

REFERENCE TITLE: health insurance; purchase outside state

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2776

Introduced by
Representatives Crump: Adams

AN ACT

AMENDING SECTIONS 20-115, 20-206, 20-215, 20-217, 20-220, 20-230 AND
20-401.01, ARIZONA REVISED STATUTES; RELATING TO PURCHASE OF HEALTH OR
SICKNESS INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 20-115, Arizona Revised Statutes, is amended to
3 read:

4 20-115. Department jurisdiction over certain health care
5 providers; exception; examination; disclosure

6 A. Any person or other entity, including a provider sponsored
7 organization that operates under the Medicare-plus-choice program established
8 under the balanced budget act of 1997 (42 United States Code sections
9 1395w-21 through 1395w-28 and title XVIII, part C of the social security act,
10 sections 1851 through 1859), that provides coverage in this state for
11 medical, surgical, chiropractic, naturopathic medicine, occupational
12 therapy, physical therapy, speech pathology, audiology, professional mental
13 health, dental, hospital or optometric expenses, whether the coverage is by
14 direct payment, reimbursement or otherwise, is presumed to be subject to the
15 jurisdiction of the department unless the person or other entity shows that
16 while providing coverage it is subject to the jurisdiction of another agency
17 of this state, any political subdivision of this or any other state or the
18 federal government OR, IN THE CASE OF INSURERS OF THE SAME TYPE AS THOSE
19 SUBJECT TO SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUES
20 POLICIES, CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE, THAT ARE
21 DOMICILED OUTSIDE OF THIS STATE AND THAT TRANSACT HEALTH OR SICKNESS
22 INSURANCE IN THIS STATE, IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR
23 THAT WHILE PROVIDING HEALTH OR SICKNESS INSURANCE THE INSURER IS SUBJECT TO
24 THE JURISDICTION OF ANOTHER STATE'S INSURANCE DEPARTMENT.

25 B. A person or entity that provides coverage for services identified
26 in subsection A may show that it is subject to the jurisdiction of another
27 agency of this state, any political subdivision of this or any other state or
28 the federal government by providing to the director the appropriate
29 certificate, license or other document that is issued by the other
30 governmental agency and that permits or qualifies it to provide those
31 services.

32 C. Any person or entity that provides coverage in this state for
33 services described in subsection A and THAT is unable to show it is subject
34 to the jurisdiction of another agency of this state, any political
35 subdivision of this or any other state or the federal government:

36 1. Shall submit to an examination by the director to determine the
37 organization and solvency of the person or the entity and to determine
38 whether or not the person or entity is in compliance with the applicable
39 provisions of this title.

40 2. Is subject to all appropriate provisions of this title regarding
41 the conduct of its business.

42 D. Any production agency or administrator which advertises, sells,
43 transacts or administers coverage in this state for services described in
44 subsection A which is provided by any person or entity described in
45 subsection C, if that coverage is not fully insured or otherwise fully

1 covered by an admitted life or disability insurer, nonprofit hospital service
2 plan or nonprofit health care plan, shall advise any purchaser, prospective
3 purchaser or covered person of the lack of insurance or other coverage.

4 E. Any administrator which advertises or administers coverage in this
5 state for services described in subsection A which is provided by any person
6 or entity described in subsection C shall advise any production agency of the
7 elements of the coverage including the amount of stop-loss insurance in
8 effect.

9 F. This section does not apply to or prohibit a self-insured program
10 operated by a single employer for the benefit of its employees or the
11 employees of a wholly-owned subsidiary.

12 Sec. 2. Section 20-206, Arizona Revised Statutes, is amended to read:
13 20-206. Authority to transact insurance

14 A. No person shall act as an insurer and no insurer shall transact
15 insurance in this state except as authorized by a subsisting authority
16 granted to it by the director, except as to such transactions as are
17 expressly otherwise provided for in this title. No such authority shall be
18 required for an insurer, formerly so authorized, to enable it to investigate
19 and settle losses under its policies lawfully written in this state, or to
20 liquidate such assets and liabilities of the insurer, other than collection
21 of new premiums, as has resulted from its former authorized operations in
22 this state.

