

TITLE 41
INSURANCE

CHAPTER 12
UNAUTHORIZED INSURERS AND SURPLUS LINES

41-1201. REPRESENTING OR AIDING UNAUTHORIZED INSURER PROHIBITED. (1) No person shall in this state directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state, in the solicitation, negotiation, procurement or effectuation of insurance or annuity contracts, or renewal thereof, or forwarding of applications for insurance, or in the dissemination of information as to coverage or rates, or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state.

(2) This section does not apply to:

(a) Matters authorized to be done by the director under the unauthorized insurers process act, sections [41-1204](#) through [41-1210](#)[, Idaho Code].

(b) Surplus line insurance when written pursuant to the surplus line law, sections [41-1211](#) through [41-1232](#), [Idaho Code,] and coverages specified in section [41-1212](#)[, Idaho Code,] (exemptions from surplus line law).

(c) Any transaction with respect to which the insurer is not required to have a certificate of authority pursuant to section [41-306](#)[, Idaho Code,] (exceptions to certificate of authority requirement).

(d) A licensed adjuster or attorney at law representing such an insurer from time to time in his professional capacity.

[41-1201, added 1961, ch. 330, sec. 245, p. 645.]

41-1202. REPRESENTING OR AIDING UNAUTHORIZED INSURER PROHIBITED -- PENALTY. Any person who violates section [41-1201](#)[, Idaho Code,] shall upon conviction thereof be guilty of a misdemeanor punishable by a fine of not to exceed two thousand dollars (\$2,000) or by imprisonment in the county jail for not to exceed six (6) months, or by both such fine and imprisonment in the court's discretion; except, that the court shall increase the amount of any fine so levied by the full amount of any compensation accruing or to accrue to the violator by reason of the acts out of which the violation arose. Each instance of violation shall be considered a separate offense for the purposes of this section.

[41-1202, added 1961, ch. 330, sec. 246, p. 645.]

41-1203. SUITS BY UNAUTHORIZED INSURER PROHIBITED. (1) No unauthorized insurer shall institute or file, or cause to be instituted or filed, any suit, action or proceeding in this state to enforce any right, claim or demand arising out of any insurance transaction in this state.

(2) This section does not apply as to:

(a) Transactions permitted under section [41-306](#)[, Idaho Code,] (exceptions to certificate of authority requirement).

(b) Coverages exempted from the surplus line law under section [41-1212](#) [, Idaho Code].

(c) Counter claim, cross complaint, or similar action by an insurer in connection with a suit brought against the insurer in which service of process on the insurer was made under the unauthorized insurers process act, sections [41-1204](#) through [41-1210](#) [, Idaho Code].

[41-1203, added 1961, ch. 330, sec. 247, p. 645.]

41-1204. UNAUTHORIZED INSURERS PROCESS ACT -- TITLE -- INTERPRETATION. (1) Sections [41-1204](#) through [41-1210](#) [, Idaho Code,] constitute and may be cited as the Unauthorized Insurers Process Act.

(2) Such act shall be so interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

[41-1204, added 1961, ch. 330, sec. 248, p. 645.]

41-1205. PURPOSE OF PROCESS ACT. The purpose of the unauthorized insurers process act is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts.

The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this statute, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, chapter 20, 1st session, S. 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

[41-1205, added 1961, ch. 330, sec. 249, p. 645.]

41-1206. ACTS CONSTITUTING DIRECTOR AS PROCESS AGENT. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer, is equivalent to and shall constitute an appointment by such insurer of the director to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer:

(1) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein.

(2) The solicitation of applications for such contracts.

(3) The collection of premiums, membership fees, assessments, or other consideration for such contract, or

(4) Any other transaction of insurance business.

[41-1206, added 1961, ch. 330, sec. 250, p. 645.]

41-1207. HOW PROCESS IS SERVED -- DEFAULT JUDGMENT. (1) Such service of process shall be made as provided for in section [41-334](#)(1), [Idaho Code,] and:

(a) The director shall forthwith mail by registered mail one (1) of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all processes so served upon him.

