understanding that the proceeds of the transactions, in whole or in  
34 substantial part, are to be used to make loans or extensions of credit to, to  
35 purchase assets of or to make investments in any affiliate of the insurer  
36 making such loans or extensions of credit if the transactions equal or  
37 exceed, with respect to nonlife insurers, the lesser of three per cent of the  
38 insurer's admitted assets or twenty-five per cent of surplus as regards  
39 policyholders as of December 31 next preceding or, with respect to life  
40 insurers, three per cent of the insurer's admitted assets as of December 31  
41 next preceding.

1           3. Reinsurance agreements or modifications to reinsurance agreements,  
2 INCLUDING:

3           (a) ALL REINSURANCE POOLING AGREEMENTS.

4           (b) AGREEMENTS in which the reinsurance premium or a change in the  
5 insurer's liabilities, OR THE PROJECTED REINSURANCE PREMIUM OR A CHANGE IN  
6 THE INSURER'S LIABILITIES IN ANY OF THE NEXT THREE YEARS, equals or exceeds  
7 five per cent of the insurer's surplus as regards policyholders as of  
8 December 31 next preceding, including those agreements that may require as  
9 consideration the transfer of assets from an insurer to a nonaffiliate if an  
10 agreement or understanding exists between the insurer and the nonaffiliate  
11 that any portion of the assets will be transferred to one or more affiliates  
12 of the insurer.

13           4. All management agreements, service contracts, TAX ALLOCATION  
14 AGREEMENTS, GUARANTEES and cost-sharing arrangements.

15           5. GUARANTEES AT THE TIME EXECUTED BY A DOMESTIC INSURER, PROVIDED  
16 THAT A GUARANTEE THAT IS QUANTIFIABLE AS TO AMOUNT IS NOT SUBJECT TO THE  
17 NOTICE REQUIREMENTS OF THIS SUBSECTION UNLESS THE GUARANTEE EXCEEDS THE  
18 LESSER OF ONE-HALF OF ONE PER CENT OF THE INSURER'S ADMITTED ASSETS OR TEN  
19 PER CENT OF THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS AS OF DECEMBER 31  
20 NEXT PRECEDING THE EXECUTION OF THE GUARANTEE. ALL GUARANTEES THAT ARE NOT  
21 QUANTIFIABLE AS TO AMOUNT ARE SUBJECT TO THE NOTICE REQUIREMENTS OF THIS  
22 SUBSECTION.

23           6. DIRECT OR INDIRECT ACQUISITIONS OR INVESTMENTS IN A PERSON THAT  
24 CONTROLS THE INSURER OR IN AN AFFILIATE OF THE INSURER IN AN AMOUNT THAT,  
25 TOGETHER WITH ITS PRESENT HOLDING IN SUCH INVESTMENTS, EXCEEDS TWO AND  
26 ONE-HALF PER CENT OF THE INSURER'S SURPLUS TO POLICYHOLDERS. DIRECT OR  
27 INDIRECT ACQUISITIONS OR INVESTMENTS IN SUBSIDIARIES ACQUIRED PURSUANT TO  
28 SECTION 20-481.01, OR IN NONSUBSIDIARY INSURANCE AFFILIATES THAT ARE SUBJECT  
29 TO THIS ARTICLE, ARE EXEMPT FROM THIS REQUIREMENT.

30           ~~5-~~ 7. Any material transaction that is specified by rule and that the  
31 director determines may adversely affect the interests of the insurer's  
32 policyholders.

33           C. THE NOTICE PRESCRIBED IN SUBSECTION B OF THIS SECTION FOR  
34 AMENDMENTS OR MODIFICATIONS MUST INCLUDE THE REASONS FOR THE CHANGE AND THE  
35 FINANCIAL IMPACT ON THE DOMESTIC INSURER. INFORMAL NOTICE SHALL BE GIVEN  
36 WITHIN THIRTY DAYS AFTER A TERMINATION OF A PREVIOUSLY FILED AGREEMENT TO THE  
37 DIRECTOR FOR DETERMINATION OF THE TYPE OF FILING REQUIRED, IF ANY.

38           ~~C-~~ D. ~~Nothing contained in~~ Subsection B of this section ~~is deemed to~~  
39 DOES NOT authorize or permit any transactions that would be otherwise  
40 contrary to law.

41           ~~D-~~ E. A domestic insurer shall not enter into transactions that are  
42 part of a plan or series of like transactions with persons within the holding  
43 company system if the purpose of those separate transactions is to avoid the  
44 statutory threshold amount and thereby avoid the review that otherwise would  
45 occur. If the director determines that separate transactions were entered

1 into during any twelve month period for that purpose, the director may order  
2 the insurer to cease and desist under section 20-481.26.

3 ~~E.~~ F. In reviewing transactions pursuant to subsection B of this  
4 section, the director shall consider if the transactions comply with the  
5 standards set forth in subsection A of this section and if they adversely  
6 affect the interests of policyholders.

7 ~~F.~~ G. Within thirty days of an investment of a domestic insurer in  
8 any one corporation the director shall be notified of the investment if the  
9 total investment in the corporation by the insurance holding company system  
10 exceeds ten per cent of the corporation's voting securities.

11 ~~G.~~ H. The director may adopt rules to exempt transactions involving  
12 nonmaterial amounts from the notice requirements of this section.

13 Sec. 10. Section 20-481.13, Arizona Revised Statutes, is amended to  
14 read:

15 20-481.13. Material changes; amended statement; time; reporting  
16 of dividends

17 A. Each registered insurer shall keep current the information required  
18 to be disclosed in its registration statement by reporting all material  
19 changes or additions on amendment forms provided by the director within  
20 fifteen days after the end of each ~~calendar year~~ MONTH in which it learns of  
21 each such change or addition.

22 B. Subject to ~~the provisions of~~ section 20-481.19, each registered  
23 insurer shall report to the director all dividends and other distributions to  
24 shareholders within ~~fifteen~~ FIVE business days following the declaration ~~AND~~  
25 ~~AT LEAST TEN BUSINESS DAYS BEFORE PAYMENT OF THE DIVIDEND OR DISTRIBUTION.~~

26 C. The director may adopt rules ~~which~~ THAT provide for an extension of  
27 the reporting times prescribed in subsections A and B of this section.

28 Sec. 11. Section 20-481.18, Arizona Revised Statutes, is amended to  
29 read:

30 20-481.18. Disclaimer of affiliation or control; contents;  
31 effect on duty to register

32 A. Any person may file with the director a disclaimer of affiliation  
33 or control with any authorized insurer or such a disclaimer may be filed by  
34 such insurer or any member of an insurance holding company system.

35 B. The disclaimer shall fully disclose all material relationships and  
36 bases for affiliation or control between such person and such insurer as well  
37 as the basis for disclaiming such affiliation or control.

38 ~~C. After a disclaimer has been filed, the insurer shall be relieved of~~  
39 ~~any duty to register or report under any of the provisions of this act,~~  
40 ~~unless and until the director disallows such a disclaimer.~~

41 ~~D. The director shall disallow such a disclaimer only after furnishing~~  
42 ~~all parties in interest with notice and opportunity to be heard and after~~  
43 ~~making specific findings of fact to support such disallowance.~~



1 C. A DISCLAIMER OF AFFILIATION SHALL BE DEEMED TO HAVE BEEN APPROVED  
2 UNLESS THE DIRECTOR WITHIN THIRTY DAYS FOLLOWING RECEIPT OF A COMPLETE  
3 DISCLAIMER NOTIFIES THE FILING PARTY THAT THE DISCLAIMER IS DISALLOWED. IF  
4 THE DIRECTOR DISALLOWS THE DISCLAIMER, THE DISCLAIMING PARTY MAY REQUEST AN  
5 ADMINISTRATIVE HEARING, WHICH SHALL BE GRANTED. THE DISCLAIMING PARTY IS NOT  
6 REQUIRED TO REGISTER UNDER THIS SECTION IF THE DIRECTOR APPROVES THE  
7 DISCLAIMER OR IF THE DISCLAIMER IS DEEMED TO HAVE BEEN APPROVED.

8 Sec. 12. Section 20-481.19, Arizona Revised Statutes, is amended to  
9 read:

10 20-481.19. Extraordinary dividend or distribution; time;  
11 notice; approval by director; definition

12 A. No insurer subject to registration under section 20-481.09 shall  
13 pay an extraordinary dividend or make any other extraordinary distribution to  
14 its shareholders until thirty days after the director has received notice of  
15 the declaration thereof and has not within such period disapproved such  
16 payment, or the director shall have approved such payment. Notice of the  
17 declaration shall be provided to the director no more than five business days  
18 after the declaration.

19 ~~C.~~ B. Notwithstanding any other law ~~to the contrary~~, an insurer may  
20 declare an extraordinary dividend or distribution ~~which~~ THAT is conditional  
21 ~~upon~~ ON the approval of the director, and such a declaration shall confer no  
22 rights ~~upon~~ ON shareholders until the director has either approved the  
23 payment of such dividend or distribution or has not disapproved such payment  
24 within thirty days after the notice of such declaration has been received.

25 ~~B.~~ C. For the purposes of this section, ~~an~~ "extraordinary dividend or  
26 distribution" includes any dividend or distribution of cash or other property  
27 whose fair market value together with that of other dividends or  
28 distributions made within the preceding twelve months exceeds the ~~greater~~  
29 ~~LESSER~~ of either ten per cent of such insurer's surplus as regards  
30 policyholders as of December 31 next preceding, or the net gain from  
31 operations of such insurer, if such insurer is a life insurer, or the net  
32 income, if such insurer is not a life insurer, for the twelve month period  
33 ending December 31 next preceding, but shall not include pro rata  
34 distributions of any class of the insurer's own securities.

35 Sec. 13. Section 20-481.20, Arizona Revised Statutes, is amended to  
36 read:

37 20-481.20. Examination of registered insurers; powers; limits;  
38 expense

39 A. In addition to the powers ~~which~~ THAT the director has under  
40 sections 20-156 to 20-160, inclusive, relating to the examination of  
41 insurers, the director shall also have the power to ~~order any insurer~~  
42 ~~registered under section 20-481.09 to produce such records, books or other~~  
43 ~~information papers in the possession of the insurer or its affiliates insofar~~  
44 ~~as the records, books or other information papers relate to transactions~~  
45 ~~between the affiliates and such insurer. If such insurer fails to comply~~

1 ~~with such order, the director shall have the power to examine records, books~~  
2 ~~or other information papers in the possession of any affiliate of the insurer~~  
3 ~~insofar as such records, books or other information papers in the possession~~  
4 ~~of any affiliate relate to any transactions between or among the insurer and~~  
5 ~~any of its affiliates.~~ EXAMINE ANY INSURER REGISTERED UNDER SECTION 20-481.09  
6 AND ITS AFFILIATES TO ASCERTAIN THE FINANCIAL CONDITION OF THE INSURER,  
7 INCLUDING THE ENTERPRISE RISK TO THE INSURER BY THE ULTIMATE CONTROLLING  
8 PARTY OR BY ANY ENTITY OR COMBINATION OF ENTITIES WITHIN THE INSURANCE  
9 HOLDING COMPANY SYSTEM OR BY THE INSURANCE HOLDING COMPANY SYSTEM ON A  
10 CONSOLIDATED BASIS.

11 B. TO DETERMINE COMPLIANCE WITH THIS ARTICLE, THE DIRECTOR MAY ORDER  
12 ANY INSURER REGISTERED UNDER SECTION 20-481.09 TO PRODUCE:

13 1. ALL RECORDS, BOOKS OR OTHER INFORMATION PAPERS IN THE POSSESSION OF  
14 THE INSURER OR ITS AFFILIATES INsofar AS THE RECORDS, BOOKS OR OTHER  
15 INFORMATION PAPERS IN THE POSSESSION OF ANY AFFILIATE RELATE TO ANY  
16 TRANSACTIONS BETWEEN OR AMONG THE INSURER AND ANY OF ITS AFFILIATES.

17 2. INFORMATION NOT IN THE POSSESSION OF THE INSURER IF THE INSURER HAS  
18 THE RIGHT TO ACCESS THE INFORMATION PURSUANT TO CONTRACTUAL RELATIONSHIPS,  
19 STATUTORY OBLIGATIONS OR ANY OTHER METHOD.

