

**STATE OF ARIZONA SURPLUS  
LINES STATUTES**

**TITLE 20**

**CHAPTER 1 – GENERAL  
PROVISIONS**

ARTICLE 5. UNAUTHORIZED INSURERS

# Chapter 1

## GENERAL PROVISIONS

### Article 5 Unauthorized Insurers

#### 20-401. Definitions

In this article, unless the context otherwise requires:

1. "Affiliated" means, with respect to an insured, any entity that controls, is controlled by or is under common control with the insured. For the purposes of this paragraph, "control" means either:

(a) Directly or indirectly acting through one or more other persons who own, control or have the power to vote twenty-five per cent or more of any class of voting securities of the other entity.

(b) Control in any manner over the election of a majority of the directors or trustees of the other entity.

2. "Affiliated group" means any group of entities that are affiliated.

3. "Clearinghouse" means the mechanism or entity established pursuant to a multistate agreement or compact for the receipt and distribution of premium taxes and transaction data related to the sale of unauthorized insurance.

4. "Diligent effort" means having sought insurance for the same risk from at least three insurers authorized in this state to write the particular insurance coverage or type, class or kind of insurance.

5. "Foreign decree" means any decree or order in equity of a court located in a reciprocal state, including a court of the United States located therein, obtained by a qualified party against any insurer incorporated or authorized to do business in this state.

6. "Home state" means one of the following:

(a) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal place of residence.

(b) If one hundred per cent of the insured risk is located out of the state that would be the insured's home state pursuant to subdivision (a) of this paragraph, the state to which the greatest percentage of the insured's taxable premium is allocated for the insurance contract in question.

(c) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the state as determined pursuant to subdivision (a) of this paragraph of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

7. "Multistate risk" means a risk covered by an unauthorized insurer with insured exposures in more than one state.

8. "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of such state.

9. "Reciprocal state" means any state or territory of the United States the laws of which give to insurers organized under the laws of this state the same right to defend actions as that granted to foreign insurers under the laws of this state and the laws of which contain procedures substantially similar to those specified in this article for the enforcement of decrees or orders in equity issued by courts located in other states or territory of the United States against any insurer incorporated or authorized to do business in such state or territory.

10. "Single-state risk" means a risk with insured exposures in only one state.

11. "Unauthorized insurance" or "nonadmitted insurance" means any insurance permitted to be placed directly or through a surplus lines broker with an insurer who is not licensed to transact insurance in this state.

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**20-401.01. Unlawful transaction of insurance business; exemptions**

A. It is unlawful for any insurer to transact insurance business, as provided by section 20-106, in this state without a certificate of authority from the director.

B. The provisions of subsection A of this section do not apply to:

1. The lawful transaction of surplus lines insurance.

2. The lawful transaction of reinsurance by insurers.

3. Transactions in this state involving a policy lawfully solicited, written and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

4. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

5. Transactions in this state involving group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.

6. Transactions in this state involving any policy of insurance or annuity contract issued prior to August 13, 1972.

7. Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.

8. Transactions in this state involving contracts of insurance not readily obtainable from insurers authorized to transact insurance in this state issued to one or more industrial insureds, as defined in section 20-401.07.

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**20-401.02. Violation; cease and desist orders; injunctive relief**

A. If the director has cause to believe that any insurer is violating or about to violate section 20-401.01, the director may order the insurer to cease and desist and, through the attorney general, may cause a complaint to be filed in the superior court in Maricopa county to enjoin and restrain the insurer from continuing the violation, engaging in the violation or doing any act in furtherance of the violation.

B. If the director orders the insurer to cease and desist, the insurer may request a hearing pursuant to title 41, chapter 6, article 10. Except as provided in section 41-1092.08, subsection H, a final decision of the director is subject to judicial review pursuant to title 12, chapter 7, article 6.

C. If the director, through the attorney general, causes a complaint to be filed, the superior court in Maricopa county shall have jurisdiction of the proceeding and may make and enter an order or judgment awarding the preliminary or final relief as in its judgment is proper.

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**20-401.03. Service of process in an action by the director of insurance**

A. Any act of transacting an insurance business in violation of section 20-401.01 by any unauthorized insurer is equivalent to and shall constitute an irrevocable appointment by such insurer, binding upon him, his executor or administrator, or successor in interest if a corporation, of the secretary of state or his successor in office to be the true and lawful attorney of such insurer upon whom may be served all lawful process in any action, suit or proceeding in any court by the director of insurance, through the attorney general, and upon whom may be served any notice, order, pleading or process in any proceeding before the director of insurance and which arises out of transacting an insurance business in this state by such insurer. Any act of transacting an insurance business in this state by any unauthorized insurer shall be signification

of its agreement that any such lawful process in such court action, suit or proceedings and any such notice, order, pleading or process in such administrative proceeding before the director of insurance so served shall be of the same legal force and validity as personal service of process in this state upon such insurer.

B. Service of process in an action prescribed by subsection A of this section shall be made by delivering to and leaving with the secretary of state, or some person in apparent charge of his office, two copies of such process. Service upon the secretary of state as such attorney shall be service upon the principal.