(b) Such service of process is sufficient, provided (i) notice thereof and (ii) a copy of the process, are sent to the defendant at its last known principal place of business, by the plaintiff or the plaintiff's attorney, by registered mail within ten (10) days thereafter, and provided that on or before the date the defendant is required to appear, or within such further time as the court may allow, there shall be filed with the clerk of the court in which such action is pending (i) the defendant's receipt of registration, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and (ii) the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith.

(2) Service of process in any such action, suit or proceeding shall, in addition to the manner provided in subsection (1) of this section, be valid if served upon any person within this state who, on behalf of such insurer, is:

(a) Soliciting insurance, or

(b) Making, issuing or delivering any contract of insurance, or

(c) Collecting or receiving any premium, membership fee, assessment or other consideration for insurance; and a copy of such process is sent to the defendant in the same manner as set forth in subsection (1) (b) herein.

(3) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.

(4) Nothing contained in this section shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

[41-1207, added 1961, ch. 330, sec. 251, p. 645.]

41-1208. DEFENSE OF ACTION BY UNAUTHORIZED INSURER. (1) Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall:

(a) Deposit with the clerk of the court in which such action, suit or proceeding is pending, cash or securities, or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount determined by the court to be sufficient to secure the payment of any final judgment which may be rendered in such action, provided, however, that the court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to such court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action, suit or proceeding, and that such insurer will pay any final judgment rendered

without requiring suit to be brought on such judgment in the state where such securities are located, or

(b) Procure a certificate of authority to transact the business of insurance in this state.

(2) In any action, suit or proceeding in which service is made in the manner provided in section [41-1207](#), [Idaho Code,] the court may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) of this section and to defend such action.

(3) Nothing in subsection (1) of this section is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion, in accordance with the applicable rules of civil procedure, to quash a writ or to set aside service thereof made in the manner provided in section [41-1207](#), [Idaho Code,] hereof on the ground either:

(a) That such unauthorized insurer has not done any of the acts enumerated in section [41-1206](#), [Idaho Code,] or

(b) That the person on whom service was made pursuant to subsection (2) of section [41-1207](#)[, Idaho Code,] was not doing any of the acts therein enumerated.

[41-1208, added 1961, ch. 330, sec. 252, p. 645.]

41-1209. UNAUTHORIZED INSURER FAILING TO PAY CLAIM -- ATTORNEY FEES. In any action against an unauthorized foreign or alien insurer, upon a contract of insurance issued or delivered in this state to a resident thereof, or to a corporation authorized to do business therein, if the insurer has failed for thirty (30) days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half per cent (12 1/2%) of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars (\$25.00). 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.

[41-1209, added 1961, ch. 330, sec. 253, p. 645.]

41-1210. EXEMPTIONS FROM PROCESS ACT. The provisions of this unauthorized insurers process act shall not apply to any action, suit or proceeding against any unauthorized foreign or alien insurer arising out of any contract of:

(1) Reinsurance, ocean marine, aircraft or railway insurance;

(2) Insurance effectuated in accordance with the surplus line law or any amendments or supplements thereto;

(3) Insurance against legal liability arising out of the ownership, operation or maintenance of any property having a permanent situs outside this state; or

(4) Insurance against loss of or damage to any property having a permanent situs outside this state;

Where such contract of insurance contains a provision designating the director or a bona fide resident of Idaho to be the true and lawful attorney of such unauthorized insurer upon whom may be served all lawful process in

any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of such contract or where the insurer enters a general appearance in any such suit, action or proceeding.

[41-1210, added 1961, ch. 330, sec. 254, p. 645.]

41-1211. SURPLUS LINE LAW -- SHORT TITLE -- PURPOSE. (1) Sections [41-1211](#) through [41-1234](#), Idaho Code, constitute and may be cited as the "surplus line law."

