



State of Arizona Surplus Lines Insurance Statutes

Arizona Revised Statutes Title 20

Chapter 2
Transaction of Insurance Business

Article 5
Unauthorized Insurers

10/28/2021

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 percent 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. "Domestic surplus lines insurer" means an insurer that is domiciled in and authorized to transact insurance in this state and that has received approval from the department pursuant to section 20-407.01 to write surplus lines insurance coverage in this state.

6. "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.

7. "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 percent 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.

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

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

10. "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 that state or territory.

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

12. "Unauthorized insurance", "surplus lines 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 or with a domestic surplus lines insurer.

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.

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.

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

A. Any act of transacting an insurance business in violation of section 20-401.01 by any unauthorized insurer is equivalent to and constitutes an irrevocable appointment by such insurer, binding on the insurer, the insurer's executor or administrator, or successor in interest if a corporation, of the secretary of state or the secretary of state's successor in office to be the true and lawful attorney of such insurer on whom may be served all lawful process in any action, suit or proceeding in any court by the director, through the attorney general, and on whom may be served any notice, order, pleading or process in any proceeding before the director 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 so served shall be of the same legal force and validity as personal service of process in this state on 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 the secretary of state's office, two copies of such process. Service on the secretary of state as such attorney shall be service on the principal.

C. The secretary of state shall immediately 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 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 the secretary of state 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 or the attorney general in the court proceeding or by the director 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 or the attorney general in court proceeding or of the director 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 may allow.

D. The director 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 is served under this section until the expiration of thirty days from the date of filing of the affidavit of compliance.

E. This section does not limit or affect the right to serve any process, notice, order or demand on any person or insurer in any other manner now or hereafter allowed 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, on 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 or any administrative proceeding before the director or any foreign decree.

B. The director shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of those 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 in this state. The clerk, on verifying with the director 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 in this state. A foreign decree so filed has the same effect and shall be deemed as a decree of a superior court in this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a decree of a superior court in 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 on 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 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 and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk does not affect the enforcement proceedings if proof of mailing by the attorney general has been filed.

F. An execution or other process for enforcement of a foreign decree filed under this section shall not 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, on 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 on which enforcement of a decree of any superior court in this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, on requiring the same security for satisfaction of the decree that 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 of this subsection 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 the department of insurance and financial institutions, 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 the department of insurance and financial institutions, 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 provision 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

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 the director's successors in office as its attorney, on 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 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 \$5 to the director, taxable as costs in the action. The director shall immediately 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 the plaintiff's attorney to the defendant insurer at its last known principal place of business by registered or certified mail. The 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. A judgment by default against the insurer may not be taken under this section until the expiration of thirty days after the date of filing of the affidavit of compliance.

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

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

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

G. An insurer that 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 the action's defense or settlement.

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. This section does not prohibit a resident or nonresident insurance producer 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 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 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 article 3 of this chapter.
2. A managing general agent pursuant to article 3.1 of this chapter.

3. A surplus lines broker pursuant to section 20-411, 20-411.01 or 20-411.02.

20-407.01. Designation as a domestic surplus lines insurer; requirements; scope of business activity permitted

A. Notwithstanding any other law, a domestic insurer possessing minimum capital and surplus of at least fifteen million dollars, pursuant to a resolution by its board of directors and on the written approval of the director, may be designated as a domestic surplus lines insurer. A domestic surplus lines insurer shall be considered an unauthorized insurer for purposes of writing surplus lines insurance coverage pursuant to the requirements of this article.

B. A domestic surplus lines insurer shall only write surplus lines insurance in this state procured pursuant to the requirements of this article. A domestic surplus lines insurer may write surplus lines insurance in any other jurisdiction in which the insurer is eligible to write surplus lines insurance if the domestic surplus lines insurer complies with any requirements of that jurisdiction.

C. Insurance written by a domestic surplus lines insurer is subject to the tax on premiums required by section 20-416 and is exempt from the tax on premiums required by chapter 2, article 1 of this title.

D. A domestic surplus lines insurer shall be considered a nonadmitted insurer as referenced in 15 United States Code section 8206 with respect to surplus lines insurance issued in this state.

E. Surplus lines insurance policies issued in this state by a domestic surplus lines insurer are not subject to the protection of or other provisions of the Arizona property and casualty insurance guaranty fund established by section 20-662.

F. Surplus lines insurance policies issued in this state by a domestic surplus lines insurer are not subject to and are exempt from all statutory requirements relating to insurance rating and rating plans, policy forms, policy cancellation and nonrenewal in the same manner and to the same extent as a surplus lines insurer domiciled in another state.