C. The secretary of state shall forthwith forward, by registered or certified mail, one copy of such process or such notice, order, pleading or process in proceedings before the director to the defendant in such court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. Such service shall be sufficient, provided:

1. Notice of such service and a copy of the court process or the notice, order, pleading or process in such administrative proceeding are sent within ten days thereafter by registered or certified mail by the director of insurance or the attorney general in the court proceeding or by the director of insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding.

2. The defendant's receipt or receipts, issued by the post office with which the letter is registered or certified, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the director of insurance or the attorney general in court proceeding or of the director of insurance in administrative proceeding, showing compliance therewith, are filed with the clerk of the court in which such action, suit or proceeding is pending or with the director in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or director of insurance may allow.

D. The director of insurance or the attorney general shall not be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading or process in proceedings before the director of insurance is served under this section until the expiration of thirty days from the date of filing of the affidavit of compliance.

E. Nothing in this section shall limit or affect the right to serve any process, notice, order or demand upon any person or insurer in any other manner now or hereafter permitted by law or rules of the courts.

20-401.04. Action by attorney general to enforce order or decision of court or director; foreign decrees

A. The attorney general upon request of the director may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding, in any administrative proceeding before the director of insurance or any foreign decree.

B. The director of insurance of this state shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

C. A copy of any foreign decree authenticated as provided by the laws of this state may be filed in the office of the clerk of any superior court of this state. The clerk, upon verifying with the director of insurance that the decree or order qualified as a foreign decree, shall treat the foreign decree in the same manner as a decree of a superior court of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of a superior court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a superior court of this state and may be enforced or satisfied in like manner.

D. At the time of the filing of the foreign decree, the attorney general shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.

E. Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the director of insurance of this state and shall make a note of the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the director of insurance of this state and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the attorney general has been filed.

F. No execution or other process for enforcement of a foreign decree filed under this section shall issue until thirty days after the date the decree is filed.

G. If the defendant shows the superior court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

H. If the defendant shows the superior court any ground upon which enforcement of a decree of any superior court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

20-401.05. Certificate of exemption; definitions

A. On July 1 of each year, the director shall grant a certificate of exemption to any insurer, employee benefit trust or voluntary employees' beneficiary association transacting life insurance, disability insurance or annuity business, or providing other health or welfare benefits, under the laws of its domicile that:

1. Is organized and operated without profit to any person, firm, partnership, association, corporation or other entity.
2. Is organized and operated exclusively for either of the following purposes:
  - (a) Aiding educational or scientific institutions that are also organized and operated without profit to any person, firm, partnership, association, corporation or other entity.
  - (b) Aiding agricultural institutions if the grantee is subject to regulation either as an insurer, a multiple employer welfare arrangement or an employee benefit trust by its state of domicile.
3. Serves a purpose prescribed in paragraph 2 by issuing insurance, annuity and employee benefits contracts only to or for the benefit of the educational, scientific or agricultural institutions or their respective members or to individuals engaged in the service of those institutions.
4. Appoints the secretary of state, and the secretary of state's successors in office, as its true and lawful attorney on whom may be served all lawful process in any action, suit or proceeding in any court by the director of insurance, through the attorney general, or any action or proceeding against the insurer, employee benefit trust or voluntary employees' beneficiary association brought by someone other than the director of insurance, which appointment is irrevocable, binds the insurer, employee benefit trust or voluntary employees' beneficiary association or any successor in interest, remains in effect as long as there is in force in this state any contract or policy made or issued by the insurer, employee benefit trust or voluntary employees' beneficiary association or any obligation arising therefrom and must be processed in accordance with sections 20-401.03 and 20-403.
5. Is fully and legally organized and qualified to do business and has been actively doing business under the laws of the state of its domicile for a period of at least twenty years before its application for a certificate of exemption.
6. Files with the director for the director's approval a copy of any policy or contract form issued to residents of this state.
7. Files with the director on or before March 1 of each year a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as any other financial material as may be requested, including the annual statement or such other financial materials as may be requested relating to any subsidiary or other legal entity operated by the insurer, employee benefit trust or voluntary employees' beneficiary association under a management contract or

other form of agreement, and coincident with the filing of its annual statement, pays the filing fee prescribed in section 20-167.

8. Agrees to submit to periodic examinations as may be deemed necessary by the director.

B. On or before March 1 of each year, any insurer holding a certificate of exemption shall file with the director a form of premium tax return prescribed by the director and shall pay the premium tax imposed by section 20-224 on all policies of life insurance and disability insurance in force with residents of this state.

C. After a hearing, the director may refuse to renew, or may revoke or suspend, a certificate of exemption if the director finds that the insurer, employee benefit trust or voluntary employees' beneficiary association no longer meets the requirements of this section, or finds that the insurer, employee benefit trust or voluntary employees' beneficiary association has violated any provisions of article 6 of this chapter.

D. For the purposes of this section:

1. "Agricultural institutions" means agricultural growers, shippers, packers, brokers, distributors, wholesalers, receivers and jobbers, or affiliated, associated and related suppliers, industries or firms.

2. "Voluntary employees' beneficiary association" means an association described in 26 United States Code section 501(c)(9).

20-401.06. Unauthorized transactions; classification

Any unauthorized insurer who knowingly transacts any unauthorized act of an insurance business is guilty of a class 5 felony.