20 C. IF THE INSURER CANNOT OBTAIN THE INFORMATION REQUESTED UNDER  
21 SUBSECTION B OF THIS SECTION, THE INSURER SHALL PROVIDE THE DIRECTOR WITH A  
22 DETAILED EXPLANATION OF THE REASON THAT THE INSURER CANNOT OBTAIN THE  
23 INFORMATION AND THE IDENTITY OF THE HOLDER OF THE INFORMATION. IF THE  
24 DIRECTOR DETERMINES THAT THE DETAILED EXPLANATION IS WITHOUT MERIT, THE  
25 DIRECTOR, AFTER NOTICE AND A HEARING PURSUANT TO SECTION 20-161, MAY ORDER  
26 THAT THE INSURER PAY A PENALTY OF NOT MORE THAN TWO HUNDRED DOLLARS FOR EACH  
27 DAY'S DELAY OR THAT THE INSURER'S CERTIFICATE OF AUTHORITY BE SUSPENDED OR  
28 REVOKED.

29 ~~B.~~ D. The director shall exercise his examination power under  
30 subsection A of this section only if the examination of the insurer under  
31 sections 20-156 ~~to~~ THROUGH 20-160, inclusive, is inadequate or the interests  
32 of the policyholders of such insurer may be adversely affected.

33 ~~C.~~ E. Each registered insurer shall be liable for and shall pay the  
34 expenses of such examination in accordance with section 20-159.

35 F. IF AN INSURER FAILS TO COMPLY WITH AN ORDER UNDER SUBSECTION C OF  
36 THIS SECTION, THE DIRECTOR MAY EXAMINE RECORDS, BOOKS OR OTHER INFORMATION  
37 PAPERS IN THE POSSESSION OF ANY AFFILIATE OF THE INSURER INsofar AS SUCH  
38 RECORDS, BOOKS OR OTHER INFORMATION PAPERS IN THE POSSESSION OF ANY AFFILIATE  
39 RELATE TO ANY TRANSACTIONS BETWEEN OR AMONG THE INSURER AND ANY OF ITS  
40 AFFILIATES. THE DIRECTOR MAY ALSO ISSUE SUBPOENAS, ADMINISTER OATHS AND  
41 EXAMINE UNDER OATH ANY PERSON FOR PURPOSES OF DETERMINING COMPLIANCE WITH  
42 THIS SECTION. IF A PERSON FAILS OR REFUSES TO OBEY A SUBPOENA, THE DIRECTOR  
43 MAY PETITION A COURT OF COMPETENT JURISDICTION SEEKING RELIEF FROM THE COURT.  
44 THE COURT MAY ENTER AN ORDER COMPELLING THE WITNESS TO APPEAR AND TESTIFY OR  
45 PRODUCE DOCUMENTARY EVIDENCE. EACH WITNESS IS ENTITLED TO THE SAME FEES AND

1 MILEAGE, IF CLAIMED, AS IF THE PERSON WAS A WITNESS IN SUPERIOR COURT  
2 PURSUANT TO SECTION 12-303 AND THE COSTS OF THOSE FEES AND MILEAGE AND ANY  
3 ACTUAL EXPENSE NECESSARILY INCURRED IN SECURING THE ATTENDANCE OF WITNESSES  
4 SHALL BE ITEMIZED AND CHARGED AGAINST AND PAID BY THE COMPANY BEING EXAMINED.

5 Sec. 14. Section 20-481.21, Arizona Revised Statutes, is amended to  
6 read:

7 20-481.21. Confidential records; consent to release; release  
8 without consent; information sharing

9 A. All documents, materials or other information that is in the  
10 possession or control of the department and that is obtained by or disclosed  
11 to the director or any other person in the course of a filing, an examination  
12 or an investigation made pursuant to sections 20-481.03, 20-481.10,  
13 20-481.12, 20-481.19 and 20-481.20 is confidential and privileged, is not  
14 subject to title 39, chapter 1, article 2, ~~and~~ is not subject to subpoena AND  
15 SHALL NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE AS EVIDENCE IN A PRIVATE  
16 CIVIL ACTION. The director may use the documents, materials or other  
17 information in the furtherance of any regulatory or legal action brought as a  
18 part of the director's official duties. The director shall not make the  
19 documents, materials or other information public without the prior written  
20 consent of the insurer to which it pertains unless the director determines,  
21 after giving the insurer and its affiliates who would be affected by the  
22 publication notice and an opportunity to be heard, that the interests of  
23 policyholders, shareholders or the public will be served by the publication.  
24 The director may then publish all or any part of the documents, materials or  
25 other information as the director deems appropriate.

26 B. The director may:

27 1. Share nonpublic documents, materials or other information with  
28 other state, federal and international regulatory agencies, with the national  
29 association of insurance commissioners and its affiliates and subsidiaries  
30 and with state, federal and international law enforcement authorities,  
31 INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE DESCRIBED IN SECTION 20-481.31,  
32 if the recipient agrees and warrants that it has the authority to maintain  
33 the confidentiality and privileged status of the documents, materials or  
34 other information AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY TO MAINTAIN  
35 CONFIDENTIALITY.

36 2. Receive documents, materials and other information from the  
37 national association of insurance commissioners and its affiliates and  
38 subsidiaries and from regulatory and law enforcement officials of other  
39 jurisdictions and shall maintain as confidential or privileged any document,  
40 material or other information received with notice or the understanding that  
41 it is confidential or privileged under the laws of the jurisdiction that is  
42 the source of the document, material or other information.

43 ~~3. Enter into agreements that govern the sharing and use of documents,~~  
44 ~~materials and other information and that are consistent with this section.~~

1 C. THE DIRECTOR SHALL ENTER INTO WRITTEN AGREEMENTS WITH THE NATIONAL  
2 ASSOCIATION OF INSURANCE COMMISSIONERS THAT GOVERN THE SHARING AND USE OF  
3 INFORMATION PROVIDED PURSUANT TO THIS ARTICLE AND THAT ARE CONSISTENT WITH  
4 THIS SECTION AND THAT DO ALL OF THE FOLLOWING:

5 1. SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE CONFIDENTIALITY AND  
6 SECURITY OF INFORMATION SHARED WITH THE NATIONAL ASSOCIATION OF INSURANCE  
7 COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES PURSUANT TO THIS ARTICLE,  
8 INCLUDING PROCEDURES AND PROTOCOLS FOR SHARING INFORMATION BY THE NATIONAL  
9 ASSOCIATION OF INSURANCE COMMISSIONERS WITH OTHER STATE, FEDERAL OR  
10 INTERNATIONAL REGULATORS.

11 2. SPECIFY THAT THE DIRECTOR HAS OWNERSHIP OF ALL INFORMATION SHARED  
12 WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES  
13 AND SUBSIDIARIES PURSUANT TO THIS ARTICLE AND THE NATIONAL ASSOCIATION OF  
14 INSURANCE COMMISSIONERS' USE OF THE INFORMATION IS SUBJECT TO THE DIRECTION  
15 OF THE DIRECTOR.

16 3. REQUIRE PROMPT NOTICE TO BE GIVEN TO AN INSURER WHOSE CONFIDENTIAL  
17 INFORMATION IN THE POSSESSION OF THE NATIONAL ASSOCIATION OF INSURANCE  
18 COMMISSIONERS OR ITS AFFILIATES OR SUBSIDIARIES PURSUANT TO THIS ARTICLE IS  
19 SUBJECT TO A REQUEST OR SUBPOENA TO THE NATIONAL ASSOCIATION OF INSURANCE  
20 COMMISSIONERS OR ITS AFFILIATES OR SUBSIDIARIES FOR DISCLOSURE OR PRODUCTION.

21 4. REQUIRE THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS  
22 AFFILIATES AND SUBSIDIARIES TO CONSENT TO INTERVENTION BY AN INSURER IN ANY  
23 JUDICIAL OR ADMINISTRATIVE ACTION IN WHICH THE NATIONAL ASSOCIATION OF  
24 INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES MAY BE REQUIRED  
25 TO DISCLOSE CONFIDENTIAL INFORMATION ABOUT THE INSURER SHARED WITH THE  
26 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND  
27 SUBSIDIARIES PURSUANT TO THIS ARTICLE.

28 D. NOTWITHSTANDING SUBSECTION B, PARAGRAPH 1 OF THIS SECTION, THE  
29 DIRECTOR MAY SHARE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIAL OR  
30 INFORMATION REPORTED PURSUANT TO SECTION 20-481.10, SUBSECTION D ONLY WITH  
31 THE DIRECTORS OR COMMISSIONERS OF INSURANCE OF OTHER STATES HAVING STATUTES  
32 OR REGULATIONS SUBSTANTIALLY SIMILAR TO SUBSECTION A OF THIS SECTION AND WHO  
33 HAVE AGREED IN WRITING NOT TO DISCLOSE SUCH INFORMATION. THE SHARING OF  
34 INFORMATION BY THE DIRECTOR PURSUANT TO THIS ARTICLE DOES NOT CONSTITUTE A  
35 DELEGATION OF REGULATORY AUTHORITY BY THE DIRECTOR AND THE DIRECTOR IS SOLELY  
36 RESPONSIBLE FOR THE ADMINISTRATION, EXECUTION AND ENFORCEMENT OF THIS  
37 ARTICLE.

38 ~~C.~~ E. A disclosure to or by the director pursuant to this section or  
39 as a result of sharing information pursuant to subsection B of this section  
40 is not a waiver of any applicable privilege or claim of confidentiality in  
41 the documents, materials or other information disclosed or shared.

42 F. DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE POSSESSION OR  
43 CONTROL OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS  
44 AFFILIATES OR SUBSIDIARIES PURSUANT TO THIS ARTICLE IS CONFIDENTIAL BY LAW  
45 AND PRIVILEGED, IS NOT SUBJECT TO TITLE 39, CHAPTER 1, ARTICLE 2, IS NOT

1 SUBJECT TO SUBPOENA AND IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE  
2 IN ANY PRIVATE CIVIL ACTION.

3 Sec. 15. Section 20-481.23, Arizona Revised Statutes, is amended to  
4 read:

5 20-481.23. Violations

6 The following acts or omissions shall be deemed to be violations of  
7 this article:

8 1. The intentional failure to file or make any statement, amendment or  
9 other material required to be filed pursuant to sections 20-481.02, 20-  
10 481.03, 20.481.04 and 20-481.05.

11 2. The ~~consummation of a tender offer or request or invitation for~~  
12 ~~tenders which~~ EFFECTUATION OR ANY ATTEMPT TO EFFECTUATE AN ACQUISITION OF  
13 CONTROL OF, DIVESTITURE OF OR MERGER WITH A DOMESTIC INSURER THAT is subject  
14 to ~~the provisions of~~ section 20-481.02 without the required approval of the  
15 director pursuant to section 20-481.07.

16 3. The intentional failure to file a registration statement or any  
17 amendment thereto required by this article within the time specified for such  
18 filing.

19 4. The payment of a dividend in violation of section 20-481.19.

20 Sec. 16. Section 20-481.25, Arizona Revised Statutes, is amended to  
21 read:

22 20-481.25. Acquisitions involving insurers not otherwise  
23 covered; anticompetitive considerations; civil  
24 penalty; definitions

25 A. Except as provided in subsection B of this section, this section  
26 applies to any acquisition in which there is a change in control of an  
27 insurer authorized to do business in this state.

28 B. This section does not apply to the following, except as provided  
29 under subsections C and D of this section:

30 ~~1. An acquisition otherwise subject to approval or disapproval by the~~  
31 ~~director pursuant to this article.~~

32 ~~2.~~ 1. A purchase of securities solely for investment purposes as long  
33 as the securities are not used by voting or otherwise to cause or attempt to  
34 cause the substantial lessening of competition in any insurance market in  
35 this state. If a purchase of securities results in a presumption of control  
36 ~~under~~ AS DEFINED IN section 20-481, the purchase of securities is not solely  
37 for investment purposes unless the director of insurance of the insurer's  
38 state of domicile accepts a disclaimer of control or affirmatively finds that  
39 control does not exist and the disclaimer action or affirmative finding is  
40 communicated by the domiciliary insurance director to the director of  
41 insurance of this state.