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 the city, state and zip code 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 \$25 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 that are issued by an unauthorized insurer pursuant to this article and that are issued for delivery to the insured shall contain a conspicuously stamped or written notice in bold-faced type that states one of the following:

1. If the surplus lines policy and any evidence of coverage are issued by a surplus lines insurer that is not a domestic surplus lines insurer:

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

2. If the surplus lines policy and any evidence of coverage are issued by a domestic surplus lines insurer:

If the insurer that issued this policy becomes insolvent, insureds or claimants will not be eligible for insurance guaranty fund protection pursuant to title 20, Arizona Revised Statutes.

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.

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 an insurance producer authorized 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; exception

A. Each surplus lines broker shall file with the director a statement of all surplus lines insurance business covering Arizona 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, except that for multistate transactions occurring on or before December 31, 2014, the statement shall be due on or before the date specified in subsection D of this section.

C. If a clearinghouse is established and is in operation and if the director enters into a multistate agreement or compact pursuant to section 20-416.01, each surplus lines broker shall file quarterly, with the clearinghouse responsible for administering the compact or multistate agreement, 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.

E. A surplus lines broker is not responsible for reporting any fees or remitting any premium taxes or stamping fees due on fees charged by an insurance producer in connection with the transaction of surplus lines insurance.

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 percent 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 D.

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).

I. From and after December 31, 2019, the director may require that reports and payments under this section and sections 20-408, 20-416.01 and 20-417 be submitted electronically. If the director requires electronic submission, the director shall include on the department's official website a list of one or more acceptable third-party services through which a surplus lines broker must submit the reports and payments.

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 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; exception

A. 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 more than \$25 for each additional day of delinquency. The director may collect the tax by distraint and may recover the civil penalty by an action in the name of this state against the insured and the surplus lines broker. All civil penalties are payable into the general fund of this state.

B. If the director requires the surplus lines tax to be paid electronically through a designated third-party service pursuant to section 20-416, a penalty does not accrue for any payment of tax or interest that is late due to delays caused by the third-party service.

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.

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 that are located, resident or to be performed wholly outside this state, or on vehicles or aircraft owned and principally garaged outside this state.
3. Insurance for an insured that is a federally recognized Indian tribe or who is a member of a federally recognized Indian tribe on subjects of insurance that are located, resident or to be performed wholly within the boundaries of a federally recognized Indian reservation.
4. 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.

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 are issued by an alien insurer and that are 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 and financial institutions. 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.

20-423. Voluntary domestic organization of surplus lines brokers; membership; stamping fee collection; meetings; definition

A. A voluntary domestic organization of surplus lines brokers that contracts with the director pursuant to section 20-167, subsection E shall be incorporated in this state as a nonprofit corporation. A surplus lines broker who is licensed and in good standing in this state may be a member in the organization if the broker pays any required membership fee and dues required to be paid by all members.

B. The organization may collect stamping fees pursuant to section 20-167 from any of the following:

1. A member of the organization.
2. A licensed surplus lines broker who is not a member of the organization.
3. A person who is no longer a licensed surplus lines broker if the stamping fee is paid in connection with transactions that the person effectuated while licensed as a surplus lines broker.

C. The organization shall hold an annual meeting of its members and may hold special meetings of its members. Members may participate in annual and special member meetings through the use of any means of communication if the communication allows all members participating in the meeting to simultaneously hear each other during the meeting and the organization provides a meeting notice that specifies how members can participate. Any member participating by this alternate means of communication is deemed to be present in person at the meeting for purposes of determining a quorum and voting and for any other purpose authorized or required by law.

D. Two percent of the total membership of the organization present in person or by proxy and entitled to vote at a meeting constitutes a quorum for the transaction of business at the meeting.

E. For the purposes of this section, "stamping fee" has the same meaning prescribed in section 20-167.

20-167. Fees; definition

A. The director shall collect in advance the following fees, determined by the director which are nonrefundable on payment:

Not Less Than: Not More Than:

1. For filing charter documents:

(a) Original charter documents, articles of incorporation, bylaws, or record of organization of insurers, or certified copies thereof, required to be filed with the director and not also subject to filing in the office of the corporation commission \$40.00 \$115.00

(b) Amended charter documents 15.00 45.00

(c) No charge or fee shall be required for filing with the director any of such documents also required by law to be filed in the office of the corporation commission

2. Certificate of authority:

(a) Issuance:

Fraternal benefit societies \$15.00 \$45.00
 Medical or hospital service corporations, health care services organizations or prepaid dental plan organizations 40.00 115.00
 Mechanical reimbursement reinsurers 150.00 450.00
 All other insurers 100.00 295.00

(b) Renewal:

Fraternal benefit societies 15.00 45.00
 Medical or hospital service corporations, health care services organizations or prepaid dental plan organizations 40.00 115.00
 Domestic stock life insurers, domestic stock disability insurers or domestic stock life and disability insurers 750.00 2,250.00
 Domestic life reinsurers, domestic disability reinsurers or domestic life and disability reinsurers 2,250.00 5,500.00
 Mechanical reimbursement reinsurers 2,250.00 5,500.00
 All other insurers 70.00 205.00

3. Certificate of registration as an administrator or application for renewal under section 20-485.12 \$ 100.00 \$ 295.00

4. Authority to solicit applications for and issue policies by means of mechanical vending machines \$ 30.00 \$ 90.00

5. Service company permit \$ 150.00 \$ 450.00

6. Application for motor vehicle service contract program approval \$ 150.00 \$ 450.00

7. Life care contract application or annual report \$ 225.00 \$ 675.00

8. Filing annual statement \$ 150.00 \$ 450.00

9. Annual statement filing for exempt insurer transacting life insurance, disability insurance or annuity business pursuant to section 20-401.05 \$65.00 \$ 100.00

10. Licenses and examinations:

(a) Licenses:

Surplus lines broker's license, quadrennially	\$ 600.00	\$1,000.00
All other licenses, quadrennially	60.00	180.00

(b) Examinations for license:

Examination on laws and one kind of insurance	8.00	25.00
Examination on laws and two or more kinds of insurance	15.00	45.00

11. Miscellaneous:

Fee accompanying service of process on director	\$ 8.00	\$ 25.00
Certificate of director, under seal	1.50	5.00
Copy of document filed in director's office, per page	0.50	0.75

B. Except as provided in section 20-1098.18, the director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected pursuant to this section in the state general fund. A refund is not allowed for any unused portion of a fee, and the director shall not prorate fees.

C. The license fees prescribed by this section shall be payment in full of all demands for all state, county, district and municipal license fees, license taxes, business privilege taxes and business privilege fees and charges of every kind.

D. The director may contract for the examination for licensing adjusters, insurance producers, bail bond agents, risk management consultants and surplus lines brokers. If the director does so, the fee for examinations for licenses pursuant to this section is payable directly to the contractor by the applicant for examination. The director may agree to a reasonable examination fee to be charged by the contractor. The fee may exceed the amounts prescribed in this section.

E. The director may contract with a voluntary domestic organization of surplus lines brokers to perform any transaction prescribed in chapter 2, article 5 of this title, including the acceptance or maintenance of the reports required by section 20-408. The director may allow the contractor to charge a stamping fee. The surplus lines broker shall pay the stamping fee established pursuant to this section directly to the contractor.

F. Captive insurers shall pay certificate of authority issuance and renewal fees as prescribed by the director.

G. For the purposes of this section, "stamping fee" means a reasonable filing fee charged by a contractor for any transaction prescribed in chapter 2, article 5 of this title, including the acceptance or maintenance of the reports required by section 20-408.



State of Arizona Surplus Lines Insurance Statutes

Arizona Revised Statutes Title 20

Insurance Producer Licensing and
Unfair Practices & Frauds

Note: Not all of the ARS Statutes in the Insurance Producer Licensing and Unfair Practices & Frauds Sections are found here. The Statutes below, in addition to the Surplus Lines Statutes, are included on the Arizona Examination for Surplus Lines Insurance Broker Exam Content Outline.

10/28/2021

Insurance Producer Licensing

20-286. Licensure; lines of authority

A. Unless the director denies a license pursuant to section 20-295, the director shall issue a resident insurance producer license to any person who meets the requirements prescribed in sections 20-284 and 20-285. An insurance producer may qualify for a license in one or more of the following lines of authority:

1. Life. Life insurance is coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.
2. Accident and health or sickness. Accident and health or sickness insurance is coverage for sickness, bodily injury or accidental death and may include benefits for disability income.
3. Property. Property insurance is coverage for the direct or consequential loss or damage to property of every kind.
4. Casualty. Casualty insurance is coverage against legal liability, including liability for death, injury, disability or damage to real or personal property.
5. Variable life and variable annuity products. Variable life and variable annuity is insurance coverage that is provided under a variable life insurance contract or a variable annuity.
6. Personal lines. Personal lines is property and casualty insurance coverage that is sold to individuals and families for primarily noncommercial purposes.
7. Credit. Credit insurance is limited line credit insurance.
8. Crop. Crop insurance is limited line crop insurance.
9. Any other line of insurance allowed under state law or rules adopted by the director.

B. The license shall contain the licensee's name, address and identification number, the date of issuance, the lines of authority, the expiration date and any other information the director deems necessary. The director may make the information prescribed by this section available electronically.