20-401.07. Premium receipts tax on industrial insureds contracting with unauthorized insurer; definitions

A. Every industrial insured under a contract procured from an unauthorized insurer shall pay to the director for coverage on Arizona single-state risks or to the clearinghouse for coverage on multistate risks on or before the dates prescribed by in section 20-415 a premium receipts tax of three per cent of the gross premiums, less premiums returned on account of cancellation or reduction of premium. Such insurance procured by an insured whose home state is Arizona, whether procured through negotiation or an application, in whole or in part occurring or made within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance effectuated or continued in this state.

B. Beginning January 1, 2015 and every five years thereafter, the amounts listed in subsection C, paragraph 1, subdivisions (a) and (e) shall be adjusted to reflect the percentage change for the



five-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

C. For the purposes of this section:

1. "Industrial insured" means an insured whose home state is Arizona, that applies for or procures any insurance that is subject to article 4.1 of this chapter through the use of a qualified risk manager, that has aggregate annual gross premiums for insurance on all property and casualty risks that are subject to article 4.1 of this chapter totaling at least one hundred thousand dollars as of the insured's preceding fiscal year end and that meets one of the following criteria:

(a) Possesses a net worth of over twenty million dollars as of the preceding fiscal year end of the industrial insured as verified by a certified public accountant.

(b) Has net revenues or sales exceeding fifty million dollars as of the preceding fiscal year end of the industrial insured as verified by a certified public accountant.

(c) Has more than five hundred full-time employees or equivalent per individual company or is a member of an affiliated group employing more than one thousand employees in the aggregate.

(d) Is a municipality with a population of more than fifty thousand persons.

(e) Is a nonprofit organization or public entity generating annual budgeted expenditures of at least thirty million dollars.

2. "Qualified risk manager" has the same meaning prescribed in the nonadmitted and reinsurance reform act of 2010 (15 United States Code section 8206).

20-402. Validity of contracts

A. The transaction of business in violation of section 20-401.01 by an insurer does not impair the validity of any act or contract of the insurer and does not prevent the insurer from defending any action at law or suit in equity in any court of this state, except that no insurer transacting insurance business in this state without a certificate of authority is permitted to maintain an action in any court of this state to enforce any right, claim or demand arising out of the transaction of the business until the insurer obtains a certificate of authority.

B. If an insurer transacting business in violation of section 20-401.01 fails to pay any claim or loss within the provisions of the insurance contract, any person who acted directly or indirectly as an insurance producer for or otherwise represented or aided the insurer in the solicitation, negotiation, procurement or effectuation of the insurance contract or renewal of the contract is liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of the insurance contract.

20-403. Service of process in an action by someone other than the director of insurance

A. The transaction of an insurance business in this state, as provided in section 20-106, by, or on behalf of, an unauthorized nonresident insurer shall be deemed to constitute an appointment by the insurer of the director and his successors in office as its attorney, upon whom may be served all lawful process issued within this state in any action or proceeding against such insurer brought by someone other than the director of insurance and arising out of any such transaction.

B. Such service of process shall be made by delivering to and leaving with the director two copies thereof. At the time of service the plaintiff shall pay five dollars to the director, taxable as costs in the action. The director shall forthwith mail by registered or certified mail one of the copies of process to the defendant at its principal place of business as last known to the director, and shall keep a record of all process so served.

C. Notice of service and a copy of process shall be sent by plaintiff's attorney to defendant insurer at its last known principal place of business by registered or certified mail. Defendant insurer's receipt, or registry receipt as to the mailing issued by the post office where registered or certified, showing the name of the sender and name and address of the addressee, and the affidavit of plaintiff's attorney showing compliance with this subsection, shall be filed in the court in which the action is pending on or before the date the defendant insurer is required to appear, or within such further time as the court may allow. No judgment by default against the insurer may be taken under this section until the expiration of thirty days from date of filing of the affidavit of compliance.

D. Service of process in such an action or proceeding against an unauthorized resident insurer shall be valid if served upon any person within this state who transacts an insurance business in this state on behalf of such insurer. The requirements of subsection C of this section shall likewise apply with respect to such service of process.

E. Service of process upon such an insurer in accordance with this section shall be as valid and effective as if served upon a defendant personally present in this state.

F. Means provided in this section for service of process upon the insurer shall not be deemed to prevent service of process upon the insurer by any other lawful means.

G. An insurer which has been so served with process, subject to section 20-405, shall have the right to appear in and defend the action and employ attorneys and other persons in this state to assist in its defense thereto or settlement thereof.

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20-404. Exemptions

Sections 20-403, 20-405 and 20-406 shall not apply to such transactions as are prescribed in section 20-401.01, paragraphs 1, 2, 3, 4, 5, 7 and 8, nor to any action or proceeding against an unauthorized insurer arising out of the following types of insurance where the policy or contract

contains a provision designating the director as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy, or where the insurer enters a general appearance in any such action:

1. Ocean marine and foreign trade insurance.
2. Insurance on subjects located, resident or to be performed, wholly outside this state, or on vehicles or aircraft owned and principally garaged outside this state.
3. Insurance on property or operations of railroads engaged in interstate commerce.

20-405. Prerequisites for participating in court action

Before an unauthorized insurer may initiate any action or proceeding in this state, the insurer shall procure a certificate of authority to transact insurance in this state, or deposit with the clerk of the court in which the action or proceeding is pending cash or securities, or file with the clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any costs and attorney's fees which may be assessed against the unauthorized insurer in the action. The court may in its discretion make an order dispensing with the deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in any state funds or securities, in trust or otherwise, sufficient and available to satisfy any such assessment which may be entered in the action or proceeding, and that the insurer will pay any final judgment entered therein without requiring suit to be brought on the judgment in the state where the funds or securities are located.