42 ~~3.~~ 2. The acquisition of a person by another person if both persons  
43 are neither directly nor through affiliates primarily engaged in the business  
44 of insurance and if preacquisition notification is filed with the director  
45 pursuant to subsection C of this section thirty days before the proposed

1 effective date of the acquisition. Preacquisition notification is not  
2 required if the acquisition would otherwise be excluded from this section by  
3 any other provision of this subsection.

4 ~~4.~~ 3. The acquisition of already affiliated persons.

5 ~~5.~~ 4. If, as an immediate result of an acquisition, the combined  
6 market share of the involved insurers in any market would not exceed five per  
7 cent of the total market, there would not be an increase in any market share  
8 or the combined market share of the involved insurers in any market would not  
9 exceed twelve per cent of the total market and the market share increases by  
10 more than two per cent of the total market. For the purposes of this  
11 paragraph, "market" means direct written insurance premiums in this state for  
12 a line of business as contained in the annual statement required to be filed  
13 by insurers licensed to do business in this state.

14 ~~6.~~ 5. An acquisition for which a preacquisition notification is  
15 required pursuant to this section because of the resulting effect on the  
16 ocean marine insurance line of business.

17 ~~7.~~ 6. An acquisition of an insurer whose domiciliary director of  
18 insurance finds that the insurer is failing, that there is no feasible  
19 alternative to improve the insurer's condition and that the public benefits  
20 that would result from improving the insurer's condition through the  
21 acquisition exceed the public benefits that would result from not lessening  
22 competition and the domiciliary director of insurance communicates these  
23 findings to the director of insurance of this state.

24 C. An acquisition under subsection B of this section may be subject to  
25 an order pursuant to subsection F of this section unless the acquiring person  
26 files a preacquisition notification and the waiting period has expired. The  
27 acquired person may file a preacquisition notification. Information submitted  
28 under this subsection is confidential. The preacquisition notification shall  
29 be in a form and contain the information that is prescribed by the national  
30 association of insurance commissioners relating to those markets ~~which~~ THAT  
31 are not exempt from the provisions of this section. The director may require  
32 additional material and information that the director deems necessary in  
33 order to determine if the proposed acquisition, if consummated, would lessen  
34 competition or tend to create a monopoly. The information may include an  
35 economist's opinion on the competitive impact of the acquisition in this  
36 state and a summary of the economist's education and experience that  
37 indicates the ~~director's~~ ECONOMIST'S ability to render an informed opinion.  
38 The waiting period begins on the date the director receives a preacquisition  
39 notification and ends thirty days after the date of receipt or on termination  
40 of the waiting period by the director, whichever is earlier. Before the  
41 waiting period ends, the director on a one-time basis may require the  
42 submission of additional information that is relevant to the proposed  
43 acquisition. The waiting period shall end thirty days after the director  
44 receives the additional information or terminates the waiting period,  
45 whichever is earlier.

1 D. No acquisition subject to the provisions of this section shall  
2 substantially lessen competition in any line of insurance in this state or  
3 tend to create a monopoly. The director may enter a cease and desist order  
4 under subsection F of this section if there is substantial evidence that the  
5 effect of the acquisition may be to substantially lessen competition in any  
6 line of insurance in this state or may tend to create a monopoly or if the  
7 insurer fails to file adequate information pursuant to subsection C of this  
8 section. The director has the burden of showing prima facie evidence of a  
9 violation of this subsection. In determining if a proposed acquisition would  
10 lessen competition or tend to create a monopoly, the director shall consider  
11 the following:

12 1. An acquisition covered under subsection B of this section that  
13 involves two or more insurers competing in the same market is prima facie  
14 evidence of a violation of this subsection if:

15 (a) The market is highly concentrated and the involved insurers  
16 possess the following market shares:

	<u>Insurer A</u>	<u>Insurer B</u>
17		
18	(i) four per cent	four per cent or more
19	(ii) ten per cent	two per cent or more
20	(iii) fifteen per cent	one per cent or more

21 (b) The market is not highly concentrated and the involved insurers  
22 possess the following market shares:

	<u>Insurer A</u>	<u>Insurer B</u>
23		
24	(i) five per cent	five per cent or more
25	(ii) ten per cent	four per cent or more
26	(iii) fifteen per cent	three per cent or more
27	(iv) nineteen per cent	one per cent or more

28 A highly concentrated market is a market in which the share of the four  
29 largest insurers is seventy-five per cent or more of the market. Percentages  
30 not shown in the tables are interpolated proportionately to the percentages  
31 that are shown. If more than two insurers are involved, exceeding the total  
32 of the two columns in the table is prima facie evidence of a violation of  
33 this subsection. For the purposes of this paragraph, the insurer with the  
34 largest market share is deemed to be insurer A.

35 2. A significant trend toward increased concentration exists if the  
36 aggregate market share of any grouping of the largest insurers in the market,  
37 from the two largest to the eight largest, has increased by seven per cent or  
38 more of the market over a period of time that extends from a base year five  
39 to ten years before the acquisition up to the time of the acquisition. Any  
40 acquisition or merger under subsection B of this section that involves two or  
41 more insurers competing in the same market is prima facie evidence of a  
42 violation of this subsection if:

43 (a) There is a significant trend toward increased concentration in the  
44 market.

1 (b) One of the insurers involved is one of the insurers in a grouping  
2 of large insurers whose market share has increased by seven per cent or more.

3 (c) Another involved insurer's market is two per cent or more.

4 E. If an acquisition is not prima facie evidence of a violation of  
5 subsection D of this section, the director may establish the requisite  
6 anticompetitive effect based on other substantial evidence. If an  
7 acquisition is prima facie evidence of a violation of subsection D of this  
8 section, a party may establish the absence of the requisite anticompetitive  
9 effect based on other substantial evidence. Relevant factors in making a  
10 determination under this subsection include market shares, volatility of  
11 ranking of market leaders, number of competitors, concentration, trend of  
12 concentration in the industry and ease of entry into and exit from the  
13 market.

14 F. If an acquisition violates this section, the director may enter an  
15 order:

16 1. Requiring an involved insurer to cease and desist from doing  
17 business in this state with respect to the line or lines of insurance  
18 involved in the violation.

19 2. Denying the application of an acquired or acquiring insurer for a  
20 license to do business in this state.

21 G. The director shall not enter an order pursuant to subsection F of  
22 this section unless a hearing is held and notice of the hearing is issued  
23 before the end of the waiting period prescribed in subsection C of this  
24 section and not less than fifteen days before the hearing. The hearing shall  
25 be concluded and the order shall be issued no later than sixty days after the  
26 end of the waiting period. The director shall include with each order a  
27 written decision setting forth the director's findings of fact and  
28 conclusions of law. The order does not become final earlier than thirty days  
29 after it is issued. Before the order becomes final the involved insurer may  
30 submit a plan to remedy within a reasonable time the anticompetitive impact  
31 of the acquisition. Based on the submitted plan or other information, the  
32 director shall specify the conditions, if any, that would remedy the aspects  
33 of the acquisition causing the violation and shall vacate or modify the  
34 order. An order does not apply if the acquisition is not consummated.

35 H. An order shall not be entered under subsection F of this section  
36 if:

37 1. The acquisition will yield substantial economies of scale or  
38 economies in resource utilization that cannot be achieved feasibly in any  
39 other way and the public benefits that would arise from the economies exceed  
40 the public benefits that would arise from not lessening competition.

41 2. The acquisition will increase substantially the availability of  
42 insurance and the public benefits of the increase exceed the public benefits  
43 that would arise from not lessening competition.



1 I. The director, after notice and a hearing, may impose one or more of  
2 the following civil penalties against a person who violates a cease and  
3 desist order that is in effect:

4 1. Up to and including ten thousand dollars for every day of  
5 violation.

6 2. Suspension or revocation of the person's license.

7 J. An insurer or other person who fails to make a filing required by  
8 this section and who fails to demonstrate a good faith effort to comply with  
9 the filing requirement is subject to a civil penalty of not more than fifty  
10 thousand dollars.

11 K. FOR THE PURPOSES OF SUBSECTION D OF THIS SECTION:

12 1. "INSURER" MEANS A COMPANY OR GROUP OF COMPANIES UNDER COMMON  
13 MANAGEMENT, OWNERSHIP OR CONTROL.

14 2. "MARKET" MEANS THE RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS. IN  
15 DETERMINING THE RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS, THE DIRECTOR SHALL  
16 CONSIDER THE DEFINITIONS OR GUIDELINES ADOPTED BY THE NATIONAL ASSOCIATION OF  
17 INSURANCE COMMISSIONERS AND TO INFORMATION SUBMITTED BY THE PARTIES TO THE  
18 ACQUISITION. IN THE ABSENCE OF SUFFICIENT INFORMATION TO THE CONTRARY, THE  
19 RELEVANT PRODUCT MARKET IS ASSUMED TO BE THE DIRECT WRITTEN INSURANCE PREMIUM  
20 FOR A LINE OF BUSINESS THAT IS USED IN THE ANNUAL STATEMENT REQUIRED TO BE  
21 FILED BY INSURERS DOING BUSINESS IN THIS STATE. THE RELEVANT GEOGRAPHICAL  
22 MARKET IS THIS STATE.

23 ~~K.~~ L. For the purposes of this section:

24 1. "Acquisition" means any agreement, arrangement or activity that  
25 results in a person acquiring directly or indirectly the control of another  
26 person, including the acquisition of voting securities, assets, bulk  
27 reinsurance and mergers.

28 ~~2. "Insurer" means a company or group of companies under common  
29 management, ownership or control.~~

30 ~~3.~~ 2. "Involved insurer" means an insurer that acquires or is  
31 acquired, is affiliated with an acquirer or acquired or is the result of a  
32 merger.

33 ~~4. "Market" means the relevant product and geographical markets. In  
34 determining the relevant product and geographical markets, the director shall  
35 give due consideration to the definitions or guidelines, if any, adopted by  
36 the national association of insurance commissioners and to information, if  
37 any, submitted by the parties to the acquisition. In the absence of  
38 sufficient information to the contrary, the relevant product market is  
39 assumed to be the direct written insurance premium for a line of business  
40 that is used in the annual statement required to be filed by insurers doing  
41 business in this state. The relevant geographical market is this state.~~



1 F. WHENEVER IT APPEARS TO THE DIRECTOR THAT ANY PERSON HAS COMMITTED A  
2 VIOLATION OF SECTION 20-481.02 AND THAT VIOLATION PREVENTS A FULL  
3 UNDERSTANDING BY THE DIRECTOR OF THE ENTERPRISE RISK TO THE INSURER BY  
4 AFFILIATES OR BY THE INSURANCE HOLDING COMPANY SYSTEM, THE VIOLATION MAY  
5 SERVE AS AN INDEPENDENT BASIS FOR DISAPPROVING DIVIDENDS OR DISTRIBUTIONS AND  
6 FOR PLACING THE INSURER UNDER AN ORDER OF SUPERVISION IN ACCORDANCE SECTION  
7 20-169.

8 Sec. 18. Title 20, chapter 2, article 8, Arizona Revised Statutes, is  
9 amended by adding sections 20-481.31 and 20-481.32, to read:

10 20-481.31. Supervisory colleges

11 A. WITH RESPECT TO ANY INSURER REGISTERED UNDER SECTION 20-481.09 AND  
12 IN ACCORDANCE WITH SUBSECTION C OF THIS SECTION, IN ORDER TO DETERMINE  
13 COMPLIANCE BY THE INSURER WITH THIS TITLE, THE DIRECTOR MAY PARTICIPATE IN A  
14 SUPERVISORY COLLEGE FOR ANY DOMESTIC INSURER THAT IS PART OF AN INSURANCE  
15 HOLDING COMPANY SYSTEM WITH INTERNATIONAL OPERATIONS. THE DIRECTOR, WITH  
16 RESPECT TO SUPERVISORY COLLEGES, MAY:

17 1. INITIATE THE ESTABLISHMENT OF A SUPERVISORY COLLEGE.