C. A licensee shall inform the director in writing within thirty days of any change in the licensee's:

1. Residential, business or e-mail address.

2. Members, directors, officers or designated producer. The director may require that a licensee who notifies the director of a change pursuant to this paragraph submit a full set of fingerprints of each new member, director, officer or designated producer to the director for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

3. Name.

D. In order to assist in the performance of the director's duties, the director may contract with a third party to perform any ministerial functions that are related to producer licensing and that the director deems appropriate, including the collection of fees.

20-289. Expiration; surrender; renewal

A. Any license that is issued pursuant to this article, other than a temporary license, continues in force until it expires or the director suspends, revokes or terminates the license. The license is also subject to renewal pursuant to this section.

B. A license that is issued or renewed pursuant to this article or a license that is issued or renewed pursuant to chapter 6, article 9 of this title expires quadrennially as follows:

1. If the licensee is an individual, on the last day of the month of the licensee's birthday, but not less than three years and not more than four years after the last day of the month in which the license is issued or is required to be renewed.

2. If the licensee is a business entity, on the last day of the same month four years after the issuance or renewal due date of the license as provided pursuant to this article.

C. The director may renew a license if the director receives from the licensee all of the following on or before the license expiration date:

1. An application on a form approved by the director.

2. The license fee prescribed in section 20-167.

3. Evidence that the licensee has complied with the continuing education requirements prescribed in chapter 18 of this title.

D. Before renewing a license, the director may require the applicant to:

1. Provide all documents that are reasonably necessary to verify the information that is contained in the application and any other information including prior criminal records.

2. Submit a full set of fingerprints to the department. The department of insurance and financial institutions shall submit the fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

E. Any license for which the director does not receive timely application for renewal and full payment of fees expires at midnight on the renewal date. During the year after the expiration of a license under this section, a person who otherwise meets the qualifications for a license may renew an expired license by filing with the director a renewal application, the quadrennial license fee and an additional \$100 as a late renewal fee. Any application that is received during this one-year period for the same license that expired

under this section is deemed a renewal application. Any application that is received after the one-year period for the same license that expired under this section is deemed a new application.

F. On the written request of a person who is licensed pursuant to this article, the director may accept the voluntary surrender of the person's authority to transact one or more lines of insurance or of the person's entire license. A person who surrenders an authority or a license under this subsection may obtain the same authority or license only if the person complies with the requirements that apply to a person who has not previously held the authority or license. .

20-295. License denial, suspension or revocation; civil penalty

A. The director may deny, suspend for not more than twelve months, revoke or refuse to renew an insurance producer's license or may impose a civil penalty in accordance with subsection F of this section or any combination of actions for any one or more of the following causes:

1. Providing incorrect, misleading, incomplete or materially untrue information in the license application.
2. Violating any provision of this title or any rule, subpoena or order of the director.
3. Obtaining or attempting to obtain a license through misrepresentation or fraud.
4. Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business.
5. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
6. Having been convicted of a felony.
7. Having admitted or been found to have committed any insurance unfair trade practice or fraud.
8. Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.
9. Having an insurance producer license, or its equivalent, denied, suspended or revoked in any state, province, district or territory.
10. Forging another's name to any document related to an insurance transaction.
11. Aiding or assisting any person in the unauthorized transaction of insurance business.
12. Violating section 41-624, subsection B or C.
13. Violating section 6-1410, 6-1412 or 6-1413.

14. Using the insurance producer's license principally to procure insurance that covers the life, property or insurable interests, other than to insure an interest in property that is being sold under a contract or that is securing a loan, of any of the following:

- (a) The licensee.
- (b) The licensee's family or relatives to the second degree.
- (c) The licensee's employer.
- (d) The licensee's employees.
- (e) A firm or corporation, or its employees, in which the licensee owns a substantial interest.

B. The director may deny, suspend for not more than twelve months, revoke or refuse to renew the license of a business entity:

- 1. For any of the causes prescribed in subsection A of this section if the cause relates to the designated producer or any member, officer, director or manager of the business entity.
- 2. If the director finds that an individual insurance producer's violation was known or should have been known by the designated producer or one or more of the members, officers, directors or managers acting on behalf of the business entity and the violation was not seasonably reported to the director and no reasonable corrective action was taken.

C. If the director denies an application for a license, the director shall notify the applicant in accordance with title 41, chapter 6, article 10.

D. The director may revoke, suspend or refuse to renew a license after notice and an opportunity for a hearing in accordance with title 41, chapter 6, article 10.

E. Any hearing required by this section shall be conducted as prescribed in chapter 1, article 2 of this title and title 41, chapter 6, article 10.

F. In addition to or instead of any suspension, revocation or refusal to renew a license pursuant to this section, after a hearing the director may:

- 1. Impose a civil penalty of not more than two hundred fifty dollars for each unintentional failure or violation, up to an aggregate civil penalty of two thousand five hundred dollars.
- 2. Impose a civil penalty of not more than two thousand five hundred dollars for each intentional failure or violation, up to an aggregate civil penalty of fifteen thousand dollars.
- 3. Order the licensee to provide restitution to any party injured by the licensee's action.