20-406. Attorneys' fees in action against insurer

In any action against an unauthorized insurer pursuant to section 20-403, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract of insurance, and it appears to the court that the refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in the action. The attorney's fee shall not exceed one third of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such a fee be less than one hundred dollars. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

20-407. Surplus lines; brokers

A. Any portion or all of an insurance coverage designated in this article as "surplus lines" may be procured from unauthorized insurers subject to the following conditions:

1. The insurance is procured through a surplus lines broker licensed in this state, referred to in this article as the "broker".

2. The insurance coverage is a recognized surplus line pursuant to section 20-409 or the insurance coverage is not procurable, after diligent effort has been made to procure coverage or the coverage has been procured to the full extent the insurers are willing to insure, and the placing of insurance with an unauthorized insurer is not for the purpose of securing advantages either as to premium rate or terms of the insurance contract.

B. Subsection A, paragraph 2 of this section does not apply to the sale of insurance coverage to an industrial insured as defined in section 20-401.07. At the inception of each new policy and at the time of each renewal, but not less than annually during the term of the policy, each industrial insured that purchases a policy as provided in this section shall certify to the broker on a form prescribed by the director that the insured meets the definition of industrial insured prescribed in section 20-401.07. The broker shall maintain the certification in the broker's files. The insurance is surplus lines insurance and is subject to the applicable provisions of this article that relate to surplus lines insurance.

C. Nothing in this section prohibits a resident or nonresident insurance producer or managing general agent licensed in this state for property or casualty insurance from obtaining surplus lines insurance for policyholders through a surplus lines broker if the insurance producer or managing general agent uses a surplus lines broker licensed in this state for the transaction of the insurance with the surplus lines insurer. The surplus lines broker is responsible for compliance with the applicable provisions of this article. The insurance producer or managing general agent may pay a fee or share a commission with a surplus lines broker who procures the surplus coverage on behalf of the insurance producer. For the purposes of this subsection, "transaction" means the acts listed in section 20-106, subsection A.

D. For the transaction of surplus lines insurance, a surplus lines broker licensed in this state shall not receive a fee, commission, brokerage or other valuable consideration from any person who is not licensed in this state as any of the following:

1. An insurance producer pursuant to chapter 2, article 3 of this title.
2. A managing general agent pursuant to chapter 2, article 3.1 of this title.
3. A surplus lines broker pursuant to section 20-411, 20-411.01 or 20-411.02.

20-408. Report of broker; civil penalty

A. A broker procuring surplus lines insurance on behalf of an insured whose home state is Arizona shall file with the director on or before the date specified in section 20-415, subsection B a verified report setting forth facts from which it may be determined whether the requirements of section 20-407 have been met. The report shall also contain or be accompanied by the following:

1. The name of the insurer and the identification number assigned to it by the national association of insurance commissioners.
2. The number of the policy issued.
3. The name and address of the insured.
4. The premium, including taxable policy fees.
5. The identity of the specific surplus lines coverage written.
6. The policy effective dates that shall not be open to public inspection.

B. The director shall prescribe the required report form.

C. The director may direct a broker to file the broker's report required by this section with a voluntary domestic organization of surplus lines brokers with which the director has contracted to accept reports pursuant to section 20-167.

D. A broker may collect from the insured the stamping fee prescribed in section 20-167.

E. The director may impose and collect a civil penalty of not more than twenty-five dollars against a broker for each day the report prescribed in subsection A of this section is late.

F. In addition to the requirements of subsection A, paragraph 5 of this section, if the insurance coverage is not a recognized surplus line pursuant to section 20-409, a surplus lines broker shall maintain evidence of compliance with the requirements of section 20-407, subsection A for the duration of the insurance policy and for a period of six years after the expiration of the policy.

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20-409. Recognized surplus lines

A. If after a hearing the director finds that a particular insurance coverage or type, class or kind of coverage is not readily procurable from authorized insurers, the director may by order declare such coverage or coverages to be recognized surplus lines until the director's further order.

B. The order is subject to modification by the director. The director shall modify any coverage if the director determines that the coverage is no longer entitled to recognition as surplus lines after a hearing held on the director's initiative or on the request of any insurance producer, surplus lines broker, broker, insurer, rating or advisory organization, or other person.

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20-410. Validity of surplus lines insurance; disclosure; policy fees

A. Insurance contracts procured as surplus lines coverage are fully valid and enforceable as to all parties and shall be recognized in all matters in the same manner as like contracts issued by authorized insurers.

B. Any policy and any evidence of surplus lines coverage from an unauthorized insurer pursuant to this article and that is issued for delivery to the insured shall contain a conspicuously stamped or written notice in bold-faced type that states:

Pursuant to Arizona Revised Statutes section 20-401.01, subsection B, paragraph 1, this policy is issued by an insurer that does not possess a certificate of authority from the director of the Arizona Department of Insurance. If the insurer that issued this policy becomes insolvent, insureds or claimants will not be eligible for insurance guaranty fund protection pursuant to Arizona Revised Statutes title 20.