23 B. An insurer not transacting new insurance business in this state but
24 continuing collection of premiums on and servicing of policies remaining in
25 force as to residents of or risks located in this state, is transacting
26 insurance in this state for the purpose of premium tax requirements only and
27 is not required to have a certificate of authority ~~therefor~~. This subsection
28 shall not apply to insurers which have withdrawn from this state ~~prior to~~
29 ~~BEFORE~~ January 1, 1955.

30 C. As to an insurance coverage on a subject of insurance not resident,
31 located, or expressly to be performed in this state at time of issuance, and
32 solicited, written and delivered outside the state, no such authority shall
33 be required of an insurer as to subsequent transactions in this state on
34 account thereof.

35 D. NOTWITHSTANDING THIS SECTION, INSURERS OF THE SAME TYPE AS THOSE
36 SUBJECT TO SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUES
37 POLICIES, CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE AND THAT ARE
38 DOMICILED OUTSIDE OF THIS STATE MAY TRANSACT HEALTH OR SICKNESS INSURANCE IN
39 THIS STATE IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR THAT WHILE
40 PROVIDING HEALTH OR SICKNESS INSURANCE THE INSURER IS SUBJECT TO THE
41 JURISDICTION OF ANOTHER STATE'S INSURANCE DEPARTMENT.

42 Sec. 3. Section 20-215, Arizona Revised Statutes, is amended to read:
43 20-215. Application for certificate of authority

44 A. To apply for an original certificate of authority an insurer shall
45 file with the director its application for a certificate of authority showing

1 its name, location of its home office or principal office in the United
2 States, if an alien insurer, kinds of insurance to be transacted, date of
3 organization or incorporation, form of organization, state or country of
4 domicile and such additional information as the director may reasonably
5 require, together with the following applicable documents:

6 1. If a foreign or alien insurer, a copy of its corporate charter with
7 all amendments to the charter certified by the public officer with whom the
8 originals are on file in the state or country of domicile.

9 2. A copy of its bylaws, as amended, certified by its secretary or
10 other officer having custody of the bylaws.

11 3. A copy of its annual statement as of December 31 last preceding.

12 4. A copy of the report of the last examination, if any, made of the
13 insurer, certified by the insurance supervisory official of its state of
14 domicile or of entry into the United States.

15 5. Appointment of the director as its attorney to receive service of
16 legal process if, as to a foreign or alien insurer, such an appointment is
17 not already on file.

18 6. Appointment of a statutory agent to receive service of legal
19 process, accompanied by his name and address, as to a domestic insurer.

20 7. If a foreign or alien insurer, a certificate of the public official
21 having supervision of insurance in its state or country of domicile showing
22 that it is authorized to transact the kinds of insurance proposed to be
23 transacted in this state.

24 8. If an alien insurer, a copy of the appointment and authority of its
25 United States manager, certified by its officer having custody of its
26 records.

27 9. If a foreign or alien insurer, a certificate as to deposit if to be
28 tendered pursuant to section 20-213.

29 B. NOTWITHSTANDING THIS SECTION, AN INSURER OF THE SAME TYPE AS THOSE
30 SUBJECT TO SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUES
31 POLICIES, CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE AND THAT IS
32 DOMICILED OUTSIDE OF THIS STATE IS NOT REQUIRED TO APPLY FOR A CERTIFICATE OF
33 AUTHORITY IN THIS STATE IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR THAT
34 WHILE PROVIDING HEALTH OR SICKNESS INSURANCE IN THIS STATE THE INSURER IS
35 SUBJECT TO THE JURISDICTION OF ANOTHER STATE'S INSURANCE DEPARTMENT.

36 Sec. 4. Section 20-217, Arizona Revised Statutes, is amended to read:

37 20-217. Certificate of authority; term; termination; delivery
38 on termination or revocation

39 A. The certificate of authority issued by the director to an insurer
40 is evidence of its authority to transact in this state the kind of insurance
41 specified in the certificate, EXCEPT FOR INSURERS OF THE SAME TYPE AS THOSE
42 SUBJECT TO SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUES
43 POLICIES, CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE, THAT ARE
44 DOMICILED OUTSIDE OF THIS STATE AND THAT TRANSACT HEALTH OR SICKNESS
45 INSURANCE IN THIS STATE IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR THAT

1 WHILE PROVIDING HEALTH OR SICKNESS INSURANCE THE INSURER IS SUBJECT TO THE
2 JURISDICTION OF ANOTHER STATE'S INSURANCE DEPARTMENT.

