

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HOUSE BILL 2149

AN ACT

AMENDING SECTION 20-401, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-407.01; AMENDING SECTIONS 20-410, 20-415, 20-416.01 AND 20-661, ARIZONA REVISED STATUTES; RELATING TO SURPLUS LINES INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 20-401, Arizona Revised Statutes, is amended to
3 read:

4 20-401. Definitions

5 In this article, unless the context otherwise requires:

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

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

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

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

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

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

22 5. "DOMESTIC SURPLUS LINES INSURER" MEANS AN INSURER THAT IS DOMICILED
23 IN AND AUTHORIZED TO TRANSACT INSURANCE IN THIS STATE AND THAT HAS RECEIVED
24 APPROVAL FROM THE DEPARTMENT PURSUANT TO SECTION 20-407.01 TO WRITE SURPLUS
25 LINES INSURANCE COVERAGE IN THIS STATE.

26 ~~5-~~ 6. "Foreign decree" means any decree or order in equity of a court
27 located in a reciprocal state, including a court of the United States located
28 therein, obtained by a qualified party against any insurer incorporated or
29 authorized to do business in this state.

30 ~~6-~~ 7. "Home state" means one of the following:

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

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

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

44 ~~7-~~ 8. "Multistate risk" means a risk covered by an unauthorized
45 insurer with insured exposures in more than one state.

1 ~~8.~~ 9. "Qualified party" means a state regulatory agency acting in its
2 capacity to enforce the insurance laws of ~~such~~ THAT state.

3 ~~9.~~ 10. "Reciprocal state" means any state or territory of the United
4 States the laws of which give to insurers organized under the laws of this
5 state the same right to defend actions as that granted to foreign insurers
6 under the laws of this state and the laws of which contain procedures
7 substantially similar to those specified in this article for the enforcement
8 of decrees or orders in equity issued by courts located in other states or
9 territory of the United States against any insurer incorporated or authorized
10 to do business in ~~such~~ THAT state or territory.

11 ~~10.~~ 11. "Single-state risk" means a risk with insured exposures in
12 only one state.

13 ~~11.~~ 12. "Unauthorized insurance", "SURPLUS LINES INSURANCE" or
14 "nonadmitted insurance" means any insurance permitted to be placed directly
15 or through a surplus lines broker with an insurer who is not licensed to
16 transact insurance in this state OR WITH A DOMESTIC SURPLUS LINES INSURER.

17 Sec. 2. Title 20, chapter 2, article 5, Arizona Revised Statutes, is
18 amended by adding section 20-407.01, to read:

19 20-407.01. Designation as a domestic surplus lines insurer;
20 requirements; scope of business activity permitted

21 A. NOTWITHSTANDING ANY OTHER LAW, A DOMESTIC INSURER POSSESSING
22 MINIMUM CAPITAL AND SURPLUS OF AT LEAST FIFTEEN MILLION DOLLARS, PURSUANT TO
23 A RESOLUTION BY ITS BOARD OF DIRECTORS AND ON THE WRITTEN APPROVAL OF THE
24 DIRECTOR, MAY BE DESIGNATED AS A DOMESTIC SURPLUS LINES INSURER. A DOMESTIC
25 SURPLUS LINES INSURER SHALL BE CONSIDERED AN UNAUTHORIZED INSURER FOR
26 PURPOSES OF WRITING SURPLUS LINES INSURANCE COVERAGE PURSUANT TO THE
27 REQUIREMENTS OF THIS ARTICLE.

28 B. A DOMESTIC SURPLUS LINES INSURER SHALL ONLY WRITE SURPLUS LINES
29 INSURANCE IN THIS STATE PROCURED PURSUANT TO THE REQUIREMENTS OF THIS
30 ARTICLE. A DOMESTIC SURPLUS LINES INSURER MAY WRITE SURPLUS LINES INSURANCE
31 IN ANY OTHER JURISDICTION IN WHICH THE INSURER IS ELIGIBLE TO WRITE SURPLUS
32 LINES INSURANCE IF THE DOMESTIC SURPLUS LINES INSURER COMPLIES WITH ANY
33 REQUIREMENTS OF THAT JURISDICTION.