(2) It is declared that the purposes of the surplus line law are to provide orderly access for the insuring public of Idaho to insurers not authorized to transact insurance in this state, through only qualified, licensed, and supervised surplus line brokers licensed in Idaho and under such safeguards for the insured as may be practical, for insurance coverages and to the extent thereof not procurable from authorized insurers; to protect such authorized insurers, which under the laws of Idaho must meet certain standards as to policy forms and rates, from unwarranted competition by unauthorized insurers who, in the absence of this law, would not be subject to similar requirements; and for other purposes as set forth in this law.

[41-1211, added 1961, ch. 330, sec. 255, p. 645; am. 1993, ch. 22, sec. 1, p. 79; am. 2002, ch. 91, sec. 1, p. 228.]

41-1212. EXEMPTIONS FROM SURPLUS LINE LAW. (1) The provisions of this surplus line law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or, except as to subsection (2) below, to the following insurances when so placed by licensed agents or surplus line brokers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in commercial scheduled interstate flight, or cargo of such aircraft, or against liability, other than worker's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this law. The record shall be preserved for not less than five (5) years from the effective date of the insurance and shall be kept available in this state and open to the examination of the director. The broker shall furnish to the director at his request and on forms as designated and furnished by him a report of all such coverages so placed in a designated calendar year.

(3) The following sections apply only when the insured's home state is Idaho:

(a) Section [41-1214](#), Idaho Code (conditions for export);

(b) Section [41-1215](#), Idaho Code (broker's affidavit);

(c) Section [41-1216](#), Idaho Code (open lines for export);

(d) Section [41-1217](#), Idaho Code (eligible surplus lines insurers);

- (e) Section [41-1218](#), Idaho Code (eligible surplus line insurers -- penalty for violation);
- (f) Section [41-1219](#), Idaho Code (evidence of the insurance -- changes -- penalty);
- (g) Section [41-1220](#), Idaho Code (endorsement of contract);
- (h) Section [41-1227](#), Idaho Code (records of broker);
- (i) Section [41-1228](#), Idaho Code (annual report of broker);
- (j) Section [41-1229](#), Idaho Code (tax on surplus lines);
- (k) Section [41-1233](#), Idaho Code (report and tax of independently procured coverages);
- (l) Section [41-1234](#), Idaho Code (records of insureds).

[41-1212, added 1961, ch. 330, sec. 256, p. 645; am. 1972, ch. 369, sec. 8, p. 1072; am. 2011, ch. 183, sec. 1, p. 517.]

41-1213. DEFINITIONS. As used in this chapter and any applicable rules, the following definitions shall apply:

- (1) "Affiliated" means, with respect to an insured, any entity that controls, is controlled by or is under common control with the insured.
- (2) "Affiliated group" means any group of entities that are all affiliated.
- (3) "Broker" means a surplus line broker duly licensed as such under this chapter, including resident surplus line brokers and nonresident surplus line brokers.
- (4) "Control" means:
 - (a) An entity directly or indirectly, or acting through one (1) or more other persons, owns or controls another entity or has the power to vote twenty-five percent (25%) or more of any class of voting securities of another entity; or
 - (b) An entity controls in any manner the election of a majority of the directors or trustees of another entity.
- (5) (a) "Exempt commercial purchaser" means any person purchasing commercial insurance who, at the time of placement, meets the following requirements:
 - (i) The person employs or retains a qualified risk manager to negotiate insurance coverage.
 - (ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000) in the immediately preceding twelve (12) months.
 - (iii) The person meets at least one (1) of the following criteria:
 - 1. The person possesses a net worth in excess of twenty million dollars (\$20,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.
 - 2. The person generates annual revenues in excess of fifty million dollars (\$50,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.
 - 3. The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate.
 - 4. The person is a nonprofit organization or public entity generating annual budgeted expenditures of at least thirty

million dollars (\$30,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.