3 B. A certificate of authority remains in effect until terminated at
4 the request of the insurer or suspended or revoked by the director.

5 C. A certificate of authority remains the property of this state. ~~Upon~~
6 ON termination at the request of the insurer or revocation by the director,
7 the insurer shall immediately deliver the certificate of authority to the
8 director.

9 D. The director shall not grant the request of an insurer to terminate
10 its certificate of authority if the insurer has any outstanding obligations
11 under a policy of insurance to policyholders or claimants who are residents
12 of this state. This subsection does not apply if the insurer has deposited
13 with the state treasurer securities acceptable to the director in an amount
14 equal to its liabilities, as computed by the director, including its reserves
15 as required by this title in respect to its business in this state for the
16 sole benefit of its policyholders and creditors who are residents of this
17 state. The state treasurer shall hold and administer the deposits pursuant
18 to chapter 3, article 3 of this title. This subsection does not apply if the
19 insurer has fully reinsured such outstanding obligations with a reinsurer
20 under an agreement filed with and approved in writing by the director
21 pursuant to section 20-261. This subsection does not apply when the
22 termination of the insurer's certificate of authority is the result of a
23 merger or consolidation if the emerging or surviving insurer is or becomes
24 authorized to transact business in this state and assumes such outstanding
25 obligations of the terminating insurer.

26 E. The certificate of authority shall be suspended or revoked if the
27 insurer fails to pay the annual certificate of authority fee denominated a
28 renewal fee in section 20-167 at the time provided in section 20-223.

29 Sec. 5. Section 20-220, Arizona Revised Statutes, is amended to read:
30 20-220. Certificate of authority; refusal to renew; revocation
31 or suspension; civil penalty

32 A. The director ~~may~~ after a hearing MAY refuse to renew or may revoke
33 or suspend an insurer's certificate of authority, in addition to other
34 grounds therefor in this title, if the insurer:

35 1. Violates any provision of this title other than a provision as to
36 which refusal, suspension or revocation is mandatory.

37 2. Knowingly fails to comply with any lawful rule or order of the
38 director.

39 3. Is found by the director to be in unsound condition or in such
40 condition as to render its further transaction of insurance in this state
41 hazardous to its policyholders or to the people of this state.

42 4. Usually compels claimants under its policies to accept less than
43 the amount due them or to bring suit against it to secure full payment
44 thereof.

1 5. Refuses to be examined or to produce its accounts, records and
2 files for examination by the director when required.

3 6. Fails to pay any final judgment rendered against it in this state
4 within thirty days after the judgment becomes final.

5 7. Is affiliated with and under the same general management or
6 interlocking directorate or ownership as another insurer which transacts
7 direct insurance in this state without having a certificate of authority
8 therefor, except as permitted to a surplus lines insurer under article 5 of
9 this chapter.

10 B. If after a hearing the director finds grounds pursuant to
11 subsection A to suspend or revoke an insurer's certificate of authority, the
12 director may impose, in lieu of or in addition to such suspension or
13 revocation, the following civil penalties:

14 1. A penalty not to exceed one thousand dollars for each violation and
15 not to exceed an aggregate of ten thousand dollars within any six-month
16 period with respect to unintentional violations.

17 2. A penalty not to exceed five thousand dollars for each violation
18 and not to exceed an aggregate of fifty thousand dollars within any six-month
19 period with respect to intentional violations. The insurer shall pay the
20 civil penalty to the director who shall deposit it, pursuant to sections
21 35-146 and 35-147, in the state general fund. The civil penalty is in
22 addition to any other penalty imposed by law.

23 C. The director may adopt rules to provide the criteria to be used for
24 identifying insurers who are found to be in a condition that would render the
25 continuance of their business hazardous to their policyholders or the people
26 of this state.