34 C. INSURANCE WRITTEN BY A DOMESTIC SURPLUS LINES INSURER IS SUBJECT TO
35 THE TAX ON PREMIUMS REQUIRED BY SECTION 20-416 AND IS EXEMPT FROM THE TAX ON
36 PREMIUMS REQUIRED BY CHAPTER 2, ARTICLE 1 OF THIS TITLE.

37 D. A DOMESTIC SURPLUS LINES INSURER SHALL BE CONSIDERED A NONADMITTED
38 INSURER AS REFERENCED IN 15 UNITED STATES CODE SECTION 8206 WITH RESPECT TO
39 SURPLUS LINES INSURANCE ISSUED IN THIS STATE.

40 E. SURPLUS LINES INSURANCE POLICIES ISSUED BY A DOMESTIC SURPLUS LINES
41 INSURER IN THIS STATE ARE NOT SUBJECT TO THE PROTECTION OF OR OTHER
42 PROVISIONS OF THE ARIZONA PROPERTY AND CASUALTY INSURANCE GUARANTY FUND
43 ESTABLISHED BY SECTION 20-662.

44 F. SURPLUS LINES INSURANCE POLICIES ISSUED IN THIS STATE BY A DOMESTIC
45 SURPLUS LINES INSURER ARE NOT SUBJECT TO AND ARE EXEMPT FROM ALL STATUTORY

1 REQUIREMENTS RELATING TO INSURANCE RATING AND RATING PLANS, POLICY FORMS,
2 POLICY CANCELLATION AND NONRENEWAL IN THE SAME MANNER AND TO THE SAME EXTENT
3 AS A SURPLUS LINES INSURER DOMICILED IN ANOTHER STATE.

4 Sec. 3. Section 20-410, Arizona Revised Statutes, is amended to read:

5 20-410. Validity of surplus lines insurance; disclosure; policy
6 fees

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

10 B. Any policy and any evidence of surplus lines coverage ~~from~~ THAT IS
11 ISSUED BY an unauthorized insurer pursuant to this article and that is issued
12 for delivery to the insured shall contain a conspicuously stamped or written
13 notice in bold-faced type that states ONE OF THE FOLLOWING:

14 1. IF THE SURPLUS LINES POLICY OR EVIDENCE OF COVERAGE IS ISSUED BY A
15 SURPLUS LINES INSURER THAT IS NOT A DOMESTIC SURPLUS LINES INSURER:

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

24 2. IF THE SURPLUS LINES POLICY OR EVIDENCE OF COVERAGE IS ISSUED BY A
25 DOMESTIC SURPLUS LINES INSURER:

26 IF THE INSURER THAT ISSUED THIS POLICY BECOMES INSOLVENT,
27 INSUREDS OR CLAIMANTS WILL NOT BE ELIGIBLE FOR INSURANCE
28 GUARANTY FUND PROTECTION PURSUANT TO TITLE 20, ARIZONA REVISED
29 STATUTES.

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

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

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

39 Sec. 4. Section 20-415, Arizona Revised Statutes, is amended to read:

40 20-415. Statement of surplus lines insurance business
41 transacted by broker; reporting periods; exception

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

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

7 B. The statement required by subsection A of this section is due on or
8 before February 15 of each year for the preceding July through December and
9 on or before August 15 of each year for the preceding January through June
10 for business covering Arizona single-state risks, except that for multistate
11 transactions occurring on or before December 31, 2014, the statement shall be
12 due on or before the date specified in subsection D of this section.

13 C. If a clearinghouse is established, ~~AND~~ is in operation and if the
14 director enters into a multistate agreement or compact pursuant to section
15 20-416.01, each surplus lines broker shall file quarterly, with the
16 clearinghouse responsible for administering the compact or multistate
17 agreement, a notarized statement of all surplus lines insurance business
18 covering multistate risks transacted by the broker on behalf of insureds
19 whose home state is Arizona during the calendar quarter for which the
20 statement is being filed. The statement shall be on a form prescribed by the
21 clearinghouse and shall include all information required by the
22 clearinghouse. A facsimile of the original notarized statement may be
23 submitted in lieu of the original notarized statement. The broker shall
24 maintain the original notarized statement for a period of six years after the
25 calendar year in which the statement was filed.