5. The person is a municipality with a population in excess of fifty thousand (50,000) persons.

(b) The amounts provided in subparagraph (iii) 1., 2. and 4. of paragraph (a) of this subsection must be adjusted to reflect the percentage change for the five (5) 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 subsection, "commercial insurance" means property and casualty insurance pertaining to a business, profession, occupation, nonprofit organization or public entity.

(6) "Export" means to place in an unauthorized insurer under this surplus line law insurance covering a subject of insurance resident, located, or to be performed in Idaho.

(7) (a) "Home state" means:

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

(ii) If one hundred percent (100%) of the insured risk is located out of state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one (1) insured from an affiliated group are named insureds on a single nonadmitted insurance contract, then "home state" means the home state, as determined pursuant to the provisions of paragraph (a) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(c) For the purposes of this subsection, "principal place of business" means the state where the insured maintains its headquarters and where the insured's high level officers direct, control and coordinate the business activities of the insured.

(8) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(a) The person is an employee of, or a third party consultant retained by, the commercial policyholder;

(b) The person provides skilled services in loss prevention, loss reduction or risk and insurance coverage analysis, and purchase of insurance; and

(c) The person:

(i) Has at least ten (10) years of experience in risk financing, claim administration, loss prevention, risk and insurance coverage analysis or purchasing commercial lines of insurance; or

(ii) Has a graduate degree from an accredited college or university in risk management, business administration, finance, economics or any other field determined by a state insurance director or other state regulatory official or entity to demonstrate minimum competence in risk management; or

(iii) Has at least seven (7) years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchasing commercial lines of insurance and

has one (1) of the designations specified in subparagraph (iv) 1. through 5. of this paragraph; or

(iv) Has a bachelor's degree or higher education from an accredited college or university in risk management, business administration, finance, economics or any other field determined by a state insurance director or other state regulatory official or entity to demonstrate minimum competency in risk management; and either has three (3) years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis or purchasing commercial lines of insurance, or has one (1) of the following designations:

1. A designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU and insurance institute of America;
2. A designation as an associate in risk management (ARM) issued by the American institute for CPCU and insurance institute of America;
3. A designation as a certified risk manager (CRM) issued by the national alliance for insurance education and research;
4. A designation as a RIMS fellow (RF) issued by the global risk management institute; or
5. Any other designation, certification or license determined by a state insurance director or other state insurance regulatory official or entity to demonstrate minimum competency in risk management.

[41-1213, added 1961, ch. 330, sec. 257, p. 645; am. 2002, ch. 91, sec. 2, p. 228; am. 2011, ch. 183, sec. 2, p. 518.]

41-1214. CONDITIONS FOR EXPORT. If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker who is a member of a surplus line association approved by the director.

(2) The full amount or kind of insurance required must not be procurable from insurers who are authorized to do business in this state. The amount of insurance exported shall be only the excess over the amount procurable from authorized insurers unless the excess is not available without support of other coverages, provided that a diligent search is made among the insurers authorized to transact and actually writing that particular kind and class of insurance in this state.

(3) The insurance must not be so exported for the purpose of securing advantages either as to:

(a) A lower premium rate than would be accepted by an authorized insurer; or

(b) Terms of the insurance contract.

(4) A surplus line broker seeking to procure from or place insurance with an unauthorized insurer for an exempt commercial purchaser is not required to satisfy the diligent search requirement set forth in subsection (2) of this section when:

(a) The surplus line broker or referring insurance producer procuring or placing the surplus line insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from

the admitted market that may provide greater protection with more regulatory oversight; and

(b) The exempt commercial purchaser has subsequently requested in writing the surplus line broker or referring insurance producer to procure or place such insurance from an unauthorized insurer.

(5) Records of the surplus line broker's satisfaction of the requirements of subsection (4) of this section shall be maintained in compliance with the provisions of section [41-1227](#), Idaho Code.