18 2. CLARIFY THE MEMBERSHIP AND PARTICIPATION OF OTHER SUPERVISORS IN  
19 THE SUPERVISORY COLLEGE.

20 3. CLARIFY THE FUNCTIONS OF THE SUPERVISORY COLLEGE AND THE ROLE OF  
21 OTHER REGULATORS, INCLUDING THE ESTABLISHMENT OF A GROUP WIDE SUPERVISOR.

22 4. COORDINATE THE ONGOING ACTIVITIES OF THE SUPERVISORY COLLEGE,  
23 INCLUDING PLANNING MEETINGS, SUPERVISORY ACTIVITIES AND PROCESSES FOR  
24 INFORMATION SHARING.

25 5. ESTABLISH A CRISIS MANAGEMENT PLAN.

26 B. EACH REGISTERED INSURER SUBJECT TO THIS SECTION SHALL BE LIABLE FOR  
27 AND SHALL PAY THE REASONABLE EXPENSES OF THE DIRECTOR'S PARTICIPATION IN A  
28 SUPERVISORY COLLEGE IN ACCORDANCE WITH SUBSECTION C OF THIS SECTION,  
29 INCLUDING REASONABLE TRAVEL EXPENSES. THE DIRECTOR MAY ESTABLISH A REGULAR  
30 ASSESSMENT TO THE INSURER FOR THE PAYMENT OF THESE EXPENSES. FOR THE  
31 PURPOSES OF THIS SECTION, A SUPERVISORY COLLEGE MAY BE CONVENED AS EITHER A  
32 TEMPORARY OR PERMANENT FORUM FOR COMMUNICATION AND COOPERATION BETWEEN THE  
33 REGULATORS CHARGED WITH THE SUPERVISION OF THE INSURER OR ITS AFFILIATES.

34 C. THE DIRECTOR MAY PARTICIPATE IN A SUPERVISORY COLLEGE WITH OTHER  
35 REGULATORS CHARGED WITH SUPERVISION OF THE INSURER OR ITS AFFILIATES,  
36 INCLUDING OTHER STATE, FEDERAL AND INTERNATIONAL REGULATORY AGENCIES. IN  
37 ORDER TO ASSESS THE BUSINESS STRATEGY, FINANCIAL POSITION, LEGAL AND  
38 REGULATORY POSITION, RISK EXPOSURE, RISK MANAGEMENT AND GOVERNANCE PROCESSES,  
39 AND AS PART OF THE EXAMINATION OF INDIVIDUAL INSURERS IN ACCORDANCE WITH  
40 SECTION 20-481.20, THE DIRECTOR MAY ENTER INTO AGREEMENTS IN COMPLIANCE WITH  
41 SECTION 20-481.21 PROVIDING THE BASIS FOR COOPERATION BETWEEN THE DIRECTOR  
42 AND THE OTHER REGULATORY AGENCIES AND THE ACTIVITIES OF THE SUPERVISORY  
43 COLLEGE. THIS SECTION DOES NOT DELEGATE TO THE SUPERVISORY COLLEGE THE  
44 AUTHORITY OF THE DIRECTOR TO REGULATE OR SUPERVISE THE INSURER OR ITS  
45 AFFILIATES WITHIN ITS JURISDICTION.



1           Sec. 19. Section 20-510, Arizona Revised Statutes, is amended to read:

2           20-510. Standard valuation law; operative date; definitions

3           A. This section may be cited as the standard valuation law.

4           B. For the purposes of this section, the following definitions apply  
5 on or after the operative date of the valuation manual:

6           1. "Accident and health insurance" means contracts that incorporate  
7 morbidity risk and provide protection against economic loss resulting from  
8 accident, sickness or medical conditions and as may be specified in the  
9 valuation manual.

10           2. "Appointed actuary" means a qualified actuary who is appointed in  
11 accordance with the valuation manual to prepare the actuarial opinion  
12 required in subsection F of this section.

13           3. "Company" means an entity that either:

14           (a) Has written, issued or reinsured life insurance contracts,  
15 accident and health insurance contracts or deposit-type contracts in this  
16 state and that has at least one such policy in force or on claim.

17           (b) Has written, issued or reinsured life insurance contracts,  
18 accident and health insurance contracts or deposit-type contracts in any  
19 state and that is required to hold a certificate of authority to write life  
20 insurance, accident and health insurance or deposit-type contracts in this  
21 state.

22           4. "Deposit-type contract" means contracts that do not incorporate  
23 mortality or morbidity risks and as may be specified in the valuation manual.

24           5. "Life insurance" means contracts that incorporate mortality risk,  
25 including annuity and pure endowment contracts, and as may be specified in  
26 the valuation manual.

27           6. "Policyholder behavior" means any action a policyholder, a contract  
28 holder or any other person with the right to elect options, such as a  
29 certificate holder, may take under a policy or contract subject to this  
30 section, including lapse, withdrawal, transfer, deposit, premium payment,  
31 loan, annuitization or benefit elections prescribed by the policy or contract  
32 but excluding events of mortality or morbidity that result in benefits  
33 prescribed in their essential aspects by the terms of the policy or contract.

34           7. "Principle-based valuation" means a reserve valuation that uses one  
35 or more methods or one or more assumptions determined by the insurer and that  
36 is required to comply with subsection S of this section as specified in the  
37 valuation manual.

38           8. "Qualified actuary" means an individual who is qualified to sign  
39 the applicable statement of actuarial opinion in accordance with the American  
40 academy of actuaries qualification standards for actuaries signing those  
41 statements and who meets the requirements specified in the valuation manual.

42           9. "Reserves" means reserve liabilities.

43           10. "Tail risk" means a risk that occurs either where the frequency of  
44 low probability events is higher than expected under a normal probability

1 distribution or where there are observed events of very significant size or  
2 magnitude.

3 11. "Valuation manual" means the manual of valuation instructions  
4 adopted by the national association of insurance commissioners as specified  
5 in this section.

6 C. The following apply to reserve valuation for policies and contracts  
7 issued before the operative date of the valuation manual:

8 1. The director shall annually value, or cause to be valued, the  
9 reserves for all outstanding life insurance policies and annuity and pure  
10 endowment contracts of every life insurance company doing business in this  
11 state that are issued before the operative date of the valuation manual. In  
12 calculating reserves, the director may use group methods and approximate  
13 averages for fractions of a year or otherwise. In lieu of the valuation of  
14 the reserves required of a foreign or alien insurer, the director may accept  
15 a valuation made, or caused to be made, by the insurance supervisory official  
16 of any state or other jurisdiction if the valuation complies with the minimum  
17 standard provided by this section.

18 2. Subsections G, H, I, J, K, L, M, N, O, P and Q of this section  
19 apply to all policies and contracts, as appropriate, subject to this section  
20 issued on or after the operative date of section 20-1231 and before the  
21 operative date of the valuation manual and subsections R, S and T of this  
22 section do not apply to those policies and contracts.

23 3. The minimum standard for the valuation of policies and contracts  
24 issued before the operative date of section 20-1231 is the standard provided  
25 by the laws in effect immediately before that date.

26 D. The following apply to reserve valuation for policies and contracts  
27 issued on or after the operative date of the valuation manual:

28 1. The director shall annually value, or cause to be valued, the  
29 reserves for all outstanding life insurance contracts, annuity and pure  
30 endowment contracts, accident and health contracts and deposit-type contracts  
31 of every company issued on or after the operative date of the valuation  
32 manual. In lieu of the valuation of the reserves required of a foreign or  
33 alien company, the director may accept a valuation made, or caused to be  
34 made, by the insurance supervisory official of any state or other  
35 jurisdiction if the valuation complies with the minimum standard provided by  
36 this section.

37 2. Subsections R, S and T of this section apply to all policies and  
38 contracts issued on or after the operative date of the valuation manual.

39 E. The following apply to actuarial opinion of reserves before the  
40 operative date of the valuation manual:

41 1. Every life insurance company doing business in this state shall  
42 annually submit the opinion of a qualified actuary. The opinion shall state  
43 whether the reserves and related actuarial items that are held in support of  
44 the policies and contracts specified by the director are computed  
45 appropriately, are based on assumptions that satisfy contractual provisions,

1 are consistent with prior reported amounts and comply with the applicable  
2 laws of this state. The director shall define the specifics of this opinion  
3 and shall add any other items to the scope of the opinion as the director  
4 deems necessary.

5 2. For actuarial analysis of reserves and assets supporting reserves:

6 (a) Every life insurance company, unless exempted by rule, shall  
7 annually include in the opinion required by paragraph 1 of this subsection an  
8 opinion of the same qualified actuary as to whether, if considered in light  
9 of the assets held by the company with respect to the reserves and related  
10 actuarial items, including but not limited to the investment earnings on the  
11 assets and the considerations anticipated to be received and retained under  
12 the policies and contracts, the reserves and related actuarial items held in  
13 support of the policies and contracts specified by the director make adequate  
14 provision for the company's obligations under the policies and contracts,  
15 including but not limited to the benefits under and expenses associated with  
16 the policies and contracts.

17 (b) The director may provide for a transition period for establishing  
18 any higher reserves that the qualified actuary may deem necessary in order to  
19 render the opinion required by this section.

20 3. The following apply to each opinion required by paragraph 2 of this  
21 subsection:

22 (a) The insurance company shall prepare a memorandum to support each  
23 actuarial opinion. The memorandum shall be in a form and substance specified  
24 by the director.

25 (b) If the insurance company fails to provide a supporting memorandum  
26 on the request of the director and in the period of time specified by rule or  
27 if the director determines that the supporting memorandum does not meet the  
28 standards prescribed by rule or is otherwise unacceptable, the director may  
29 engage a qualified actuary at the expense of the insurance company to review  
30 the opinion and the basis for the opinion and to prepare any supporting  
31 memorandum that the director requires.

32 4. The following apply to each opinion required by paragraph 1 of this  
33 subsection:

34 (a) The company shall submit the opinion with the annual statement  
35 reflecting the valuation of the reserves for each year ending on or after  
36 December 31, 1996.

37 (b) The opinion applies to all business in force, including individual  
38 and group health insurance plans, and shall be in a form and substance that  
39 the director specifies.

40 (c) The opinion shall be based on standards that are adopted from time  
41 to time by the actuarial standards board and on any other additional  
42 standards that the director prescribes.

43 (d) If an opinion is required to be submitted by an alien or foreign  
44 company, the director may accept the opinion that is filed by that company  
45 with the insurance supervisory official of another state if the director

1 determines that the opinion reasonably meets the requirements applicable to a  
2 company domiciled in this state.

3 (e) Except in cases of fraud or wilful misconduct, the qualified  
4 actuary is not liable for damages to any person other than the director and  
5 the insurance company for any act, error, omission, decision or conduct with  
6 respect to the actuary's opinion.

7 (f) The director shall define by rule what disciplinary actions the  
8 director may take against an insurance company or qualified actuary.

9 (g) Except as provided in subdivisions (k), (l) and (m) of this  
10 paragraph, documents, materials or other information in the possession or  
11 control of the department that are a memorandum in support of the opinion,  
12 and any other material provided by the company to the director in connection  
13 with the memorandum, are confidential by law and privileged and are not  
14 subject to public records requests, are not subject to subpoena and are not  
15 subject to discovery or admissible in evidence in any private civil action.  
16 The director is authorized to use the documents, materials or other  
17 information in the furtherance of any regulatory or legal action brought as  
18 part of the director's official duties.

19 (h) The director or any person who received documents, materials or  
20 other information while acting under the authority of the director is not  
21 allowed or required to testify in any private civil action concerning any  
22 confidential documents, materials or information subject to subdivision (g)  
23 of this paragraph.

24 (i) In order to assist in the performance of the director's duties,  
25 the director may:

26 (i) Share documents, materials or other information, including the  
27 confidential and privileged documents, materials or information subject to  
28 subdivision (g) of this paragraph, with other state, federal and  
29 international regulatory agencies, with the national association of insurance  
30 commissioners and its affiliates and subsidiaries, and with state, federal  
31 and international law enforcement authorities, if the recipient agrees to  
32 maintain the confidentiality and privileged status of the document, material  
33 or other information.