C. A surplus lines broker may charge and receive a fee in addition to the premium for services provided in the transaction of surplus lines insurance if before effecting any coverage both of the following conditions are met:

1. The service fees and the specific services for which the fees are charged are disclosed to the insured or the insured's representative and are agreed to in writing by the insured or the insured's representative.

2. The taxes prescribed in section 20-416 are paid on any fees charged to the insured.

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20-411. Licensing of surplus lines broker; examination

A. A person shall not act as a surplus lines broker in this state on behalf of an insured whose home state is Arizona unless the person has a current surplus lines broker license issued by the director.

B. Any individual who is a resident of this state and who is licensed as a resident insurance producer authorized for property or casualty insurance in this state may also be licensed as a

resident surplus lines broker if the director determines that the insurance producer is competent and trustworthy. The director shall prescribe and furnish application forms.

C. Each individual applicant for an original license as a resident surplus lines broker or for renewal of a resident surplus lines broker license who has not previously taken and passed a surplus lines broker license examination in this state shall take and pass to the director's satisfaction a written examination given by or under the supervision of the director. The examination shall reasonably test the applicant's knowledge of surplus lines insurance and the legal responsibilities of a surplus lines broker.

D. The director may issue a resident surplus lines broker license to any business entity that is licensed as a resident property or casualty insurance producer in this state and that satisfies all of the requirements prescribed by section 20-285, subsections C and D.

E. At least one individual in each office or place where surplus lines insurance is transacted in this state shall be licensed pursuant to this title as either an insurance producer authorized for property or casualty insurance or a managing general agent for property or casualty insurance, and shall be licensed pursuant to this article as a surplus lines broker.

F. The license prescribed in this section shall expire and be subject to renewal coincidental to, and in the same manner as, other insurance license authority as prescribed in section 20-289. The director shall charge the surplus lines broker license fee prescribed in section 20-167, except that, from and after June 30, 2005, a licensee adding surplus lines broker authority to an existing insurance license shall be charged one-half the surplus lines broker license fee if less than two years remain in the term of the existing insurance license as of the date the director receives the application to add surplus lines broker authority to the existing insurance license.

G. To the extent not inconsistent with this article, section 20-281, section 20-283, subsection B, paragraph 6, section 20-286, subsection C and sections 20-287, 20-289, 20-291, 20-292, 20-295, 20-296, 20-297, 20-298, 20-299, 20-300, 20-301 and 20-302 apply to surplus lines brokers.

H. For the purposes of implementing the nonadmitted and reinsurance reform act of 2010 (15 United States Code section 8201) the director shall participate in the national insurance producer database of the national association of insurance commissioners or any other equivalent national database for the licensure and license renewal of surplus lines brokers on and after July 21, 2012.

20-411.01. Licensing of Mexican insurance surplus lines broker

A. Any resident or nonresident licensed insurance producer that maintains an office in this state may be licensed as a Mexican insurance surplus lines broker to transact insurance business as prescribed in section 20-422 if the director determines that the insurance producer is competent and trustworthy and the insurance producer complies with all of the requirements of section 20-411 except for section 20-411, subsection C. The director shall prescribe and provide application forms.

B. Any surplus lines broker licensed pursuant to section 20-411 or 20-411.02 may transact the insurance business prescribed in section 20-422 without being licensed under this section.

20-411.02. Nonresident surplus lines broker; remittance of tax on insurance procured out of state

A. The director shall license a nonresident person as a surplus lines broker in accordance with section 20-287.

B. Except as otherwise provided, a nonresident surplus lines broker is subject to this title as if the broker were licensed as a resident.

C. A license from this state is not required for a nonresident who procures surplus lines insurance in another state in which the nonresident is licensed solely because of the allocation of premium to this state to determine the surplus lines tax due to this state pursuant to section 20-416, subsection E. The nonresident shall remit the tax according to this article. The director shall prescribe the form of any reports or statements that are necessary for the nonresident to remit the tax.

20-412. Acceptance of surplus lines business by broker

A licensed surplus lines broker may accept or place surplus lines business from any insurance producer licensed in this state for the kind of insurance involved and may compensate the insurance producer therefor. The broker shall have the right to receive from the insurer the customary commission.

20-413. Placing of surplus lines coverage; endorsement by broker; list of unauthorized insurers; removal from list; definition

A. A surplus lines broker shall not knowingly place any surplus lines coverage on behalf of an insured whose home state is Arizona with an unauthorized insurer, Lloyd's association, insurance exchange or syndicate of an insurance exchange that does not meet the minimum financial requirements of this section or that is declared by the director to be in a hazardous financial condition, improperly managed or unreliable in insurance transactions. A surplus lines broker may place surplus lines coverage with a syndicate of an unauthorized insurance exchange even if another syndicate of the insurance exchange is declared by the director to be in a hazardous financial condition, improperly managed or unreliable in insurance transactions, as long as that syndicate does not participate in insuring the risk and unless the declaration of the director specifies that the insurance exchange shall not accept surplus lines placements.

B. An unauthorized foreign insurer authorized to transact insurance on an admitted or surplus lines basis in at least one other state shall possess a minimum capital and surplus that equals the greater of either the minimum capital and surplus requirements imposed by article 1 of this chapter or fifteen million dollars.