(6) A surplus line broker may not knowingly place surplus line insurance with insurers that are financially unsound. The surplus line broker may only so insure with the following:

(a) Any foreign insurer that is authorized to write the kind of insurance in its domiciliary jurisdiction and has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the following: (i) the minimum capital and surplus requirements under the laws of this state; or (ii) fifteen million dollars (\$15,000,000); or

(b) Any alien insurer that is listed on the quarterly listing of alien insurers maintained by the international insurers department of the national association of insurance commissioners.

(7) The requirements in paragraph (a) of subsection (6) of this section may be satisfied by an insurer that possesses less than the minimum capital and surplus upon an affirmative finding of acceptability by the director. Such finding shall be based upon factors such as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. The director is prohibited from making an affirmative finding of acceptability when the foreign insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000).

(8) The director may promulgate rules to prescribe the terms under which the financial requirements provided in this section may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(9) For any violation of the provisions of this section, a surplus line broker may be subject to a fine of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000), or the surplus line broker's license may be revoked, suspended or nonrenewed, or both such fine and license revocation, suspension or nonrenewal.

[41-1214, added 1961, ch. 330, sec. 258, p. 645; am. 1993, ch. 22, sec. 2, p. 80; am. 2011, ch. 183, sec. 3, p. 520.]

41-1215. BROKER'S AFFIDAVIT. At the time of procuring any such surplus line insurance the broker shall execute an affidavit, in form as prescribed or accepted by the director, setting forth facts from which it can be determined whether such insurance was eligible for export under section [41-1214](#), Idaho Code. The broker shall file, or cause to be filed, this affidavit with the director within thirty (30) days after the insurance policy is received by the broker.

[41-1215, added 1961, ch. 330, sec. 259, p. 645; am. 1993, ch. 22, sec. 3, p. 80; am. 2002, ch. 91, sec. 3, p. 228.]

41-1216. OPEN LINES FOR EXPORT. (1) The director may by order or by rule declare eligible for export generally and without compliance with the provisions of sections [41-1214](#)(2), [41-1214](#)(3) and [41-1215](#), Idaho Code, any class or classes of insurance coverage or risk which he finds, consistent with the procedural requirements of [chapter 52, title 67](#), Idaho Code, that there is no reasonable or adequate market among authorized insurers either as to acceptance of the risk, contract terms, or premium or premium rate. Any such order shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the director.

(2) The broker shall file with or as directed by the director a memorandum as to each such coverage placed by him in an unauthorized insurer, in such form and context as the director may reasonably require for the identification of the coverage and determination of the tax payable to the state relative thereto.

(3) The broker, or a licensed Idaho agent of the authorized insurer, may also place with authorized insurers any insurance coverage made eligible for export generally under subsection (1) of this section and without regard to rate or form filings which may otherwise be applicable as to the authorized insurer. As to coverages so placed in an authorized insurer the premium tax thereon shall be reported and paid by the insurer as required generally under section [41-402](#), Idaho Code.

[41-1216, added 1961, ch. 330, sec. 260, p. 645; am. 2002, ch. 91, sec. 4, p. 228.]

41-1217. ELIGIBLE SURPLUS LINES INSURERS. (1) A broker shall not knowingly place surplus lines insurance with an insurer that is unsound financially, or that is ineligible under this section.

(2) The director shall from time to time compile or approve a list of all surplus lines insurers deemed by him to be eligible currently, and shall cause to be sent a copy of such list to each broker at his office last of record with the director. This subsection shall not be deemed to require the director to determine the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the director, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the director has no credible evidence to the contrary. While any such list is in effect the broker shall restrict to the insurers so listed all surplus lines business placed by him and a person who independently procures its own insurance pursuant to this chapter for risks located in Idaho shall only purchase surplus line insurance from insurers so listed.

(3) An eligible surplus lines insurer shall notify the director of any change to the name of the insurer, its physical or mailing address, or its state of domicile, within sixty (60) days of such change.