34 (ii) Receive documents, materials or information, including otherwise  
35 confidential and privileged documents, materials or information, from the  
36 national association of insurance commissioners and its affiliates and  
37 subsidiaries, and from regulatory and law enforcement officials of other  
38 foreign or domestic jurisdictions, and shall maintain as confidential or  
39 privileged any document, material or information received with notice or the  
40 understanding that it is confidential or privileged under the laws of the  
41 jurisdiction that is the source of the document, material or information.

42 (iii) Enter into agreements governing sharing and use of information  
43 consistent with subdivision (g) of this paragraph and this subdivision.

44 (j) No waiver of any applicable privilege or claim of confidentiality  
45 in the documents, materials or information shall occur as a result of



1 disclosure to the director under this subsection or as a result of sharing as  
2 authorized in subdivision (i) of this paragraph.

3 (k) A memorandum in support of the opinion, and any other material  
4 provided by the company to the director in connection with the memorandum,  
5 may be subject to subpoena for the purpose of defending an action seeking  
6 damages from the actuary submitting the memorandum by reason of an action  
7 required by this section or by rules adopted under this section.

8 (l) The memorandum or other material may otherwise be released by the  
9 director with the written consent of the company or to the American academy  
10 of actuaries on request stating that the memorandum or other material is  
11 required for the purpose of professional disciplinary proceedings and setting  
12 forth procedures satisfactory to the director for preserving the  
13 confidentiality of the memorandum or other material.

14 (m) Once any portion of the confidential memorandum is cited by the  
15 company in its marketing, is cited before a governmental agency other than a  
16 state insurance department or is released by the company to the news media,  
17 all portions of the confidential memorandum are no longer confidential.

18 5. For the purposes of this subsection, "qualified actuary" means a  
19 member in good standing of the American academy of actuaries who meets the  
20 requirements set forth by the director.

21 F. The following apply to actuarial opinion of reserves after the  
22 operative date of the valuation manual:

23 1. Every company with outstanding life insurance contracts, accident  
24 and health insurance contracts or deposit-type contracts in this state and  
25 subject to regulation by the director shall annually submit the opinion of  
26 the appointed actuary as to whether the reserves and related actuarial items  
27 held in support of the policies and contracts are computed appropriately, are  
28 based on assumptions that satisfy contractual provisions, are consistent with  
29 prior reported amounts and comply with applicable laws of this state. The  
30 valuation manual will prescribe the specifics of this opinion including any  
31 items deemed to be necessary to its scope.

32 2. Every company with outstanding life insurance contracts, accident  
33 and health insurance contracts or deposit-type contracts in this state and  
34 subject to regulation by the director, except as exempted in the valuation  
35 manual, shall also annually include in the opinion required by paragraph 1 of  
36 this subsection an opinion of the same appointed actuary as to whether the  
37 reserves and related actuarial items held in support of the policies and  
38 contracts specified in the valuation manual, when considered in light of the  
39 assets held by the company with respect to the reserves and related actuarial  
40 items, including the investment earnings on the assets and the considerations  
41 anticipated to be received and retained under the policies and contracts,  
42 make adequate provision for the company's obligations under the policies and  
43 contracts, including the benefits under and expenses associated with the  
44 policies and contracts.

1           3. The following apply to each opinion required by paragraph 2 of this  
2 subsection:

3           (a) A memorandum, in form and substance as specified in the valuation  
4 manual, and acceptable to the director, shall be prepared to support each  
5 actuarial opinion.

6           (b) If the insurance company fails to provide a supporting memorandum  
7 at the request of the director within a period specified in the valuation  
8 manual or the director determines that the supporting memorandum provided by  
9 the insurance company fails to meet the standards prescribed by the valuation  
10 manual or is otherwise unacceptable to the director, the director may engage  
11 a qualified actuary at the expense of the company to review the opinion and  
12 the basis for the opinion and prepare the supporting memorandum required by  
13 the director.

14           4. The following apply to all opinions subject to this subsection:

15           (a) The opinion shall be in form and substance as specified in the  
16 valuation manual and acceptable to the director.

17           (b) The opinion shall be submitted with the annual statement  
18 reflecting the valuation of the reserves for each year ending on or after the  
19 operative date of the valuation manual.

20           (c) The opinion shall apply to all policies and contracts subject to  
21 this subsection, plus other actuarial liabilities as may be specified in the  
22 valuation manual.

23           (d) The opinion shall be based on standards adopted from time to time  
24 by the actuarial standards board or its successor, and on any additional  
25 standards as may be prescribed in the valuation manual.

26           (e) In the case of an opinion required to be submitted by a foreign or  
27 alien company, the director may accept the opinion filed by that company with  
28 the insurance supervisory official of another state if the director  
29 determines that the opinion reasonably meets the requirements applicable to a  
30 company domiciled in this state.

31           (f) Except in cases of fraud or wilful misconduct, the appointed  
32 actuary is not liable for damages to any person, other than the insurance  
33 company and the director, for any act, error, omission, decision or conduct  
34 with respect to the appointed actuary's opinion.

35           (g) Disciplinary action by the director against the company or the  
36 appointed actuary shall be defined by the director in rule.

37           G. Except as otherwise provided in subsections H, I, J and Q of this  
38 section, the minimum standard for the valuation of all policies and contracts  
39 that were issued before the operative date of section 20-1231 is that  
40 provided by the laws in effect immediately before January 1, 1955. Except as  
41 otherwise provided in subsections H, I, J and Q of this section, the minimum  
42 standard for the valuation of all policies and contracts that are issued on  
43 or after January 1, 1955 is the commissioners reserve valuation methods  
44 defined in subsections K, L, O and P of this section, three and one-half per  
45 cent interest or, in the case of life insurance policies and contracts, other

1 than annuity and pure endowment contracts, that are issued on or after July  
2 1, 1974, four per cent interest for those policies that are issued before  
3 January 1, 1979, five and one-half per cent interest for single premium life  
4 insurance policies and four and one-half per cent interest for all other  
5 policies that are issued on and after January 1, 1979, and the following  
6 tables:

7 1. For all ordinary policies of life insurance that are issued on the  
8 standard basis, excluding any disability and accidental death benefits in  
9 those policies, the commissioners 1941 standard ordinary mortality table for  
10 those policies issued before the operative date of section 20-1231,  
11 subsection F, paragraph 5, subdivision (b) and the commissioners 1958  
12 standard ordinary mortality table for those policies that are issued on or  
13 after the operative date of section 20-1231, subsection F, paragraph 5,  
14 subdivision (b) and before the operative date as provided in section  
15 20-1231.01. If any category of these policies is issued on female risks,  
16 modified net premiums and present values referred to in this section may be  
17 calculated according to an age not more than six years younger than the  
18 actual age of the insured. For policies that are issued on or after the  
19 operative date of section 20-1231.01, the following tables may be used:

20 (a) The commissioners 1980 standard ordinary mortality table.

21 (b) At the election of the insurer for any one or more specified plans  
22 of life insurance, the commissioners 1980 standard ordinary mortality table  
23 with ten year select mortality factors.

24 (c) Any ordinary mortality table that is adopted after 1980 by the  
25 national association of insurance commissioners and that is approved by the  
26 director for use in determining the minimum standard of valuation for those  
27 policies.

28 2. For all industrial life insurance policies that are issued on the  
29 standard basis, excluding any disability and accidental death benefits in  
30 those policies, the 1941 standard industrial mortality table for those  
31 policies that are issued before the operative date of section 20-1231,  
32 subsection F, paragraph 5, subdivision (d) and for those policies that are  
33 issued on or after the operative date of section 20-1231, subsection F,  
34 paragraph 5, subdivision (d) the commissioners 1961 standard industrial  
35 mortality table or any industrial mortality table that is adopted after 1980  
36 by the national association of insurance commissioners and that is approved  
37 by the director for use in determining the minimum standard of valuation for  
38 those policies.

39 3. For individual annuity and pure endowment contracts, excluding any  
40 disability and accidental death benefits in those policies, the 1937 standard  
41 annuity mortality table or, at the option of the insurer, the annuity  
42 mortality table for 1949, ultimate, or any modification of either of these  
43 tables that the director approves.

1           4. For group annuity and pure endowment contracts, excluding any  
2 disability and accidental death benefits in those policies, the group annuity  
3 mortality table for 1951, any modification of the group annuity mortality  
4 table that is approved by the director or, at the option of the insurer, any  
5 of the tables or modifications of tables that are specified for individual  
6 annuity and pure endowment contracts.

7           5. For total and permanent disability benefits in or supplementary to  
8 ordinary policies or contracts:

9           (a) For policies or contracts that are issued on or after January 1,  
10 1966, the tables of period 2 disablement rates and the 1930 to 1950  
11 termination rates of the 1952 disability study of the society of actuaries  
12 with due regard to the type of benefit or any tables of disablement rates and  
13 termination rates, adopted after 1980 by the national association of  
14 insurance commissioners, that are approved by the director for use in  
15 determining the minimum standard of valuation for those policies.

16           (b) For policies or contracts that are issued on or after January 1,  
17 1961 and before January 1, 1966, either of the tables that are specified in  
18 subdivision (a) of this paragraph, or at the option of the insurer, the class  
19 three disability table (1926).

20           (c) For policies or contracts that are issued before January 1, 1961,  
21 the class three disability table (1926).

22           (d) For active lives, any table that is used pursuant to subdivision  
23 (a), (b) or (c) of this paragraph shall be combined with a mortality table  
24 that is allowed for calculating the reserves for life insurance policies.

25           6. For accidental death benefits in or supplementary to policies:

26           (a) For policies that are issued on or after January 1, 1966, the 1959  
27 accidental death benefits table or any accidental death benefits table that  
28 was adopted after 1980 by the national association of insurance commissioners  
29 and that the director approves for use in determining the minimum standard of  
30 valuation for those policies.

31           (b) For policies that are issued on or after January 1, 1961 and  
32 before January 1, 1966, either table provided by subdivision (a) of this  
33 paragraph or, at the option of the insurer, the intercompany double indemnity  
34 mortality table.

35           (c) For policies that are issued before January 1, 1961, the  
36 intercompany double indemnity mortality table.

37           (d) A table that is allowed under subdivision (a), (b) or (c) of this  
38 paragraph shall be combined with a mortality table that is allowed for  
39 calculating the reserves for life insurance policies.

40           7. For group life insurance, life insurance issued on the substandard  
41 basis and other special benefits, any tables that the director approves as  
42 sufficient with relation to the benefits provided by those policies.

43           H. Except as provided in subsection I of this section, the minimum  
44 standard for the valuation for individual annuity and pure endowment  
45 contracts issued on or after the operative date of this subsection and

1 annuities and pure endowments purchased on or after the operative date of  
2 this subsection under group annuity and pure endowment contracts shall be the  
3 commissioners reserve valuation methods defined in subsections K and L of  
4 this section and the following tables and interest rates:

5 1. For individual annuity and pure endowment contracts that are issued  
6 before January 1, 1979, excluding any disability and accidental death  
7 benefits in those contracts, the 1971 individual annuity mortality table or  
8 any modification of the table that the director approves, and six per cent  
9 interest for single premium immediate annuity contracts, and four per cent  
10 interest for all other individual annuity and pure endowment contracts.

11 2. For individual single premium immediate annuity contracts that are  
12 issued on or after January 1, 1979, excluding any disability and accidental  
13 death benefits in those contracts, the 1971 individual annuity mortality  
14 table or any individual annuity mortality table adopted after 1980 by the  
15 national association of insurance commissioners and that the director  
16 approves for use in determining the minimum standard valuation for those  
17 contracts, or any modification of these tables that the director approves,  
18 and seven and one-half per cent interest.

19 3. For individual annuity and pure endowment contracts that are issued  
20 on or after January 1, 1979, other than single premium immediate annuity  
21 contracts and excluding any disability and accidental death benefits in those  
22 contracts, the 1971 individual annuity mortality table or any individual  
23 annuity mortality table that is adopted after 1980 by the national  
24 association of insurance commissioners and that the director approves for use  
25 in determining the minimum standard of valuation for those contracts, or any  
26 modification of these tables that the director approves, and five and  
27 one-half per cent interest for single premium deferred annuity and pure  
28 endowment contracts and four and one-half per cent interest for all other  
29 individual annuity and pure endowment contracts.