26 D. The statement required by subsection C of this section is due on or
27 before February 15 for the quarter ending the preceding December 31, May 15
28 for the quarter ending the preceding March 31, August 15 for the quarter
29 ending the preceding June 30 and November 15 for the quarter ending the
30 preceding September 30.

31 E. A SURPLUS LINES BROKER IS NOT RESPONSIBLE FOR REPORTING ANY FEES OR
32 REMITTING ANY PREMIUM TAXES OR STAMPING FEES DUE ON FEES CHARGED BY AN
33 INSURANCE PRODUCER IN CONNECTION WITH THE TRANSACTION OF SURPLUS LINES
34 INSURANCE.

35 Sec. 5. Section 20-416.01, Arizona Revised Statutes, is amended to
36 read:

37 20-416.01. Collection and payment of tax on surplus lines;
38 multistate agreement

39 A. In accordance with the nonadmitted and reinsurance reform act of
40 2010, the director may enter into a compact or multistate agreement to
41 provide for the reporting, payment, collection and allocation of taxes
42 imposed pursuant to sections 20-401.07 and 20-416 on ~~unauthorized~~ surplus
43 lines insurance covering multistate risks if, after a hearing conducted
44 pursuant to section 20-161, it is determined that entering into a compact or
45 multistate agreement is in the best interests of this state. In determining

1 whether entering into a compact or multistate agreement is in the best
2 interests of this state, the following factors shall be considered:

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

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

14 C. If a clearinghouse is not established or otherwise in operation or
15 if the director does not enter into a multistate agreement or compact
16 pursuant to subsection A of this section, any statements and taxes otherwise
17 payable to a clearinghouse pursuant to this article shall be filed with the
18 director or with a voluntary domestic organization of surplus lines brokers
19 with which the director has contracted to accept reports pursuant to section
20 20-167.

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

24 Sec. 6. Section 20-661, Arizona Revised Statutes, is amended to read:
25 20-661. Definitions

26 In this article, unless the context otherwise requires:

- 27 1. "Account" means any one of the three accounts within the Arizona
28 property and casualty insurance guaranty fund.
- 29 2. "Board" means the guaranty fund board.
- 30 3. "Covered claim" means an unpaid claim, including one for unearned
31 premium, which arises out of and is within the coverage of an insurance
32 policy to which this article applies issued by an insurer, if such insurer
33 becomes an insolvent insurer after August 27, 1977 and the claimant or
34 insured is a resident of this state at the time of the insured event or the
35 property from which the claim arises is permanently located in this state.
36 Covered claim does not include any amount due any reinsurer, insurer,
37 insurance pool or underwriting association as subrogation recoveries or
38 otherwise nor shall it include any obligations of the insolvent insurer
39 arising out of any reinsurance contracts nor shall it include attorney fees
40 or adjustment expenses incurred prior to the determination of insolvency.
- 41 4. "Fund" means the Arizona property and casualty insurance guaranty
42 fund.
- 43 5. "Insolvent insurer" means an insurer that is licensed to transact
44 insurance in this state either at the time the policy was issued or when the
45 insured event occurred and against whom an order of liquidation with a

1 finding of insolvency has been entered after September 19, 2007 by a court of
2 competent jurisdiction in the insurer's state of domicile or by this state
3 pursuant to section 20-623, and the order of liquidation has not been stayed
4 or been the subject of a writ of supersedeas or other comparable order. For
5 purposes of the workers' compensation insurance account, ~~an~~ "insolvent
6 insurer" ~~shall also include~~ INCLUDES any insolvent insurer against which an
7 order of liquidation with a finding of insolvency has been entered on, before
8 or after the effective date of this section.

9 6. "Member insurer" means any person who writes any kind of insurance,
10 unless such writing is restricted solely to life, title, surety, disability,
11 credit, mortgage guaranty ~~or~~, ocean-marine OR SURPLUS LINES insurance,
12 including the exchange of reciprocal or inter-insurance contracts, and is
13 licensed to transact insurance in this state.

14 7. "Net direct written premiums" means direct gross premiums written
15 in this state on insurance policies to which this article applies, less
16 return premiums and dividends paid or credited to policyholders on such
17 direct business. Net direct written premiums do not include premiums on
18 contracts between insurers or reinsurers.