27 D. THIS SECTION DOES NOT APPLY TO INSURERS OF THE SAME TYPE AS THOSE
28 SUBJECT TO SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUES
29 POLICIES, CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE, THAT ARE
30 DOMICILED OUTSIDE OF THIS STATE AND THAT TRANSACT HEALTH OR SICKNESS
31 INSURANCE IN THIS STATE IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR THAT
32 WHILE PROVIDING HEALTH OR SICKNESS INSURANCE THE INSURER IS SUBJECT TO THE
33 JURISDICTION OF ANOTHER STATE'S INSURANCE DEPARTMENT.

34 Sec. 6. Section 20-230, Arizona Revised Statutes, is amended to read:
35 20-230. Retaliation

36 A. When by or pursuant to the laws of any other state or foreign
37 country any premium or income or other taxes, or any fees, fines, penalties,
38 licenses, deposit requirements or other material obligations, prohibitions or
39 restrictions are imposed upon insurers of this state doing business, or that
40 might seek to do business in such other state or country, or upon the agents
41 of such insurers, which in the aggregate are in excess of such taxes, fees,
42 fines, penalties, licenses, deposit requirements or other obligations,
43 prohibitions or restrictions directly imposed upon similar insurers of such
44 other state or foreign country under the statutes of this state, ~~so~~ AS long
45 as such laws continue in force or are so applied, the same obligations,

1 prohibitions and restrictions of whatever kind shall be imposed upon similar
2 insurers of such other state or foreign country doing business in
3 Arizona. Any tax, license or other obligation imposed by any city, county or
4 other political subdivision of a state or foreign country on insurers of this
5 state or their agents shall be deemed to be imposed by such state or foreign
6 country within the meaning of this section. For the purpose of this section,
7 the director shall compute the burden of any tax, license or other obligation
8 imposed by any city, county or other political subdivision of a state or
9 foreign country on insurers of this state or their agents on an aggregate
10 statewide or foreign countrywide basis as an addition to the rate of tax
11 payable by Arizona insurers in such state or foreign country. The addition
12 to the rate of tax payable by Arizona life insurers shall be calculated
13 separately from the addition to the rate of tax payable by other Arizona
14 insurers. In each case, the addition to the rate of tax payable by Arizona
15 insurers shall be calculated by dividing the aggregate of the tax obligations
16 paid by Arizona insurers to any such city, county or other political
17 subdivision of such state or foreign country by the aggregate of their
18 taxable premiums under the premium taxing statute of such state or foreign
19 country. The director may issue rules to carry out the purpose of this
20 section. ~~The provisions of~~ This section ~~shall~~ DOES not apply to ad valorem
21 taxes on real or personal property or to personal income taxes or to
22 assessments on or credits to insurers for the payment of claims of
23 policyholders of insolvent insurers. **THE RETALIATORY TAX IMPOSED BY THIS**
24 **SUBSECTION DOES NOT APPLY TO INSURERS OF THE SAME TYPE AS THOSE SUBJECT TO**
25 **SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUES POLICIES,**
26 **CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE, THAT ARE DOMICILED**
27 **OUTSIDE OF THIS STATE AND THAT TRANSACT HEALTH OR SICKNESS INSURANCE IN THIS**
28 **STATE IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR THAT WHILE PROVIDING**
29 **HEALTH OR SICKNESS INSURANCE THE INSURER IS SUBJECT TO THE JURISDICTION OF**
30 **ANOTHER STATE'S INSURANCE DEPARTMENT.**

31 B. If an insurer domiciled in this state is refused authority to
32 transact **INSURANCE** in another state ~~insurance~~ upon a plan and in a manner
33 which is permitted for domestic insurers of such other state, notwithstanding
34 that the insurer of this state is fully qualified for such authority in
35 accordance with the applicable laws of such other state, and if such refusal
36 is not accompanied by a written statement of the grounds therefor, then and
37 thereafter, and for ~~so~~ **AS** long as such refusal shall continue, the director
38 may refuse to grant an initial certificate of authority, but not a renewal of
39 an existing certificate of authority, to any insurer domiciled in such other
40 state which may seek to transact in this state a like kind or kinds of
41 insurance.