30 4. For all annuities and pure endowments that are purchased before  
31 January 1, 1979 under group annuity and pure endowment contracts, excluding  
32 any disability and accidental death benefits in those contracts, the 1971  
33 group annuity mortality table, or any modification of this table that the  
34 director approves, and six per cent interest.

35 5. For all annuities and pure endowments that are purchased on or  
36 after January 1, 1979 under group annuity and pure endowment contracts,  
37 excluding any disability and accidental death benefits that are purchased  
38 under those contracts, the 1971 group annuity mortality table or any group  
39 annuity mortality table that is adopted after 1980 by the national  
40 association of insurance commissioners and that the director approves for use  
41 in determining the minimum standard of valuation for those annuities and pure  
42 endowments, or any modification to these tables that the director approves,  
43 and seven and one-half per cent interest.

1 I. After July 1, 1974, any insurer may file with the director a  
2 written notice of its election to comply with subsection H of this section on  
3 a specified date before January 1, 1979, which shall be the operative date of  
4 subsection H of this section for that insurer if the insurer elects a  
5 different operative date for individual annuity and pure endowment contracts  
6 from the date that is elected for group annuity and pure endowment  
7 contracts. If an insurer does not make an election pursuant to this  
8 subsection, the operative date of subsection L of this section shall be  
9 January 1, 1979.

10 J. The minimum standard by calendar year of issue shall be computed as  
11 follows:

12 1. The interest rates that are used in determining the minimum  
13 standard for the valuation of the following shall be the calendar year  
14 statutory valuation interest rates as defined in this subsection:

15 (a) All life insurance policies that are issued in a particular  
16 calendar year on or after the operative date of section 20-1231.01.

17 (b) All individual annuity and pure endowment contracts that are  
18 issued in a particular calendar year on or after January 1, 1983.

19 (c) All annuities and pure endowments that are purchased in a  
20 particular calendar year on or after January 1, 1983 under group annuity and  
21 pure endowment contracts.

22 (d) The net increase, if any, in a particular calendar year after  
23 January 1, 1983 in the amounts that are held under guaranteed interest  
24 contracts.

25 2. As used in this paragraph:

26 (a) R1 is the lesser of R and 0.09, R2 is the greater of R and 0.09, R  
27 is the reference interest rate defined in this subsection and W is the  
28 weighting factor defined in this subsection, the calendar year statutory  
29 valuation interest rates, or I, shall be determined as follows and the  
30 results shall be rounded to the nearer one-quarter of one per cent:

31 (i) For life insurance:

$$32 \quad I = .03 + W(R1 - .03) + W/2 (R2 - .09).$$

33 (ii) For single premium immediate annuities and for annuity benefits  
34 involving life contingencies arising from other annuities with cash  
35 settlement options and from guaranteed interest contracts with cash  
36 settlement options:

$$37 \quad I = .03 + W(R - .03).$$

38 (iii) Except pursuant to item (ii) of this subdivision, for other  
39 annuities with cash settlement options and guaranteed interest contracts with  
40 cash settlement options that are valued on an issue year basis, the formula  
41 for life insurance under item (i) of this subdivision applies to annuities  
42 and guaranteed interest contracts with guarantee durations of more than ten  
43 years and the formula for single premium immediate annuities under item (ii)  
44 of this subdivision applies to annuities and guaranteed interest contracts  
45 with guarantee durations of ten years or less.

1 (iv) For other annuities with no cash settlement options and  
2 guaranteed interest contracts with no cash settlement options, the formula  
3 for single premium immediate annuities under item (ii) of this subdivision  
4 applies.

5 (v) For other annuities with cash settlement options and guaranteed  
6 interest contracts with cash settlement options that are valued on a change  
7 in fund basis, the formula for single premium immediate annuities under item  
8 (ii) of this subdivision applies.

9 (b) If the calendar year statutory valuation interest rate for any  
10 life insurance policies issued in any calendar year determined without  
11 reference to this subdivision differs from the corresponding actual rate for  
12 similar policies issued in the immediately preceding calendar year by less  
13 than one-half of one per cent, the calendar year statutory valuation interest  
14 rate for those life insurance policies shall be equal to the corresponding  
15 actual rate for the immediately preceding calendar year. For the purposes of  
16 applying the immediately preceding sentence, the calendar year statutory  
17 valuation interest rate for life insurance policies issued in a calendar year  
18 shall be determined for 1980 using the reference interest rate defined in  
19 1979 and shall be determined for each subsequent calendar year regardless of  
20 the operative date of section 20-1231.01.

21 3. For the purposes of this subsection, the weighting factors referred  
22 to in the formulas stated above are given in the following tables:

23 (a) Weighting factors for life insurance:

24	Guarantee	
25	Duration	Weighting
26	(Years)	Factors
27	Ten years or less	.50
28	More than ten years, but not more than 20 years	.45
29	More than twenty years	.35

30 (b) For life insurance under subdivision (a) of this paragraph, the  
31 guarantee duration is the maximum number of years the life insurance can  
32 remain in force on a basis guaranteed in the policy or under options to  
33 convert to plans of life insurance with premium rates or nonforfeiture  
34 values, or both, that are guaranteed in the original policy.

35 (c) The weighting factor for single premium immediate annuities and  
36 for annuity benefits involving life contingencies arising from other  
37 annuities with cash settlement options and guaranteed interest contracts with  
38 cash settlement options: .80

39 (d) Except pursuant to subdivision (c) of this paragraph, weighting  
40 factors for other annuities and for guaranteed interest are as specified and  
41 in accordance with this subdivision:

1 (i) For annuities and guaranteed interest contracts valued on an issue  
 2 year basis:

3 Guarantee	Weighting Factor		
4 Duration	for plan type		
5 (Years)	A	B	C
6 Five years or less	.80	.60	.50
7 More than five years, but not more than ten years	.75	.60	.50
8 More than ten years, but not more than twenty years	.65	.50	.45
9 More than twenty years	.45	.35	.35

10 (ii) For annuities and guaranteed interest contracts valued on a  
 11 change in fund basis, the factors listed in item (i) of this subdivision  
 12 increased by

	Plan type		
	A	B	C
	.15	.25	.05

16 (iii) For annuities and guaranteed interest contracts valued on an  
 17 issue year basis other than those with no cash settlement options that do not  
 18 guarantee interest on considerations received more than one year after issue  
 19 or purchase and for annuities and guaranteed interest contracts valued on a  
 20 change in fund basis that do not guarantee interest rates on considerations  
 21 received more than twelve months after the valuation date, the factors shown  
 22 in item (i) of this subdivision or derived in item (ii) of this subdivision  
 23 increased by

	Plan type		
	A	B	C
	.05	.05	.05

27 (iv) For other annuities with cash settlement options and guaranteed  
 28 interest contracts with cash settlement options, the guarantee duration is  
 29 the number of years for which the contract guarantees interest rates in  
 30 excess of the calendar year statutory valuation interest rate for life  
 31 insurance policies with guarantee duration of more than twenty years. For  
 32 other annuities with no cash settlement options and for guaranteed interest  
 33 contracts with no cash settlement options, the guarantee duration is the  
 34 number of years from the date of issue or date of purchase to the date  
 35 annuity benefits are scheduled to begin.

36 (v) A company may elect to value guaranteed interest contracts with  
 37 cash settlement options and annuities with cash settlement options on either  
 38 an issue year basis or on a change in fund basis. Guaranteed interest  
 39 contracts with no cash settlement options and other annuities with no cash  
 40 settlement options shall be valued on an issue year basis. As used in this  
 41 subsection, "issue year basis" means a valuation basis under which the  
 42 interest rate used to determine the minimum valuation standard for the entire  
 43 duration of the annuity or guaranteed interest contract is the calendar year  
 44 valuation interest rate for the year of issue or year of purchase of the  
 45 annuity or guaranteed interest contract and "change in fund basis" means a



1 valuation basis under which the interest rate used to determine the minimum  
2 valuation standard applicable to each change in the fund held under the  
3 annuity or guaranteed interest contract is the calendar year valuation  
4 interest rate for the year of the change in the fund.

5 4. "Plan type" as used in paragraph 3, subdivision (d) of this  
6 subsection means:

7 (a) Plan type A: A policyholder may withdraw funds at any time only  
8 with an adjustment to reflect changes in interest rates or asset values since  
9 the insurance company received the funds, without an adjustment but in  
10 installments over a period of five years or more, as an immediate life  
11 annuity, or a policyholder may not withdraw funds.

12 (b) Plan type B: Before the interest rate guarantee expires, a  
13 policyholder may withdraw funds only with an adjustment to reflect changes in  
14 interest rates or asset values since the insurance company received the  
15 funds, without an adjustment but in installments over a period of five years  
16 or more, or a policyholder may not withdraw funds. At the end of the  
17 interest rate guarantee, a policyholder may withdraw funds without an  
18 adjustment in a single sum or in installments over a period of less than five  
19 years.

20 (c) Plan type C: A policyholder may withdraw funds before the  
21 interest rate guarantee expires in a single sum or in installments over a  
22 period of less than five years either without an adjustment to reflect  
23 changes in interest rates or asset values since the insurance company  
24 received the funds or subject only to a fixed surrender charge that is  
25 stipulated in the contract as a percentage of the fund.

26 5. For the purposes of this subsection, "reference interest rate"  
27 means:

28 (a) For all life insurance, the lesser of the average over a period of  
29 thirty-six months and the average over a period of twelve months, ending on  
30 June 30 of the calendar year next preceding the year of issue, of the monthly  
31 average of the composite yield on seasoned corporate bonds, as published by  
32 Moody's investors service, incorporated.

33 (b) For single premium immediate annuities and for annuity benefits  
34 involving life contingencies arising from other annuities with cash  
35 settlement options and guaranteed interest contracts with cash settlement  
36 options, the average over a period of twelve months, ending on June 30 of the  
37 calendar year of issue or year of purchase, of the monthly average of the  
38 composite yield on seasoned corporate bonds, as published by Moody's  
39 investors service, incorporated.

40 (c) Except pursuant to subdivision (b) of this paragraph, for other  
41 annuities with cash settlement options and guaranteed interest contracts with  
42 cash settlement options that are valued on an issue year basis, with  
43 guarantee duration of more than ten years, the lesser of the average over a  
44 period of thirty-six months and the average over a period of twelve months,  
45 ending on June 30 of the calendar year of issue or purchase, of the monthly

1 average of the composite yield on seasoned corporate bonds, as published by  
2 Moody's investors service, incorporated.

3 (d) Except pursuant to subdivision (b) of this paragraph, for other  
4 annuities with cash settlement options and guaranteed interest contracts with  
5 cash settlement options that are valued on a year of issue basis, with  
6 guaranteed duration of ten years or less, the average over a period of twelve  
7 months, ending on June 30 of the calendar year of issue or purchase, of the  
8 monthly average of the composite yield on seasoned corporate bonds, as  
9 published by Moody's investors service, incorporated.

10 (e) For other annuities with no cash settlement options and guaranteed  
11 interest contracts with no cash settlement options, the average over a period  
12 of twelve months, ending on June 30 of the calendar year of issue or  
13 purchase, of the monthly average of the composite yield on seasoned corporate  
14 bonds, as published by Moody's investors service, incorporated.

15 (f) Except pursuant to subdivision (b) of this paragraph, for other  
16 annuities with cash settlement options and guaranteed interest contracts with  
17 cash settlement options that are valued on a change in fund basis, the  
18 average over a period of twelve months, ending on June 30 of the calendar  
19 year of the change in the fund, of the monthly average of the composite yield  
20 on seasoned corporate bonds, as published by Moody's investors service,  
21 incorporated.

22 6. If Moody's investors service, incorporated no longer publishes the  
23 monthly average of the composite yield on seasoned corporate bonds or if the  
24 national association of insurance commissioners determines that the monthly  
25 average of the composite yield on seasoned corporate bonds as published by  
26 Moody's investor service, incorporated is no longer appropriate for the  
27 determination of the reference interest rate, an alternative method for  
28 determination of the reference interest rate that the national association of  
29 insurance commissioners adopts and the director approves may be substituted.

