

# NOTICE OF FINAL RULEMAKING

EFFECTIVE FEBRUARY 6, 2023

## TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

### CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – INSURANCE DIVISION

#### ARTICLE 4. TYPES OF INSURANCE COMPANIES

##### **R20-6-407. Service Companies**

- A. Scope.** This rule shall apply to all service companies except those that are exempt under A.R.S. § 20-1095.02.
- B. Definitions.** The definitions in A.R.S. § 20-1095 apply to this rule.
1. "Contract Holder" has the same meaning as "consumer" as defined in A.R.S. § 20-1095(1).
  2. "Department" means the Arizona Department of Insurance and Financial Institutions, Insurance Division.
  3. "Director" means the Director of the Department.
  4. "Insolvent" as used in A.R.S. § 20-1095.08(3) means total liabilities are equal to or exceed total assets.
  5. "Provider" means a person who is contractually obligated to the service contract holder under the terms of a service contract. "Provider" is synonymous with "service company" and "obligor" as defined in A.R.S. § 20-1095(6).
  6. "Reasonable time" or "Reasonable period of time:"
    - a. As used in A.R.S. § 20-1095.06(C)(2), means at the time of purchase or mailed or electronically delivered but not more than 10 business days after the purchase date of the contract. The service company must be able to provide proof of delivery if requested by the Department.
    - b. As used in A.R.S. § 20-1095.09(A)(4), is what an ordinary person would consider "reasonable" under the totality of the circumstances.
  7. "Solvent" as used in A.R.S. § 20-1095.03(A)(1) means total assets exceed total liabilities.
  8. "Subcontractor" means a person or business having a contractual relationship with a service company to provide work or services which a service company has agreed to perform under a service contract. If required by the type of work being performed, all subcontractors must be licensed.
- C. Application for a service company permit.**
1. Application form. The application for a service company permit shall be on a form designated by the Department and shall be transmitted through an electronic online system if such a system is designated on the Department's web site. An application must be complete and have all attachments to be considered by the Department.
  2. Application. The application shall contain the following information:
    - a. Applicant's full legal name;
    - b. Applicant's federal employer identification number (EIN);
    - c. Applicant's trade name(s), if applicable;
    - d. Applicant's state of domicile;
    - e. Applicant's form of business entity (corporation, limited liability company, etc.);
    - f. Applicant's addresses, phone numbers, e-mail address(es) and website address(es);
    - g. Name, address, and phone number or e-mail address for each contact person of the applicant;
    - h. A list of the applicant's officers, directors, LLC managers, and persons owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company;
    - i. If the applicant intends to use a service contract administrator, the name and contact information for the applicant's service contract administrator;
    - j. The applicant's fiscal year end date;
    - k. A summary of the applicant's financial position including current assets, current liabilities, equity and income;
      - l. The name and signature of an officer of the applicant; and
      - m. Any other information the Department deems necessary to aid in the approval of the application.
  3. Application attachments. The applicant shall include the following as part of the application:

- a. A copy of the service company's most recent financial statement sworn to and certified by the owner, duly elected officer or a certified public accountant.
  - b. Evidence of compliance with the financial security requirements of A.R.S. § 20-1095.03(A)(3).
  - c. A biographical affidavit, on a form approved by the Department, for each officer, director, LLC manager, or person owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company.
  - d. A list of any actions taken against the applicant in any jurisdiction by a regulatory agency or state attorney general.
4. Application fee. At the time of filing the application, the applicant shall pay the nonrefundable application fee prescribed by A.R.S. § 20-167 and fixed by the Department.
- D. Term of the service company permit.**
1. Term of permit. A service company permit shall have a term that begins on the date that the Department either grants or renews a service company permit and expires at midnight on the last day of the month, three months after the service company's fiscal year-end date.
  2. The Department is not required to issue a paper copy of the service company permit. However, the Department will make a copy of the service company permit available by electronic or other means.
  3. Expiration of a service company permit.
    - a. Unless the Department receives an application and full payment of fees for renewal prior to the end of the service company permit term, the service company permit expires.
    - b. A service company whose permit term has expired shall not offer, extend, or renew a service contract.
    - c. A service company whose permit has expired shall continue to fulfill the obligations of its in-force contracts and shall maintain the security required under A.R.S. § 20-1095.03(3) until such time that all of the service company's contractual obligations to contract holders are fulfilled.
- E. Service company permit renewal and late-renewal.**
1. Timely renewal. A service company seeking to renew its permit shall file with the Department a renewal application, consisting of the renewal application form, all required attachments and the renewal fee after the end of its fiscal year but before the expiration of its permit term. A service company shall transmit the renewal application through an electronic online system if such a system is designated on the Department's website. A renewal application must be complete, have all required attachments and the renewal fee to be considered as having been received by the Department.
  2. Renewal form. A service company shall use the renewal form designated by the Department. The renewal shall contain the following information:
    - a. Service company name appearing on the permit, and the service company's Arizona license number and EIN;
    - b. Any additions or deletions to the service company's trade name(s), addresses, phone numbers and website addresses;
    - c. Any changes to the service company's contact person(s) or service contract administrator, or their contact information;
    - d. A summary of the applicant's financial position including current assets, current liabilities, equity and income; and
    - e. Any other information the Department deems necessary to aid in the renewal of the permit.
  3. Renewal attachments. The service company shall attach the following to the renewal:
    - a. A copy of the service company's financial statement as of the end of the service company's most recently completed fiscal year, sworn to and certified by the owner, duly elected officer or a certified public accountant.
    - b. Evidence of continuing compliance with the financial security requirements of A.R.S. § 20-1095.03(A)(3).
    - c. Any additions or deletions to the officers, directors, LLC managers, or persons owning 25% or more of the service company, or to an entity that owns the service company since the last report to the Department.
    - d. A biographical affidavit, on a form approved by the Department, for each new person identified in subsection (3)(c).
    - e. Any actions taken against the service company in any jurisdiction by a regulatory agency or state attorney general not previously reported to the Department.
  4. Renewal fee. At the time of filing the renewal, the service company shall pay a nonrefundable renewal fee as prescribed by A.R.S. § 20-167 and fixed by the Department.