[41-1217, added 1961, ch. 330, sec. 261, p. 645; am. 1969, ch. 214, sec. 39, p. 625; am. 1997, ch. 108, sec. 1, p. 252; am. 2002, ch. 91, sec. 5, p. 229; am. 2004, ch. 87, sec. 1, p. 322.]

41-1218. ELIGIBLE SURPLUS LINE INSURERS -- PENALTY FOR VIOLATION. (1) For any violation of section [41-1217](#), Idaho Code, the broker or a person who independently procures its own insurance shall, upon conviction thereof, be guilty of a misdemeanor punishable as provided in section [41-117](#), Idaho Code (general penalty).

(2) The director may impose an administrative penalty not to exceed fifteen thousand dollars (\$15,000), for deposit in the general account of the state of Idaho, upon any person or entity who transacts or who attempts to transact insurance as a surplus lines insurer in violation of any provision of [chapter 12, title 41](#), Idaho Code. Failure of any such person or entity to pay a fine imposed pursuant to the provisions of this section shall authorize the director to seek enforcement of the fine, and any associated costs and attorney's fees related to bringing the action, in any district court of this state.

[41-1218, added 1961, ch. 330, sec. 262, p. 645; am. 1993, ch. 22, sec. 4, p. 81; am. 2002, ch. 91, sec. 6, p. 229; am. 2005, ch. 267, sec. 1, p. 828.]

41-1219. EVIDENCE OF THE INSURANCE -- CHANGES -- PENALTY. (1) Upon placing a surplus line coverage, the broker shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the certificate shall state the name and address and proportion of the entire direct risk assumed by each such insurer.

(2) No broker shall issue any such certificate or any cover note, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer, unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(3) If after the issuance and delivery of any such certificate there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by an insurer as stated in the broker's original certificate, or in any other material respect as to the insurance coverage evidenced by the certificate, the broker shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

(4) If a policy issued by the insurer is not available upon placement of the insurance and the broker has issued and delivered his certificate as hereinabove provided, upon request therefor by the insured the broker shall as soon as reasonably possible procure from the insurer its policy evidencing such insurance and deliver such policy to the insured in replacement of the broker's certificate theretofore issued.

(5) Any surplus line broker who knowingly issues a false certificate of insurance, or who knowingly fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate as provided in subsection (3) of this section, shall upon conviction, be subject to the penalties provided by section [41-117](#), Idaho Code, or to any greater applicable penalty otherwise provided by law.

[41-1219, added 1961, ch. 330, sec. 263, p. 645; am. 1997, ch. 108, sec. 2, p. 253.]

41-1220. ENDORSEMENT OF CONTRACT. Every insurance contract procured and delivered as a surplus lines coverage pursuant to this law shall have stamped upon it, either in red ink with at least ten (10) point bold print or in black ink with at least twelve (12) point bold print, and bear the name of the surplus lines broker who procured it, the following:

"This surplus line contract is issued pursuant to the Idaho insurance laws by an insurer not licensed by the Idaho Department of Insurance. There is no coverage provided for surplus line insurance by either the Idaho Insurance Guaranty Association or by the Idaho Life and Health Insurance Guaranty Association."

[41-1220, added 1961, ch. 330, sec. 264, p. 645; am. 1969, ch. 214, sec. 40, p. 625; am. 1993, ch. 22, sec. 5, p. 81; am. 2010, ch. 164, sec. 1, p. 338.]

41-1221. SURPLUS LINE INSURANCE VALID. Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

[41-1221, added 1961, ch. 330, sec. 265, p. 645.]

41-1222. LIABILITY OF INSURER AS TO LOSSES AND UNEARNED PREMIUMS. (1) As to a surplus line risk which has been assumed by an unauthorized insurer pursuant to this surplus line insurance law, and if the premium thereon has been received by the surplus line broker who placed such insurance, in all questions thereafter arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancelation of such insurance, whether or not in fact the broker is indebted to the insurer with respect to such insurance or for any other cause.