G. The licensee shall pay any civil penalty to the director who shall deposit it, pursuant to sections 35-146 and 35-147, in the state general fund. The civil penalty is in addition to any other applicable penalty or restraint either in this article or in any other law and may be recovered in a civil action brought by the director. For the purposes of subsection F of this section, a single publication, exhibition or utterance of

any matter in violation of this title is deemed one violation or failure, including an edition of a newspaper, book or magazine, a single representation to an audience, a single broadcast over radio or television or a single exhibition of a motion picture.

H. The director shall retain the authority to enforce this title and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title even if the person's license has been surrendered or has lapsed by operation of law.

20-296. Effect of suspension or revocation of license

A. The director shall not again issue any license under this title to any person whose license has been revoked until one year after the revocation and the person again qualifies in accordance with the applicable provisions of this title.

B. If the license of a business entity is suspended or revoked, a member, officer or director of or designated producer for the business entity shall not be issued a license or serve as the designated producer for any licensee during the period of the suspension or revocation unless the director determines that the member, officer, director or designated producer was not personally at fault and did not acquiesce in the matter that resulted in the suspension or revocation of the license.

20-297. Assumed business name; trade name

A. An insurance producer doing business under any name other than the producer's legal name shall notify the director on a form prescribed by the director before using the assumed name.

B. The director may deny the use of an assumed business name, require the use of a different assumed business name or require the use of an assumed business name if an insurance producer uses or proposes to use an assumed business name that either:

1. Is so similar to the legal name or name already assumed under this section by any other licensed insurance producer so as to cause uncertainty or confusion.

2. Tends to deceive or mislead the public as to the nature of the business that is or will be conducted.

C. An insurance producer shall notify the director in writing within thirty days after any material change to the information filed with the director under this section.

D. The director shall not issue any license in a trade name except to a business entity and on proof satisfactory to the director that the trade name has been lawfully registered.

20-298. Commissions

A. An insurer or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

B. A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

C. Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this article at the time of the sale, solicitation or negotiation and was so licensed at that time.

D. An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate section 20-451.

E. This section does not affect payment of the regular salaries due to a licensee's employees or the distribution in the regular course of business of compensation and profits among a business entity's members or other owners.

20-301. Report of actions

A. Within thirty days after the final disposition of the matter, an insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state. The report shall include a copy of the order, consent to order or other relevant dispositive document.

B. Within thirty days after the filing date of a criminal conviction in any jurisdiction, an insurance producer who has been convicted shall report the conviction to the director. The report shall include a copy of the initial indictment, information or complaint filed, the final judgment entered by the court and all other relevant legal documents.

Unfair Practices & Frauds - General Prohibitions

20-443. Misrepresentations and false advertising of policies; false disclosure of compensation

A. A person shall not make, issue or circulate, or cause to be made, issued or circulated, any estimate, illustration, circular, sales material or statement:

1. Misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised or the dividends or share of the surplus to be received.
 2. Making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies.
 3. Making any misleading representation or any misrepresentation as to the financial condition of any insurer or as to the legal reserve system upon which any life insurer operates.
 4. Using any name or title of any policy or class of policies misrepresenting the true nature of the policy.
 5. Making any misrepresentation to any policyholder for the purpose of inducing or tending to induce the policyholder to lapse, forfeit, surrender, retain or convert any insurance policy.
 6. Referring to the coverage or any of the provisions of chapter 3, article 6 or 7 of this title in connection with the sale or attempted sale of any policy of insurance, except in connection with the notice prescribed in section 20-400.10, subsection E, section 20-410, subsection B and section 20-422, subsection C.
- B. An insurance producer, consultant or third party administrator shall not falsely disclose the method or amount of compensation associated with a health benefits plan as defined in section 20-2301.
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20-443.01. Misrepresentation in sale of insurance; violation; classification

- A. It is unlawful for a person to knowingly make any misrepresentation as proscribed by section 20-443 in the sale of insurance.
- B. A person who violates this section is guilty of a class 5 felony.
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20-444. False or deceptive advertising of insurance or status as insurer

A. No person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement, sales material or statement containing any assertion, representation or statement with respect to the business of insurance

or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

B. No person that is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer.

20-445. Defamation

No person shall make, publish, disseminate or circulate, directly or indirectly, or aid, abet or encourage the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article, sales material or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance, or any domestic corporation or group being formed pursuant to this code for the purpose of becoming an insurer. This provision shall not be deemed to restrict the right, lawfully exercised, of newspapers, magazines, radio and television stations, and similar public media for news dissemination, objectively to publish and disseminate news.