30 K. The reserve valuation method for life insurance and endowment  
31 benefits shall be determined as follows:

32 1. Except as otherwise provided in subsections L, O and Q of this  
33 section, reserves according to the commissioners reserve valuation method,  
34 for the life insurance and endowment benefits of policies providing for a  
35 uniform amount of insurance and requiring the payment of uniform premiums,  
36 are the excess, if any, of the present value, at the date of valuation, of  
37 the future guaranteed benefits provided for by those policies, over the  
38 present value of any future modified net premiums. The modified net premiums  
39 for any one policy shall be the uniform percentage of the respective contract  
40 premiums for the benefits that the present value, at the date of issue of the  
41 policy, of all the modified net premiums shall be equal to the sum of the  
42 then present value of the benefits provided for by the policy and the excess  
43 of subdivision (a) over subdivision (b) of this paragraph as follows:

44 (a) A net level annual premium equal to the present value, at the date  
45 of issue, of the benefits provided for after the first policy year, divided

1 by the present value, at the date of issue, of an annuity of one per annum  
2 payable on the first and each subsequent anniversary of the policy on which a  
3 premium falls due, provided however that the net level annual premium shall  
4 not exceed the net level annual premium on the nineteen year premium whole  
5 life plan for insurance of the same amount at an age one year higher than the  
6 age at issue of such policy.

7 (b) A net one year term premium for the benefits that are provided for  
8 in the first policy year.

9 2. Any life insurance policy that is issued on or after January 1,  
10 1986 for which the contract premium in the first policy year exceeds that of  
11 the second year and for which no comparable additional benefit is provided in  
12 the first year for the excess and that provides an endowment benefit or a  
13 cash surrender value or a combination thereof in an amount greater than the  
14 excess premium, the reserve according to the commissioners reserve valuation  
15 method as of any policy anniversary occurring on or before the assumed ending  
16 date defined for the purposes of this paragraph as the first policy  
17 anniversary on which the sum of any endowment benefit and any cash surrender  
18 value then available is greater than the excess premium, except as otherwise  
19 provided in subsection 0 of this section, shall be the greater of the reserve  
20 as of the policy anniversary calculated as described in paragraph 1 of this  
21 subsection and the reserve as of the policy anniversary calculated as  
22 described in that paragraph, but with:

23 (a) The value defined in paragraph 1, subdivision (a) of this  
24 subsection being reduced by fifteen per cent of the amount of the excess  
25 first year premium.

26 (b) All present values of benefits and premiums being determined  
27 without reference to premiums or benefits provided for by the policy after  
28 the assumed ending date.

29 (c) The policy being assumed to mature on the date as an endowment.

30 (d) The cash surrender value provided on the date being considered as  
31 an endowment benefit.

32 In making the above comparison the mortality and interest bases stated in  
33 subsections G and J of this section shall be used.

34 3. Reserves according to the commissioners reserve valuation method  
35 for:

36 (a) Life insurance policies providing for a varying amount of  
37 insurance or requiring the payment of varying premiums.

38 (b) Group annuity and pure endowment contracts purchased under a  
39 retirement plan or plan of deferred compensation that is established or  
40 maintained by an employer, including a partnership or sole proprietorship, or  
41 by an employee organization, or by both, other than a plan providing  
42 individual retirement accounts or individual retirement annuities under  
43 section 408 of the internal revenue code, as amended.

44 (c) Disability and accidental death benefits in all policies and  
45 contracts.

1 (d) All other benefits, except life insurance and endowment benefits  
2 in life insurance policies and benefits provided by all other annuity and  
3 pure endowment contracts, shall be calculated by a method consistent with the  
4 principles of paragraphs 1 and 2 of this subsection.

5 L. The reserve valuation method for annuity and pure endowment  
6 benefits shall be determined as follows:

7 1. This subsection applies to all annuity and pure endowment contracts  
8 other than group annuity and pure endowment contracts purchased under a  
9 retirement plan or plan of deferred compensation that is established or  
10 maintained by an employer, including a partnership or sole proprietorship, or  
11 by an employee organization, or by both, other than a plan providing  
12 individual retirement accounts or individual retirement annuities under  
13 section 408 of the internal revenue code, as amended.

14 2. Reserves according to the commissioners annuity reserve method for  
15 benefits under annuity or pure endowment contracts, excluding any disability  
16 and accidental death benefits in those contracts, shall be the greatest of  
17 the respective excesses of the present values, at the date of valuation, of  
18 the future guaranteed benefits, including guaranteed nonforfeiture benefits  
19 that are provided for by the contracts at the end of each respective contract  
20 year, over the present value, at the date of valuation, of any future  
21 valuation considerations derived from future gross considerations, required  
22 by the terms of the contract, that become payable before the end of the  
23 respective contract year. The future guaranteed benefits shall be determined  
24 by using the mortality table, if any, and the interest rate or rates  
25 specified in the contracts for determining guaranteed benefits. The  
26 valuation considerations are the portions of the respective gross  
27 considerations applied under the terms of the contracts to determine  
28 nonforfeiture values.

29 M. A company's aggregate reserves for all life insurance policies,  
30 excluding disability and accidental death benefits, that are issued on or  
31 after the operative date of section 20-1231, shall not be less than the  
32 aggregate reserves calculated in accordance with the methods set forth in  
33 subsections K, L, O and P of this section and the mortality table or tables  
34 and rate or rates of interest used in calculating nonforfeiture benefits for  
35 the policies. The aggregate reserves for all policies, contracts and  
36 benefits shall not be less than the aggregate reserves determined by the  
37 qualified actuary to be necessary to render the opinion required by  
38 subsection E of this section.

39 N. Optional reserves may be calculated as follows:

40 1. At the option of the insurer, reserves for all policies and  
41 contracts that are issued before the operative date of section 20-1231 may be  
42 calculated according to any standards that produce greater aggregate reserves  
43 for all the policies and contracts than the minimum reserves required by the  
44 laws in effect immediately before that date.

1           2. At the option of the insurer, reserves for any category of  
2 policies, contracts or benefits that the director establishes and that are  
3 issued on or after the operative date of section 20-1231 may be calculated  
4 according to any standards that produce greater aggregate reserves for that  
5 category than those calculated according to the minimum standard provided in  
6 this section, but the rate or rates of interest used for policies and  
7 contracts, other than annuity and pure endowment contracts, shall not be  
8 greater than the corresponding rate or rates of interest used in calculating  
9 any nonforfeiture benefits provided for in the policy or contract.

10           3. An insurer that at any time has adopted any standard of valuation  
11 producing greater aggregate reserves than those calculated according to the  
12 minimum standard provided by this section, with the director's approval, may  
13 adopt any lower standard of valuation, but not lower than the minimum  
14 provided by this section. For the purposes of this section, the holding of  
15 additional reserves previously determined by the appointed actuary to be  
16 necessary to render the opinion required by subsection E of this section  
17 shall not be deemed to be the adoption of a higher standard of valuation.

18           0. Reserves when the valuation net premium exceeds the gross premium  
19 charged shall be calculated as follows:

20           1. If in any contract year the gross premium charged by a company on  
21 any policy or contract is less than the valuation net premium for the policy  
22 or contract calculated by the method used in calculating the reserve but  
23 using the minimum valuation standards of mortality and rate of interest, the  
24 minimum reserve required for the policy or contract shall be the greater of  
25 either the reserve calculated according to the mortality table, rate of  
26 interest, and method actually used for the policy or contract, or the reserve  
27 calculated by the method actually used for the policy or contract but using  
28 the minimum valuation standards of mortality and rate of interest and  
29 replacing the valuation net premium by the actual gross premium in each  
30 contract year for which the valuation net premium exceeds the actual gross  
31 premium. The minimum valuation standards of mortality and rate of interest  
32 referred to in this subsection are those standards stated in subsections G  
33 and J of this section.

34           2. For any life insurance policy that is issued on or after January 1,  
35 1986, for which the gross premium in the first policy year exceeds that of  
36 the second year and for which no comparable additional benefit is provided in  
37 the first year for that excess and that provides an endowment benefit or a  
38 cash surrender value or a combination in an amount greater than the excess  
39 premium, this subsection applies as if the method actually used in  
40 calculating the reserve for the policy was the method described in subsection  
41 K, paragraphs 1 and 3 of this section. The minimum reserve at each policy  
42 anniversary of such a policy shall be the greater of the minimum reserve  
43 calculated in accordance with subsection K of this section, including  
44 paragraph 2 of that subsection, and the minimum reserve calculated in  
45 accordance with this subsection.

1 P. If a plan of life insurance provides for future premium  
2 determination, the amounts of which are to be determined by the insurer based  
3 on then estimates of future experience, or if the minimum reserves of a plan  
4 of life insurance or annuity cannot be determined by the methods described in  
5 subsections K, L and O of this section, the reserves that are held under any  
6 plan must:

7 1. Be appropriate in relation to the benefits and the pattern of  
8 premiums for that plan.

9 2. Be computed by a method that is consistent with the principles of  
10 this section, as determined by rules adopted by the director related to the  
11 minimum standards applicable to the valuation of health plans.

12 Q. For accident and health insurance contracts issued on or after the  
13 operative date of the valuation manual, the standard prescribed in the  
14 valuation manual is the minimum standard of valuation required under  
15 subsection D, paragraph 1 of this section. For disability insurance  
16 contracts issued on or after the operative date of section 20-1231 and before  
17 the operative date of the valuation manual, the minimum standard of valuation  
18 is the standard adopted by the director by rule.

19 R. The following apply to the valuation manual for policies issued on  
20 or after the operative date of the valuation manual:

21 1. For policies issued on or after the operative date of the valuation  
22 manual, the standard prescribed in the valuation manual is the minimum  
23 standard of valuation required under subsection D, paragraph 1 of this  
24 section, except as provided under paragraph 5 or 7 of this subsection.

25 2. The operative date of the valuation manual is January 1 of the  
26 first calendar year following the first July 1 as of which all of the  
27 following have occurred:

28 (a) The valuation manual has been adopted by the national association  
29 of insurance commissioners by an affirmative vote of at least forty-two  
30 members, or three-fourths of the members voting, whichever is greater.

31 (b) The standard valuation law, as amended by the national association  
32 of insurance commissioners in 2009, or legislation including substantially  
33 similar terms and provisions, has been enacted by states representing greater  
34 than seventy-five per cent of the direct premiums written as reported in the  
35 following annual statements submitted for 2008: life, accident and health  
36 annual statements, health annual statements, or fraternal annual statements.

37 (c) The standard valuation law, as amended by the national association  
38 of insurance commissioners in 2009, or legislation including substantially  
39 similar terms and provisions, has been enacted by at least forty-two of the  
40 following fifty-five jurisdictions:

41 (i) The fifty states of the United States.

42 (ii) American Samoa.

43 (iii) The United States Virgin Islands.

44 (iv) The District of Columbia.

1 (v) Guam.

2 (vi) The Commonwealth of Puerto Rico.

3 3. Unless a change in the valuation manual specifies a later effective  
4 date, changes to the valuation manual shall be effective on January 1  
5 following the date when all of the following have occurred:

6 (a) The change to the valuation manual has been adopted by the  
7 national association of insurance commissioners by an affirmative vote  
8 representing the following:

9 (i) At least three-fourths of the members of the national association  
10 of insurance commissioners voting, but not less than a majority of the total  
11 membership.

12 (ii) Members of the national association of insurance commissioners  
13 representing jurisdictions totaling greater than seventy-five per cent of the  
14 direct premiums written as reported in the following annual statements most  
15 recently available before the vote in item (i) of this subdivision: life,  
16 accident and health annual statements, health annual statements, or fraternal  
17 annual statements.

18 (b) The valuation manual becomes effective pursuant to an order of the  
19 director.

20 4. The valuation manual must specify all of the following:

21 (a) Minimum valuation standards for and definitions of the policies or  
22 contracts subject to subsection D, paragraph 1 of this section. The minimum  
23 valuation standards shall include all of the following:

24 (i) The director's reserve valuation method for life insurance  
25 contracts, other than annuity contracts, subject to subsection D, paragraph 1  
26 of this section.