(2) Each unauthorized insurer assuming a surplus line direct risk under this surplus lines insurance law shall be deemed thereby to have subjected itself to the terms of this section.

[41-1222, added 1961, ch. 330, sec. 266, p. 645.]

41-1223. LICENSING OF SURPLUS LINE BROKERS. (1) Any individual while licensed as a producer licensed for property or casualty insurance who has had at least two (2) years' experience as a producer for the lines of insurance for which he is seeking to be licensed as a surplus line broker, and who is deemed by the director to be competent and trustworthy with respect to the handling of surplus lines, may be licensed as a surplus line broker.

(2) Application for the license shall be made to the director on forms as designated and furnished by the director.

(3) The license and continuation fee shall be as set forth by rule pursuant to section [41-401](#), Idaho Code.

(4) The license and licensee shall be subject to the applicable provisions of [chapter 10, title 41](#), Idaho Code (producer licensing).

(5) When a national insurance producer database of the national association of insurance commissioners, or other equivalent uniform national

database, for the licensure of surplus line brokers is created, the director may participate in such database.

[41-1223, added 1961, ch. 330, sec. 267, p. 645; am. 1972, ch. 164, sec. 3, p. 376; am. 1976, ch. 118, sec. 3, p. 458; am. 2001, ch. 296, sec. 5, p. 1063; am. 2002, ch. 91, sec. 7, p. 230; am. 2011, ch. 183, sec. 4, p. 521.]

41-1224. SUSPENSION OR REVOCATION OF BROKER'S LICENSE. (1) The director may suspend or revoke any surplus line broker's license:

- (a) If the broker fails to file his annual report or to remit the tax as required by this law; or
- (b) If the broker fails to keep the records, or to allow the director to examine his records in this state as required by this law; or
- (c) If the broker knowingly places a surplus line coverage in an insurer that is in unsound financial condition in violation of section [41-1217](#), Idaho Code; or
- (d) For any other applicable cause for which a producer's license may be suspended or revoked.

(2) The procedures provided by [chapter 10, title 41](#), Idaho Code, for suspension or revocation of licenses shall apply to suspension or revocation of a surplus line broker's license.

(3) Upon suspending or revoking the broker's surplus line license the director shall also suspend or revoke all other licenses of the same individual under this code.

(4) No broker whose license has been so suspended or revoked shall again be so licensed until any fines or delinquent taxes owing by him have been paid, nor, in case of revocation, until after expiration of one (1) year from date revocation became final.

[41-1224, added 1961, ch. 330, sec. 268, p. 645; am. 1972, ch. 164, sec. 4, p. 376; am. 1997, ch. 108, sec. 3, p. 254; am. 2002, ch. 91, sec. 8, p. 230.]

41-1226. ACCEPTANCE OF BUSINESS FROM AGENTS. A licensed surplus line broker may accept and place surplus line business for any insurance agent licensed in this state for the kind of insurance involved, and may compensate the agent therefor.

[41-1226, added 1961, ch. 330, sec. 270, p. 645.]

41-1227. RECORDS OF BROKER. (1) Each broker shall keep in his office a full and true record of each surplus line coverage procured by him, including a copy of each daily report, if any, a copy of each certificate of insurance issued by him, and such of the following items as may be applicable:

- (a) Amount of the insurance;
- (b) Gross premium charged;
- (c) Return premium paid, if any;
- (d) Rate of premium charged upon the several items of property;
- (e) Effective date of the contract, and the terms thereof;
- (f) Name and address of each insurer on the direct risk and the proportion of the entire risk assumed by such insurer if less than the entire risk;
- (g) Name and address of the insured;

(h) Brief general description of the property of risk injured and where located or to be performed; and

(i) Other information as may be required by the director.

(2) The record shall at all times within five (5) years after issuance of the coverage to which it relates be open to examination in this state by the director.

[41-1227, added 1961, ch. 330, sec. 271, p. 645; am. 2002, ch. 91, sec. 10, p. 231.]

