

REFERENCE TITLE: domestic surplus lines insurance; fees

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

# HB 2149

Introduced by  
Representative Fann

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, 20-465 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 ISSUE 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" or "nonadmitted insurance" means any  
14 insurance permitted to be placed directly or through a surplus lines broker  
15 with an insurer who is not licensed to transact insurance in this state.

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

18          20-407.01. Designation as a domestic surplus lines insurer;  
19   requirements; scope of business activity permitted

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

27          B. A DOMESTIC SURPLUS LINES INSURER SHALL ONLY INSURE RISKS IN THIS  
28 STATE PROCURED FROM A SURPLUS LINES BROKER PURSUANT TO THE REQUIREMENTS OF  
29 THIS ARTICLE.

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

33          D. A DOMESTIC SURPLUS LINES INSURER SHALL BE CONSIDERED A NONADMITTED  
34 INSURER AS DEFINED IN 15 UNITED STATES CODE SECTION 8206 WITH RESPECT TO  
35 SURPLUS LINES INSURANCE ISSUED IN THIS STATE.

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

40          F. SURPLUS LINES INSURANCE POLICIES ISSUED IN THIS STATE BY A DOMESTIC  
41 SURPLUS LINES INSURER ARE NOT SUBJECT TO AND ARE EXEMPT FROM ALL STATUTORY  
42 REQUIREMENTS RELATING TO INSURANCE RATING AND RATING PLANS, POLICY FORMS,  
43 POLICY CANCELLATION AND NONRENEWAL IN THE SAME MANNER AND TO THE SAME EXTENT  
44 AS A NONADMITTED INSURER DOMICILED IN ANOTHER STATE.

1           Sec. 3. Section 20-410, Arizona Revised Statutes, is amended to read:  
2           20-410. Validity of surplus lines insurance; disclosure; policy  
3                           fees

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

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

11           1. IF THE SURPLUS LINES POLICY OR EVIDENCE OF COVERAGE IS ISSUED BY A  
12 NONDOMESTIC SURPLUS LINES INSURER:

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

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

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

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

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

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

36           D. AN INSURANCE PRODUCER MAY CHARGE A FEE IN CONNECTION WITH REFERRING  
37 AN INSURED OR POTENTIAL INSURED TO A SURPLUS LINES BROKER FOR THE TRANSACTION  
38 OF SURPLUS LINES INSURANCE IF THE REQUIREMENTS OF SUBSECTION C OF THIS  
39 SECTION ARE MET.

40           Sec. 4. Section 20-465, Arizona Revised Statutes, is amended to read:  
41           20-465. Fees; deposits; exception

42           A. An insurer and insurance producer shall not charge or receive any  
43 fee or service charge in addition to the premium charged for services  
44 customarily provided in the transaction of insurance for motor vehicle  
45 insurance policies that insure six or fewer motor vehicles.

1           B. An insurer and insurance producer may charge and receive a fee for  
2 services not customarily provided in the transaction of insurance if the fee  
3 is filed with the director and the following conditions exist:

4           1. The services performed by the insurer or insurance producer are in  
5 excess of those normally performed for insureds.

6           2. The service charge and the specific services for which the charge  
7 is made are disclosed and agreed to in writing by the insured on a form that  
8 is approved by the director.

9           3. The amount of the service charge is reasonably related to the cost  
10 of the service performed.

11          C. After notice and a hearing, the director shall prescribe the  
12 services that are customarily provided in the transaction of insurance.

13          D. If after an examination and a hearing the director determines that  
14 an insurer or insurance producer has violated subsection A of this section,  
15 the director may order the insurer or insurance producer to refund the fee or  
16 that part of the fee that the director determines was excessive and may  
17 impose civil penalties as set forth in section 20-456. The insurer or  
18 insurance producer shall pay the costs of the examination from monies  
19 deposited with the director pursuant to section 20-159 regardless of the  
20 findings of the examination.

21          E. This section does not prohibit fees, including membership fees  
22 charged by a reciprocal or mutual insurer, if the fees are filed with the  
23 director and are included by an insurer in supplemental rate information.

24          F. This section does not apply to insurers, ~~and~~ insurance producers OR  
25 SURPLUS LINES BROKERS transacting commercial insurance OR SURPLUS LINES  
26 INSURANCE PURSUANT TO ARTICLE 5 OF THIS CHAPTER. For the purposes of this  
27 subsection, "commercial insurance" means insurance that insures against the  
28 risks resulting from the responsibilities or activities of one or more  
29 businesses, including motor vehicle insurance policies insuring seven or more  
30 motor vehicles.

31          Sec. 5. Section 20-661, Arizona Revised Statutes, is amended to read:

32          20-661. Definitions

33          In this article, unless the context otherwise requires:

34          1. "Account" means any one of the three accounts within the Arizona  
35 property and casualty insurance guaranty fund.

36          2. "Board" means the guaranty fund board.

37          3. "Covered claim" means an unpaid claim, including one for unearned  
38 premium, which arises out of and is within the coverage of an insurance  
39 policy to which this article applies issued by an insurer, if such insurer  
40 becomes an insolvent insurer after August 27, 1977 and the claimant or  
41 insured is a resident of this state at the time of the insured event or the  
42 property from which the claim arises is permanently located in this state.  
43 Covered claim does not include any amount due any reinsurer, insurer,  
44 insurance pool or underwriting association as subrogation recoveries or  
45 otherwise nor shall it include any obligations of the insolvent insurer

1 arising out of any reinsurance contracts nor shall it include attorney fees  
2 or adjustment expenses incurred prior to the determination of insolvency.

3 4. "Fund" means the Arizona property and casualty insurance guaranty  
4 fund.

5 5. "Insolvent insurer" means an insurer that is licensed to transact  
6 insurance in this state either at the time the policy was issued or when the  
7 insured event occurred and against whom an order of liquidation with a  
8 finding of insolvency has been entered after September 19, 2007 by a court of  
9 competent jurisdiction in the insurer's state of domicile or by this state  
10 pursuant to section 20-623, and the order of liquidation has not been stayed  
11 or been the subject of a writ of supersedeas or other comparable order. For  
12 purposes of the workers' compensation insurance account, ~~an~~ "insolvent  
13 insurer" ~~shall also include~~ INCLUDES any insolvent insurer against which an  
14 order of liquidation with a finding of insolvency has been entered on, before  
15 or after the effective date of this section.

16 6. "Member insurer" means any person who writes any kind of insurance,  
17 unless such writing is restricted solely to life, title, surety, disability,  
18 credit, mortgage guaranty or ocean-marine insurance, including the exchange  
19 of reciprocal or inter-insurance contracts, and is licensed to transact  
20 insurance in this state.

21 7. "Net direct written premiums" means direct gross premiums written  
22 in this state on insurance policies to which this article applies, less  
23 return premiums and dividends paid or credited to policyholders on such  
24 direct business. Net direct written premiums do not include premiums on  
25 contracts between insurers or reinsurers OR PREMIUMS FOR SURPLUS LINES  
26 INSURANCE COVERAGE ISSUED IN THIS STATE BY A DOMESTIC SURPLUS LINES INSURER  
27 PURSUANT TO CHAPTER 2, ARTICLE 5 OF THIS TITLE.