C. An unauthorized alien insurer other than a title insurer shall possess minimum capital and surplus of at least fifteen million dollars and shall maintain within the United States in public



depositories or trust institutions approved by the director assets in the amount of two million five hundred thousand dollars. The director may require the unauthorized alien insurer to maintain a larger deposit if the director determines that the public interest reasonably requires a larger deposit. A broker shall not knowingly place any insurance with the unauthorized alien insurer until the insurer complies with the director's requirement to maintain a larger deposit. Notwithstanding the requirements of this subsection, a surplus lines broker may place insurance with an alien insurer that is listed on the quarterly listing of alien insurers maintained by the national association of insurance commissioners international insurers department.

D. Any unauthorized Lloyd's association or any similar association of individual or incorporated insurers under a common administration shall maintain a trust fund in the United States of at least one hundred million dollars as joint and several security for all United States policyholders of any member of the association. The director may require the association to maintain a larger fund if the director determines that the public interest reasonably requires a larger fund. A broker shall not knowingly place any insurance with the association until the association complies with the director's requirement to maintain a larger fund.

E. An unauthorized insurance exchange authorized to transact insurance on an admitted or surplus lines basis in at least one other state shall possess minimum aggregate capital and surplus of at least fifty million dollars. Each syndicate of the insurance exchange with which a risk is to be placed shall possess minimum aggregate capital and surplus of at least four million dollars until December 31, 1996. Beginning January 1, 1997 each syndicate with which a risk is to be placed shall possess minimum capital and surplus of at least five million dollars. The insurance exchange shall maintain a deposit of at least two million five hundred thousand dollars in public custody in trust, in part, for the purpose of protecting all of the policyholders of the insurance exchange. Each syndicate of an insurance exchange qualified to transact surplus lines insurance in this state shall file with the director on or before June 1 an annual statement for the preceding year in a form prescribed by the national association of insurance commissioners. The annual statement is in addition to any other document required of the insurance exchange by the director.

F. If the surplus lines broker delivers a certificate in a form prescribed by the director, it is prima facie evidence of the insurer's compliance with the financial requirements of this section. The certificate shall state the names of the public officials or other persons who have supervision over the insurer in any other state and shall certify the amount of capital and surplus that the insurer possesses and the amount of the trust deposit that the insurer maintains, as determined from the records and knowledge of the public officials or other persons, together with any supporting documentation that the director requires. The certifying surplus lines broker of an alien insurer may deliver other evidence acceptable to the director to establish that the alien insurer meets the financial requirements of this section. The certifying surplus lines broker may withdraw the certificate by providing written notice of intent to withdraw to the director and the affected insurer. The withdrawal is not effective until forty-five days after delivery of the notice to all parties. The withdrawal is not grounds for removal from the list pursuant to subsection H if, before the withdrawal becomes effective, another licensed surplus lines broker delivers to the director a replacement certificate based on the qualifying documentation already on file with the department.

G. The director may periodically publish a list of unauthorized insurers that may write surplus lines insurance in this state established on the basis of documentation provided to the director pursuant to this section. The director may mail a copy of the list to each licensed surplus lines broker at the last address on the records of the department. This subsection is not deemed to require the director to determine the actual financial condition or claims practices of any unauthorized insurer, and the appearance of an unauthorized insurer on the list indicates only that the insurer appears to be financially sound and to have satisfactory claims practices. A broker shall restrict all surplus lines business placed by the broker with an unauthorized insurer to those insurers qualified with the director as provided in this section.

H. The director may refuse to add an insurer to the list established pursuant to subsection G or may remove an insurer from that list if the director believes that the insurer:

1. Is in a hazardous financial condition.
2. No longer meets the requirements of this article.
3. Does not have the endorsement of a surplus lines broker pursuant to subsection F.
4. Does not comply with all applicable provisions of this title.
5. Is improperly managed.
6. Is unreliable in insurance transactions.

I. In addition to any other penalty provided by law, if a surplus lines broker's license is revoked for a violation of this section, the director shall not license the broker again within a period of two years thereafter.

J. For the purposes of subsections F, G and H, "insurer" means an unauthorized insurer, Lloyd's association, insurance exchange or syndicate of an insurance exchange.

20-414. Records of surplus lines brokers

Each surplus lines broker shall keep in the broker's principal place of business a full and true record of each surplus lines contract procured by the broker under the license issued pursuant to this article. The director may examine the record at any time within three years after the expiration or cancellation date of the insurance policy. The record shall include the following items as applicable:

1. Name and address of the insurer.
2. Name and address of the insured.
3. Amount of insurance.

4. Gross premium charged.
5. Return premium paid, if any.
6. Rate of premium charged on the several items of coverage.
7. Effective date and terms of the contract.
8. Brief general description of the risks insured against and the property insured.

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20-415. Statement of surplus lines insurance business transacted by broker; reporting periods

A. Each surplus lines broker shall file semiannually with the director a statement of all surplus lines insurance business covering Arizona single-state risks transacted by the broker during the period for which the statement is being filed. The statement shall be on a form prescribed by the director and shall show:

1. Gross amount of each kind of insurance transacted.
2. Aggregate gross premiums charged.
3. Aggregate of return premiums paid to insureds.
4. Aggregate of net premiums.
5. Such additional information as may reasonably be required by the director.