5. Late-renewed application and fee.

- a. Late-renewal period. A service company whose permit term has expired may file a renewal application up to ninety days after the expiration of the permit term. After the ninety-day period, a renewal application will not be accepted by the Department and the service company must file a service company permit application with the Department pursuant to subsection (C) of this Section.
- b. A service company whose permit term has expired shall not offer, extend, or renew a service contract until the permit is renewed or a new permit is issued by the Department.
- c. Fee. In addition to the nonrefundable renewal fee required under subsection (E)(4) of this Section, the service company shall pay a nonrefundable additional fee of \$25 per day starting the calendar day after the permit term expiration and ending on the date the service company files a complete renewal application.
- d. Term of a late-renewed permit. The term of a late-renewed permit shall begin on the date the Department renews the permit and shall end on the last day of the permit term.

F. Deposits of cash or alternatives to cash.

1. Contracts issued, renewed, or extended on or after August 3, 2018. For any contract that a service company issues, extends, or renews from and after August 3, 2018, a service company may not satisfy the financial responsibility requirements of A.R.S. § 20-1095.04 by means of providing a deposit of cash or alternatives to cash.
2. Contracts issued, renewed, or extended before August 3, 2018. If a service company provided a deposit of cash or alternatives to cash covering service contracts that were issued, last extended, or last renewed prior to August 3, 2018, the service company shall maintain the deposit in the amount required to cover those contracts and the deposit shall not be encumbered.
3. Release of deposits of cash or alternatives to cash. As it relates to financial responsibility requirements fulfilled by a deposit of cash or alternatives to cash, the Director shall only release the deposit upon one of the following:
  - a. The service company provides a surety bond or mechanical reimbursement policy that covers the outstanding service contract liabilities secured by the cash or alternatives to cash.
  - b. The Department has approved the assumption of outstanding service contracts and liabilities by another service company that has acknowledged the assumption of the outstanding contracts and that shall provide each affected contract holder an endorsement issued by the mechanical reimbursement insurer or surety.
  - c. The service company provides evidence satisfactory to the Department that:
    - i. The outstanding service contracts and liabilities have expired or have been cancelled in accordance with the service contract terms;
    - ii. All claims under the service contracts have been settled; and
    - iii. The service company is financially able and agrees to be financially responsible for any valid unreported claims.

G. Filing of forms.

1. Contracts to be submitted for approval. A service company shall submit contracts for the Department's approval pursuant to A.R.S. § 20-1095.06. A service company is not required to submit advertisements or marketing materials for approval by the Department but shall abide by the provisions of Title 20, Chapter 2 - Article 6, Chapter 4 - Article 11, and this Section regarding misrepresentations in the sales of service contracts.
2. Requirements for approval. No service contract form shall be approved unless it:
  - a. Complies with A.R.S. § 20-1095.06;
  - b. Identifies the covered products under the contract and, in bold-faced type, preferably in a larger font, the specific items or components of those products which are excluded;
  - c. States the service fee or deductible charge, if any, to be charged, or applied, for service calls and/or each covered repair;
  - d. Specifies in clear and easily understood language the specific circumstances under which a contract holder may engage a subcontractor who is not recommended by the service company without becoming financially responsible under the contract and whether pre-authorization is required prior to engaging a subcontractor who is not recommended by the service company;
  - e. Specifies in clear and easily understood language the service company's financial responsibilities to the contract holder when any of the systems, products or appliances covered by the contract cannot be replaced or repaired;

- f. If applicable, states the conditions under which the service contract or coverage may be reinstated;
  - g. States the dates of coverage under the service contract including any delay in coverage that differs from the purchase date of the contract which would extend the coverage term of the contract and any terms that govern renewal of the service contract; and
  - h. If providing a pro rata refund upon cancellation of the service contract before the end of the coverage period of the service contract, the service contract shall contain language in conformance with A.R.S. § 20-1095.06(D)(9).
3. Disapproval of contracts. The Department may disapprove any service contract that is in violation of Title 20, Chapter 4 - Article 11, or this subsection (G). The service company may request a hearing to appeal the disapproval pursuant to A.R.S. § 20-161.