27 (ii) The director's annuity reserve valuation method for annuity  
28 contracts subject to subsection D, paragraph 1 of this section.

29 (iii) Minimum reserves for all other policies or contracts subject to  
30 subsection D of this section.

31 (b) Which policies or contracts or types of policies or contracts that  
32 are subject to the requirements of a principle-based valuation in subsection  
33 S of this section and the minimum valuation standards consistent with those  
34 requirements.

35 (c) For policies and contracts subject to a principle-based valuation  
36 under subsection S of this section:

37 (i) Requirements for the format of reports to the director under  
38 subsection T, paragraph ~~2~~ 3 of this section and that shall include  
39 information necessary to determine if the valuation is appropriate and in  
40 compliance with this section.

41 (ii) Assumptions shall be prescribed for risks over which the company  
42 does not have significant control or influence.

43 (iii) Procedures for corporate governance and oversight of the  
44 actuarial function and a process for appropriate waiver or modification of  
45 the procedures.

1 (d) For policies not subject to a principle-based valuation under  
2 subsection S of this section the minimum valuation standard shall either:

3 (i) Be consistent with the minimum standard of valuation before the  
4 operative date of the valuation manual.

5 (ii) Develop reserves that quantify the benefits and guarantees, and  
6 the funding, associated with the contracts and their risks at a level of  
7 conservatism that reflects conditions that include unfavorable events that  
8 have a reasonable probability of occurring.

9 (e) Other requirements, including those relating to reserve methods,  
10 models for measuring risk, generation of economic scenarios, assumptions,  
11 margins, use of company experience, risk measurement, disclosure,  
12 certifications, reports, actuarial opinions and memorandums, transition rules  
13 and internal controls.

14 (f) The data and form of the data required under subsection T of this  
15 section, with whom the data must be submitted, and other requirements  
16 including data analyses and reporting of analyses.

17 5. In the absence of a specific valuation requirement or if a specific  
18 valuation requirement in the valuation manual is not, in the opinion of the  
19 director, in compliance with this section, the company, with respect to the  
20 requirements, shall comply with minimum valuation standards prescribed by the  
21 director by rule.

22 6. The director may engage a qualified actuary, at the expense of the  
23 company, to perform an actuarial examination of the company and opine on the  
24 appropriateness of any reserve assumption or method used by the company, or  
25 to review and opine on a company's compliance with any requirement of this  
26 section. The director may rely on the opinion, regarding provisions  
27 contained in this section, of a qualified actuary engaged by the director of  
28 another state, district or territory of the United States. For the purposes  
29 of this paragraph, engage includes employment and contracting.

30 7. The director may require a company to change any assumption or  
31 method that in the opinion of the director is necessary in order to comply  
32 with the requirements of the valuation manual or this section, and the  
33 company shall adjust the reserves as required by the director. The director  
34 may take other disciplinary action as allowed pursuant to section 20-152.

35 S. A company must establish reserves using a principle-based valuation  
36 that meets the following conditions for policies or contracts as specified in  
37 the valuation manual:

38 1. Quantify the benefits and guarantees, and the funding, associated  
39 with the contracts and their risks at a level of conservatism that reflects  
40 conditions that include unfavorable events that have a reasonable probability  
41 of occurring during the lifetime of the contracts, and for policies or  
42 contracts with significant tail risk, that reflects conditions appropriately  
43 adverse to quantify the tail risk.

44 2. Incorporate assumptions, risk analysis methods and financial models  
45 and management techniques that are consistent with, but not necessarily



1 identical to, those utilized within the company's overall risk assessment  
2 process, while recognizing potential differences in financial reporting  
3 structures and any prescribed assumptions or methods.

4 3. Incorporate assumptions that are derived in one of the following  
5 manners:

6 (a) The assumption is prescribed in the valuation manual.

7 (b) For assumptions that are not prescribed, the assumptions shall  
8 either:

9 (i) Be established utilizing the company's available experience to the  
10 extent it is relevant and statistically credible.

11 (ii) To the extent that company data is not available, relevant or  
12 statistically credible, be established utilizing other relevant,  
13 statistically credible experience.

14 4. Provide margins for uncertainty including adverse deviation and  
15 estimation error, such that the greater the uncertainty the larger the margin  
16 and resulting reserve.

17 T. A company using a principle-based valuation for one or more  
18 policies or contracts subject to this section as specified in the valuation  
19 manual shall:

20 1. Establish procedures for corporate governance and oversight of the  
21 actuarial valuation function consistent with those described in the valuation  
22 manual.

23 2. Provide to the director and the board of directors an annual  
24 certification of the effectiveness of the internal controls with respect to  
25 the principle-based valuation. The controls shall be designed to **assure**  
26 **ENSURE** that all material risks inherent in the liabilities and associated  
27 assets subject to the valuation are included in the valuation, and that  
28 valuations are made in accordance with the valuation manual. The  
29 certification shall be based on the controls in place as of the end of the  
30 preceding calendar year.

31 3. Develop, and file with the director on request, a principle-based  
32 valuation report that complies with standards prescribed in the valuation  
33 manual. A principle-based valuation may include a prescribed formulaic  
34 reserve component.

35 U. A company shall submit mortality, morbidity, policyholder behavior  
36 or expense experience and other data as prescribed in the valuation manual.

37 V. The following apply to confidentiality:

38 1. For the purposes of this subsection, "confidential information"  
39 means:

40 (a) A memorandum in support of an opinion submitted under subsection F  
41 of this section and any other documents, materials and other information,  
42 including all working papers, and copies thereof, created, produced or  
43 obtained by or disclosed to the director or any other person in connection  
44 with the memorandum.

1 (b) All documents, materials and other information, including all  
2 working papers, and copies thereof, created, produced or obtained by or  
3 disclosed to the director or any other person in the course of an examination  
4 made under subsection R of this section. If an examination report or other  
5 material prepared in connection with an examination made under section 20-156  
6 is not held as private and confidential information under section 20-156, an  
7 examination report or other material prepared in connection with an  
8 examination made under subsection R, paragraph 6 of this section is not  
9 confidential information to the same extent as if the examination report or  
10 other material had been prepared under section 20-156.

11 (c) Any reports, documents, materials and other information developed  
12 by a company in support of or in connection with an annual certification by  
13 the company under subsection T, paragraph 2 of this section evaluating the  
14 effectiveness of the company's internal controls with respect to a  
15 principle-based valuation and any other documents, materials and other  
16 information, including all working papers, and copies thereof, created,  
17 produced or obtained by or disclosed to the director or any other person in  
18 connection with the reports, documents, materials and other information.

19 (d) Any principle-based valuation report developed under subsection T,  
20 paragraph 3 of this section and any other documents, materials and other  
21 information, including all working papers, and copies thereof, created,  
22 produced or obtained by or disclosed to the director or any other person in  
23 connection with the report.

24 (e) Any documents, materials, data and other information submitted by  
25 a company under subsection U of this section (collectively, "experience  
26 data") and any other documents, materials, data and other information,  
27 including all working papers, and copies thereof, created or produced in  
28 connection with the experience data, in each case that include any  
29 potentially company-identifying or personally identifiable information that  
30 is provided to or obtained by the director (together with any "experience  
31 data", the "experience materials") and any other documents, materials, data  
32 and other information, including all working papers, and copies thereof,  
33 created, produced or obtained by or disclosed to the director or any other  
34 person in connection with the experience materials.

35 2. The following apply to the privilege for and confidentiality of  
36 confidential information:

37 (a) Except as provided in this subsection, a company's confidential  
38 information is confidential by law and privileged, and is not subject to  
39 public records requests or subpoenas and shall not be subject to discovery or  
40 admissible in evidence in any private civil action. The director is  
41 authorized to use the confidential information in the furtherance of any  
42 regulatory or legal action brought against the company as a part of the  
43 director's official duties.

44 (b) Neither the director nor any person who received confidential  
45 information while acting under the authority of the director shall be allowed

1 or required to testify in any private civil action concerning any  
2 confidential information.

3 (c) In order to assist in the performance of the director's duties,  
4 the director may share confidential information:

5 (i) With other state, federal and international regulatory agencies  
6 and with the national association of insurance commissioners and its  
7 affiliates and subsidiaries.

8 (ii) In the case of confidential information specified in paragraph 1,  
9 subdivisions (a) and (d) of this subsection only, with the actuarial board  
10 for counseling and discipline or its successor on request stating that the  
11 confidential information is required for the purpose of professional  
12 disciplinary proceedings and with state, federal and international law  
13 enforcement officials.

14 (iii) In the case of items (i) and (ii) of this subdivision, if the  
15 recipient agrees, and has the legal authority to agree, to maintain the  
16 confidentiality and privileged status of the documents, materials, data and  
17 other information in the same manner and to the same extent as required for  
18 the director.

19 (d) The director may receive documents, materials, data and other  
20 information, including otherwise confidential and privileged documents,  
21 materials, data or information, from the national association of insurance  
22 commissioners and its affiliates and subsidiaries, from regulatory or law  
23 enforcement officials of other foreign or domestic jurisdictions and from the  
24 actuarial board for counseling and discipline or its successor and shall  
25 maintain as confidential or privileged any document, material, data or other  
26 information received with notice or the understanding that it is confidential  
27 or privileged under the laws of the jurisdiction that is the source of the  
28 document, material or other information.

29 (e) The director may enter into agreements governing sharing and use  
30 of information consistent with this paragraph.

31 (f) No waiver of any applicable privilege or claim of confidentiality  
32 in the confidential information shall occur as a result of disclosure to the  
33 director under this section or as a result of sharing as authorized in  
34 subdivision (c) of this paragraph.

35 (g) Privilege established under the law of any state or jurisdiction  
36 that is substantially similar to the privilege established under this  
37 paragraph shall be available and enforced in any proceeding in and in any  
38 court of this state.

39 3. Notwithstanding paragraph 2 of this subsection, any confidential  
40 information specified in paragraph 1, subdivisions (a) and (d) of this  
41 subsection:

42 (a) May be subject to subpoena for the purpose of defending an action  
43 seeking damages from the appointed actuary submitting the related memorandum  
44 in support of an opinion submitted under subsection F, paragraph 1 of this  
45 section or principle-based valuation report developed under subsection T,

1 paragraph 3 of this section by reason of an action required by this section  
2 or by rules adopted under this section.

3 (b) May otherwise be released by the director with the written consent  
4 of the company.

5 (c) Once any portion of a memorandum in support of an opinion  
6 submitted under subsection F, paragraph 1 of this section or a  
7 principle-based valuation report developed under subsection T, paragraph 3 of  
8 this section is cited by the company in its marketing or is publicly  
9 volunteered to or before a governmental agency other than a state insurance  
10 department or is released by the company to the news media, all portions of  
11 the memorandum or report are no longer confidential.

12 4. For the purposes of this subsection, "regulatory agency", "law  
13 enforcement agency" and "national association of insurance commissioners"  
14 include the employees, agents, consultants and contractors of those entities.

15 W. The following apply to single state exemption:

16 1. The director may exempt specific product forms or product lines of  
17 a domestic company that is licensed and doing business only in this state  
18 from the requirements of subsection R of this section if:

19 (a) The director has issued an exemption in writing to the company and  
20 has not subsequently revoked the exemption in writing.

21 (b) The company computes reserves using assumptions and methods used  
22 before the operative date of the valuation manual in addition to any  
23 requirements established by the director and adopted by rule.

24 2. For any company granted an exemption under this section,  
25 subsections D, E, F, G, H, I, J, K, L, M, N, O, P and Q of this section  
26 apply. For any company applying this exemption, any reference to subsection  
27 R found in subsections D, E, F, G, H, I, J, K, L, M, N, O, P and Q of this  
28 section does not apply.

29 Sec. 20. Department of insurance; rulemaking exemption

30 For the purposes of implementing this act, the department of insurance  
31 is exempt from the rulemaking requirements of title 41, chapter 6, Arizona  
32 Revised Statutes, for two years after the effective date of this act.