B. The statement required by subsection A of this section is due on or before February 15 of each year for the preceding July through December and on or before August 15 of each year for the preceding January through June for business covering Arizona single-state risks.

C. Each surplus lines broker shall file quarterly, with the clearinghouse responsible for administering the compact or multistate agreement entered into by the director pursuant to section 20-416.01, a notarized statement of all surplus lines insurance business covering multistate risks transacted by the broker on behalf of insureds whose home state is Arizona during the calendar quarter for which the statement is being filed. The statement shall be on a form prescribed by the clearinghouse and shall include all information required by the clearinghouse. A facsimile of the original notarized statement may be submitted in lieu of the original notarized statement. The broker shall maintain the original notarized statement for a period of six years after the calendar year in which the statement was filed.

D. The statement required by subsection C of this section is due on or before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March

31, August 15 for the quarter ending the preceding June 30 and November 15 for the quarter ending the preceding September 30.

20-416. Tax on surplus lines

A. On or before the due date prescribed in section 20-415, each surplus lines broker shall remit to the state treasurer through the director a tax on the premiums, exclusive of sums collected to cover federal and state taxes, examination fees and stamping fees collected pursuant to section 20-167, on surplus lines insurance covering Arizona single-state risks subject to tax transacted by the broker during the preceding reporting period, as shown by the statement of surplus lines business filed with the director.

B. On or before the due date prescribed in section 20-415, each surplus lines broker shall remit to the clearinghouse responsible for administering the compact or multistate agreement entered into by the director pursuant to section 20-416.01 a tax on the premiums, exclusive of the sums collected to cover federal and state taxes, examination fees and stamping fees collected pursuant to section 20-167, on surplus lines insurance covering multistate risks subject to tax for insureds whose home state is Arizona transacted by the broker during the preceding reporting period, as shown by the statement of surplus lines business filed with the clearinghouse.

C. The tax required by subsections A and B of this section is at the rate of three per cent of the gross premiums, including policy fees other than stamping fees prescribed in section 20-167, and shall not be applied to premiums returned on account of cancellation or reduction of premium and shall not be applied to gross premiums and returned premiums on business exempted from surplus lines provisions under section 20-420. The surplus lines broker shall collect the tax from the insured in addition to the full amount of the gross premium charged by the insurer for the insurance. The surplus lines broker shall return the tax on any portion of the premium unearned at the termination of the insurance policy to the policyholder. The surplus lines broker is prohibited from absorbing the tax and from rebating, for any reason, any part of the tax or commission.

D. Notwithstanding section 20-415 and subsection A of this section, if a surplus lines broker fails to timely renew the license held by the broker to transact surplus lines insurance and the broker's license is revoked by order of the director or the director accepts the consent to voluntary termination of the license, the broker shall file a statement of surplus lines business from the end of the last reporting period covered by the statement filed by the broker through the date the license was last valid and shall remit all outstanding surplus lines taxes to the director. The broker shall file the statement of surplus lines business and shall remit any outstanding surplus lines taxes within thirty days after the nonrenewal, revocation or voluntary termination of the license.

E. Except as provided in subsection F of this section, for the purpose of determining the surplus lines tax, the total premium charged for surplus lines insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be allocated to this state in the proportion as the total premium on the insured properties or operations in this state, computed on the exposure in this state on the basis of any single standard

rating method in use in all states or countries where the insurance applies, bears to the total premium so computed in all the states or countries.

F. The surplus lines tax on insurance on motor transit operations conducted between this and other states is payable on the total premium charged on all surplus lines insurance less the portion of the premium determined as provided in subsection E of this section charged for operations in other states taxing the premium of an insured maintaining its headquarters office in this state or the premium for operations outside of this state of an insured maintaining its headquarters office outside of this state and a branch office in this state.

G. Such tax shall be apportioned in the manner provided by section 20-224, subsection C.

H. All surplus lines taxes collected on Arizona single-state risks pursuant to this section and section 20-416.01 are monies that belong to this state and constitute a debt to this state. All surplus lines tax on coverage procured for an insured whose home state is Arizona that would otherwise be payable to another state as the other state's portion of a multistate risk shall constitute monies of this state and a debt to this state if the other state has not entered into a compact or multistate agreement to which Arizona is a party to effectuate the nonadmitted and reinsurance reform act of 2010 (15 United States Code section 8201).

20-416.01. Collection and payment of tax on surplus lines; multistate agreement

A. In accordance with the nonadmitted and reinsurance reform act of 2010, the director may enter into a compact or multistate agreement to provide for the reporting, payment, collection and allocation of taxes imposed pursuant to sections 20-401.07 and 20-416 on unauthorized surplus lines insurance covering multistate risks if, after a hearing conducted pursuant to section 20-161, it is determined that entering into a compact or multistate agreement is in the best interests of this state. In determining whether entering into a compact or multistate agreement is in the best interests of this state, the following factors shall be considered:

1. The impact on the state's gross receipt of premium taxes, if any.
2. The regulatory burden and costs placed on insurance companies, surplus lines brokers and insurance agents doing business in this state.
3. The cost impact on insureds resulting from any regulatory requirements attributable to a compact or multistate agreement, if any.
4. Other factors as may be raised by the director or any other interested party.