20-446. Acts tending to result in unreasonable restraint or monopoly of insurance business

No person shall enter into any agreement to commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

20-447. False financial statements or records

A. No person shall file with any public official, or make, publish, disseminate, circulate or deliver to any person, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or delivered to any person, or placed before the public, any false statement of the financial condition of an insurer with intent to deceive.

B. No person shall make any false entry in any book, report or statement of any insurer or other person required to have records under this title, with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer or person is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omit to make a true entry of any material fact pertaining to the business of the insurer or person in any book, report or statement thereof.

20-448. Unfair discrimination; definitions

A. A person shall not make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable or in any other of the terms and conditions of the contract.

B. A person shall not make or permit any unfair discrimination respecting hemophiliacs or between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of disability insurance or in the benefits payable or in any of the terms or conditions of the contract, or in any other manner whatever. The provisions of this subsection regarding hemophiliacs do not apply to any policy or subscription contract that provides only benefits for specific diseases or for accidental injuries or that provides only indemnity for blood transfusion services or replacement of whole blood products, fractions or derivatives.

C. As to kinds of insurance other than life and disability, a person shall not make or permit any unfair discrimination in favor of particular persons or between insureds or subjects of insurance having substantially like insuring, risk and exposure factors, or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged.

D. An insurer shall not refuse to consider an application for life or disability insurance on the basis of a genetic condition, developmental delay or developmental disability.

E. The rejection of an application or the determining of rates, terms or conditions of a life or disability insurance contract on the basis of a genetic condition, developmental delay or developmental disability constitutes unfair discrimination, unless the applicant's medical condition and history and either claims experience or actuarial projections establish that substantial differences in claims are likely to result from the genetic condition, developmental delay or developmental disability.

F. In addition to the provisions in subsection E of this section, the rejection of an application or the determination of rates, terms or conditions of a disability insurance contract on the basis of a genetic condition constitutes unfair discrimination in the absence of a diagnosis of the condition related to information obtained as a result of a genetic test.

G. An insurer that offers life, disability or long-term care insurance contracts may not unfairly discriminate against a living organ donor in the offering, issuance, price or conditions of an insurance policy based solely, and without additional actuarial risks, on that person's status as a living organ donor.

H. An insurer that offers life, disability, property or liability insurance contracts shall not deny a claim incurred or deny, refuse, refuse to renew, restrict, cancel, exclude or limit coverage or charge a different rate for the same coverage solely on the basis that the insured or proposed insured is or has been a victim of domestic violence or is an entity or individual that provides counseling, shelter, protection or other services to victims of domestic violence. If an insurer that offers life, disability, property or liability insurance contracts denies a claim incurred or denies, refuses, refuses to renew, restricts, cancels, excludes or limits coverage or charges a different rate for the same coverage on the basis of a mental or physical condition and the insured or the proposed insured is or has been a victim of domestic violence, the insurer shall submit a written explanation to the insured or proposed insured of the reasons for the insurer's actions, in accordance with section 20-2110. The fact that an insured or proposed insured is or has been the victim of domestic violence is not a mental or physical condition. This subsection is not

intended to provide any private right or cause of action to or on behalf of any applicant or insured. It is the specific intent of this subsection to provide solely an administrative remedy to the director for any violation of this section. This subsection does not prevent an insurer from refusing to issue a life insurance policy insuring a person who has been the victim of domestic violence if either of the following is true:

1. The family or household member who commits the act of domestic violence is the applicant for or prospective owner of the policy or would be the beneficiary of the policy and any of the following is true:

(a) The applicant or prospective beneficiary of the policy is known, on the basis of police or court records, to have committed an act of domestic violence.

(b) The insurer has knowledge of an arrest or conviction for a domestic violence related offense by the family or household member.

(c) The insurance company has other reasonable grounds to believe, and those grounds are corroborated, that the applicant or proposed beneficiary of a policy is a family or household member committing acts of domestic violence.

2. The applicant or prospective owner of the policy lacks an insurable interest in the insured.

I. Subsection H of this section does not prevent an insurer that:

1. Offers life or disability insurance contracts from underwriting coverage on the basis of an insured's or proposed insured's mental or physical condition if the underwriting:

(a) Does not consider whether or not the mental or physical condition was caused by an act of domestic violence.

(b) Is the same for an insured or proposed insured who is not the victim of domestic violence as it is for an insured or proposed insured who is the victim of domestic violence.

(c) Does not violate any other rule or law.

2. Offers property or liability insurance contracts from underwriting coverage on the basis of the insured's claims history or characteristics of the insured's property and using rating criteria consistent with section 20-384.