B. Taxes imposed pursuant to sections 20-401.07 and 20-416 on unauthorized insurance covering Arizona single-state risks shall not be covered by or payable through any compact or multistate agreement entered into by the director pursuant to subsection A of this section.

C. If a clearinghouse is not established or otherwise in operation or if the director does not enter into a multistate agreement or compact pursuant to subsection A of this section, any statements

and taxes otherwise payable to a clearinghouse pursuant to this article shall be filed with the director or with a voluntary domestic organization of surplus lines brokers with which the director has contracted to accept reports pursuant to section 20-167.

D. The director may adopt reasonable rules to effectuate any provision of the nonadmitted and reinsurance reform act of 2010 (15 United States Code section 8201).

20-417. Failure to remit tax; civil penalty

If any surplus lines broker fails to remit the surplus lines tax provided for by section 20-416, the broker is liable for a civil penalty of not to exceed twenty-five dollars for each additional day of delinquency. The director shall collect the tax by distraint and shall recover the civil penalty by an action in the name of this state against the insured, the surplus lines broker and the surety on the bond filed pursuant to section 20-411. All civil penalties are payable into the general fund of this state.

20-418. Denial, revocation or suspension of license; civil penalty

A. The director may deny or suspend for not more than twelve months, revoke or refuse to renew any surplus lines broker's license and, in addition or in lieu thereof, may levy a civil penalty and order restitution to any injured party:

1. If the broker fails to comply with any requirement of this article.
2. For any of the causes for which an insurance producer's license may be denied, revoked or suspended.

B. The procedures provided by this title for the denial, suspension or revocation of an insurance producer's license apply to denial, suspension or revocation of a surplus lines broker's license.

20-419. Legal process against surplus lines insurer

A. Every unauthorized nonresident insurer issuing or delivering a surplus lines policy through a surplus lines broker in this state is conclusively deemed to have irrevocably appointed the director as its agent for acceptance of service of all legal process issued in this state in any action or proceeding under or arising out of the policy, and service of the process on the director is lawful personal service on the nonresident insurer.

B. Service of process in an action or proceeding against an unauthorized resident insurer issuing or delivering a surplus lines policy through a surplus lines broker in this state is valid if served on any person within this state who transacts an insurance business in this state on behalf of the insurer.

C. Each surplus lines policy shall contain a provision stating the substance of subsection A or B of this section, whichever is applicable, and designating the person to whom process shall be mailed as provided in subsection D of this section.

D. Duplicate copies of legal process against a nonresident insurer shall be served on the director, and at the time of service the plaintiff shall pay to the director the service of process fee prescribed in section 20-167, taxable as costs in the action. The director shall immediately mail one copy of the process served to the person designated by the nonresident insurer in the policy for the purpose, by certified mail, return receipt requested. Legal process against a resident insurer shall be served on any person within this state who transacts an insurance business within this state on behalf of the insurer. The plaintiff shall mail notice of service and a copy of the process to the person designated by the resident insurer in the policy for the purpose, by certified mail, return receipt requested. An insurer shall have forty days after the date of mailing within which to plead, answer or otherwise defend the action.

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**20-420. Exemptions from surplus lines provisions**

A. The sections of this article relating to surplus lines coverages do not apply to reinsurance or to the following classes of insurance placed by licensed insurance producers of this state:

1. Ocean marine and foreign trade insurance.
2. Insurance on subjects located, resident or to be performed wholly outside this state, or on vehicles or aircraft owned and principally garaged outside this state.
3. Insurance on property or operations of railroads engaged in interstate commerce.

B. Any insurance producer that places any of the classes of insurance prescribed in subsection A of this section with an unauthorized insurer shall keep a record of each coverage in detail as required of surplus lines insurance pursuant to section 20-414. The insurance producer shall preserve the record for not less than three years after the expiration or cancellation date of the insurance policy and shall make the record available in this state and open to the examination of the director.

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**20-421. Access of director to records of person insured by unauthorized insurer**

Upon the director's request any person in this state who is the insured under any policy issued by an unauthorized insurer upon a subject of insurance resident, located or to be performed in this state at the time the policy was issued, shall produce for examination all policies and other documents evidencing and relating to the insurance, and shall disclose the amount of the gross premiums paid or agreed to be paid for the insurance, through whom the insurance was procured, and such other information relative to the placing of the insurance as may reasonably be required.

20-422. Alien insurance for coverage in Mexico

A. A person shall not solicit or accept applications in this state for insurance or collect a commission on a policy that is to be effective in Mexico and only outside the geographical limits of this state and that is to be issued by an alien insurer or insurers not authorized to transact insurance in this state, unless that person is licensed pursuant to section 20-411, 20-411.01 or 20-411.02 or any agent or employee of that licensed person or any other authorized insurance producer in this state provided that the insurance producer obtains the coverage through that licensed person.

B. Except for sections 20-411, 20-411.01, 20-411.02, 20-414 and 20-418, the insurance prescribed in this section is not subject to this article.

C. Any policy and any evidence of coverage that is issued by an alien insurer and that is issued pursuant to this section for delivery to the insured in this state shall contain a conspicuously stamped or written notice in bold-faced type that states:

This policy is issued by an insurance company that is not regulated by the Arizona department of insurance. The insurance company may not provide claims service and may not be subject to service of process in Arizona. If the insurance company becomes insolvent, insureds or claimants will not be eligible for protection under Arizona law.

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