J. Any determination made pursuant to section 20-2537 by the external independent review organization shall not be considered in connection with the evaluation of whether any person subject to this article has complied with this section.

K. A property or liability insurer may exclude coverage for losses caused by an insured's intentional or fraudulent act. The exclusion shall not deny an insured's otherwise covered property loss if the property loss is caused by an act of domestic violence by another insured under the policy and the insured who claims the property loss cooperates in any investigation relating to the loss and did not cooperate in or contribute to the creation of the property loss. The insurer may apply reasonable standards of proof for claims filed under this subsection. The insurer may limit the payment to the insured's insurable interest in the property minus any payment made to any mortgagee or other party with a secured interest in the

property. This subsection does not require an insurer to pay any amount that is more than the amount of the loss or property coverage limits. An insurer who pays a claim under this subsection has the right of subrogation against any person except the victim of the domestic violence.

L. All insurers shall adopt and adhere to written policies that are consistent with chapter 11 of this title and that specify the procedures to be followed by employees, contractors, producers, agents and brokers to ensure the privacy of and to help protect the safety of a victim of domestic violence when taking an application, investigating a claim, pursuing subrogation or taking any other action relating to a policy or claim involving a victim of domestic violence. Insurers shall distribute the written policies to employees, contractors, producers, agents and brokers who have access to personal or privileged information regarding domestic violence.

M. For the purposes of this section:

1. "Developmental delay" means a delay of at least one and one-half standard deviations from the norm.
2. "Developmental disability" has the same meaning prescribed in section 36-551.
3. "Domestic violence" means any act that is a dangerous crime against children as defined in section 13-705 or an offense defined in section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923 or 13-3623, if any of the following applies:
 - (a) The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.
 - (b) The victim and the defendant have a child in common.
 - (c) The victim or the defendant is pregnant by the other party.
 - (d) The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister, or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
 - (e) The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or has resided in the same household as the defendant.
4. "Gene products" means gene fragments, nucleic acids or proteins derived from deoxyribonucleic acids that would be a reflection of or indicate DNA sequence information.
5. "Genetic condition" means a specific chromosomal or single-gene genetic condition.
6. "Genetic test" means an analysis of an individual's DNA, gene products or chromosomes that indicates a propensity for or susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrates genetic or chromosomal damage due to environmental factors, or carrier status for a disease or disorder.
7. "Living organ donor" means a living person who donates an organ to another living person.

20-451. Rebates on other than life or disability insurance; definitions

A. Except as allowed in subsection B of this section, an insurer or employee, insurance producer or representative may not knowingly charge, demand or receive a premium for any policy of insurance, other than life or disability insurance, except in accordance with any applicable filing on file with the director. An insurer, employee, insurance producer or representative may not offer, pay, allow or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in an applicable filing. An insured named in a policy of insurance or any representative or employee of the insured may not knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to duly licensed insurance producers or prohibit any insurer from allowing or returning to its participating policyholders, members or subscribers dividends, savings or unabsorbed premium deposits.

B. An insurer, its employees, insurance producers and representatives may offer or provide products or services that are ancillary or related to any policy of insurance, other than life or disability insurance, that are intended to minimize or prevent claims-related losses or expenses or harm to the public, including fire or smoke detectors, risk audits or assessments and products or services to deter injury, death or property theft or damage. The products and services that may be offered or provided in this subsection are exempt from the prohibitions set forth in subsection A of this section.

C. This section does not prohibit an insurer from retaining an independent third party to conduct a customer feedback effort intended to help the insurer improve the quality of its products or services and to offer an insured business or individual a reasonable incentive to participate in the feedback effort. An incentive is presumed reasonable if it does not exceed \$200. An insurer may not offer, reference or promote an incentive or feedback effort under this section in connection with an application for or renewal of insurance coverage.

D. For the purposes of this section:

1. "Feedback effort" means activities that are designed to elicit customer perceptions on a predetermined set of topics that are related to the insurer's products or services, including in-person, telephonic or online surveys, polls, focus groups, interviews, questionnaires and other recognized opinion-gathering mechanisms.
 2. "Insurance" includes suretyship.
 3. "Policy" includes bond.
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20-452. Prohibited inducements

A. Except as allowed in subsection B of this section and sections 20-453 and 20-454, any insurer, insurance producer or other person, as an inducement to insurance or in connection with any insurance transaction, shall not provide in any policy for or offer, sell, buy or offer or promise to buy, sell, give, promise or allow to the insured or prospective insured or to any other person on behalf of the insured or prospective insured in any manner:

1. Any employment.
2. Any shares of stock or other securities issued or at any time to be issued or any interest therein or rights thereto.
3. Any advisory board contract, or any similar contract, agreement or understanding, offering, providing for or promising any special profits.
4. Any prizes, goods, wares, merchandise or tangible property of an aggregate value of more than \$100. This paragraph does not prohibit an insurer from retaining an independent third party to conduct a customer feedback effort intended to help the insurer improve the quality of its products or services and to offer an insured business or individual a reasonable incentive to participate in the feedback effort. An incentive is presumed reasonable if it does not exceed \$200. An insurer may not offer, reference or promote an incentive or feedback effort under this paragraph in connection with an application for or renewal of insurance coverage. For the purposes of this paragraph, "feedback effort" means activities that are designed to elicit customer perceptions on a predetermined set of topics that are related to the insurer's products or services, including in-person, telephonic or online surveys, polls, focus groups, interviews, questionnaires and other recognized opinion-gathering mechanisms.

B. An insurer, insurance producer or other person may offer or provide products or services that are ancillary or related to any insurance coverage and that are intended to minimize or prevent claims-related losses or expenses or harm to the public, including fire or smoke detectors, risk audits or assessments and products or services to deter injury, death or property theft or damage. The products and services that may be offered or provided in this subsection are exempt from the prohibitions set forth in subsection A of this section.

20-461. Unfair claim settlement practices

A. A person shall not commit or perform with such a frequency to indicate as a general business practice any of the following:

1. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue.
2. Failing to acknowledge and act reasonably and promptly upon communications with respect to claims arising under an insurance policy.
3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under an insurance policy.

4. Refusing to pay claims without conducting a reasonable investigation based upon all available information.
5. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.
6. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.
7. As a property or casualty insurer, failing to recognize a valid assignment of a claim. The property or casualty insurer shall have the rights consistent with the provisions of its insurance policy to receive notice of loss or claim and to all defenses it may have to the loss or claim, but not otherwise to restrict an assignment of a loss or claim after a loss has occurred.
8. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds.
9. Attempting to settle a claim for less than the amount to which a reasonable person would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.
10. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured.
11. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made.
12. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.
13. Delaying the investigation or payment of claims by requiring an insured, a claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.
14. Failing to promptly settle claims if liability has become reasonably clear under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.
15. Failing to promptly provide a reasonable explanation of the basis in the insurance policy relative to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.
16. Attempting to settle claims for the replacement of any nonmechanical sheet metal or plastic part which generally constitutes the exterior of a motor vehicle, including inner and outer panels, with an aftermarket crash part which is not made by or for the manufacturer of an insured's motor vehicle unless the part meets the specifications of section 44-1292 and unless the consumer is advised in a written notice attached to or printed on a repair estimate which:
 - (a) Clearly identifies each part.

(b) Contains the following information in ten point or larger type:

This estimate has been prepared based on the use of replacement parts supplied by a source other than the manufacturer of your motor vehicle. Warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle.

17. As an insurer subject to section 20-826, 20-1342, 20-1402 or 20-1404, or as an insurer of the same type as those subject to section 20-826, 20-1342, 20-1402 or 20-1404 that issues policies, contracts, plans, coverages or evidences of coverage for delivery in this state, failing to pay charges for reasonable and necessary services provided by any physician licensed pursuant to title 32, chapter 8, 13 or 17, if the services are within the lawful scope of practice of the physician and the insurance coverage includes diagnosis and treatment of the condition or complaint, regardless of the nomenclature used to describe the condition, complaint or service.

18. Failing to comply with chapter 15 of this title.

19. Denying liability for a claim under a motor vehicle liability policy in effect at the time of an accident without having substantial facts based on reasonable investigation to justify the denial for damages or injuries that are a result of the accident and that were caused by the insured if the denial is based solely on a medical condition that could affect the insured's driving ability.

B. Nothing in subsection A, paragraph 17 of this section shall be construed to prohibit the application of deductibles, coinsurance, preferred provider organization requirements, cost containment measures or quality assurance measures if they are equally applied to all types of physicians referred to in this section, and if any limitation or condition placed upon payment to or upon services, diagnosis or treatment by any physician covered by this section is equally applied to all physicians referred to in subsection A, paragraph 16 of this section, without discrimination to the usual and customary procedures of any type of physician. A determination under this section of discrimination to the usual and customary procedures of any type of physician shall not be based on whether an insurer applies medical necessity review to a particular type of service or treatment.

C. In prescribing rules to implement this section, the director shall follow, to the extent appropriate, the national association of insurance commissioners unfair claims settlement practices model regulation.

D. Nothing contained in this section is intended to provide any private right or cause of action to or on behalf of any insured or uninsured resident or nonresident of this state. It is, however, the specific intent of this section to provide solely an administrative remedy to the director for any violation of this section or rule related to this section.

E. The director shall deposit, pursuant to sections 35-146 and 35-147, all civil penalties collected pursuant to this article in the state general fund.