41-1228. ANNUAL REPORT OF BROKER. (1) Each broker shall on or before the first day of March of each year file with the director a verified report of all surplus line insurance transacted by him during the preceding calendar year.

(2) The statement shall be on forms as prescribed and furnished by the director and shall show:

(a) Gross amount of each kind of insurance transacted;

(b) Aggregate gross premiums charged;

(c) Aggregate of returned premiums paid to insureds;

(d) Aggregate of net premiums; and

(e) Additional information as required by the director.

[41-1228, added 1961, ch. 330, sec. 272, p. 645; am. 2002, ch. 91, sec. 11, p. 231.]

41-1229. TAX ON SURPLUS LINES. (1) On or before the first day of March of each year, each broker shall remit to the director a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by him with unauthorized insurers during the preceding calendar year as shown by his annual statement filed with the director, and at the rate of one and five-tenths percent (1.5%). Such tax shall be in lieu of all other taxes upon such insurers with respect to the business so reported.

(2) For property and casualty insurance other than worker's compensation insurance, if Idaho is the insured's home state, then the tax so payable shall be computed upon the entire premium under subsection (1) of this section, without regard to whether the policy covers risks or exposures that are located in Idaho. For all other lines of insurance, if a surplus line policy covers risks or exposures only partially in Idaho, the tax so payable shall be computed upon the proportion of the premium that is properly allocable to the risks or exposures located in Idaho.

(3) Each broker shall round to the nearest whole dollar any amount shown or required to be shown on any return, form, statement, or other document submitted to the director or to any entity set forth in rule pursuant to section [41-1232](#), Idaho Code. Any record or other document prepared or maintained by the director shall express any dollar amount rounded to the nearest whole dollar.

[41-1229, added 1961, ch. 330, sec. 273, p. 645; am. 1988, ch. 186, sec. 1, p. 325; am. 1988, ch. 366, sec. 4, p. 1079; am. 1994, ch. 383, sec. 3, p. 1232; am. 2004, ch. 387, sec. 1, p. 1163; am. 2011, ch. 183, sec. 5, p. 521; am. 2019, ch. 45, sec. 2, p. 125.]

41-1230. FAILURE TO FILE REPORT OR REMIT TAX -- PENALTY. If any broker fails to file his annual report, or fails to remit the tax provided by section [41-1229](#), Idaho Code, prior to the first day of April after the tax is due, he shall be liable for a fine of twenty-five dollars (\$25.00) for each day of delinquency commencing with the first day of April. The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the director in any court of competent jurisdiction. Any fine collected by the director shall be paid to the state treasurer and credited to the general fund.

[41-1230, added 1961, ch. 330, sec. 274, p. 645; am. 2002, ch. 91, sec. 12, p. 231.]

41-1231. LEGAL PROCESS AGAINST SURPLUS LINE INSURER. (1) An unauthorized insurer shall be sued, upon any cause of action arising in this state under any contract issued by it as a surplus line contract pursuant to this law, in the district court of the county in which the cause of action arose.

(2) Service of legal process against the insurer may be made in any such action by service upon the director as provided in section [41-334](#)(1) [, Idaho Code]. The director shall forthwith mail a copy of the process served to the person designated by the insurer in the policy for the purpose, by prepaid registered mail with return receipt requested. The insurer shall have thirty (30) days from the date of service upon the director within which to plead, answer, or otherwise defend the action. Upon service of process upon the director in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer.

(3) An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision stating the substance of this section, and designating the person to whom the director shall mail process as provided in subsection (2) of this section.

[41-1231, added 1961, ch. 330, sec. 275, p. 645.]

41-1232. RULES AND REGULATIONS. (1) The director shall make or may approve and adopt reasonable rules and regulations, consistent with this surplus lines law, for any or all of the following purposes:

(a) Effectuation of such law;

(b) Establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for export; and

(c) Establishment, procedures, and operations of any organization of brokers or others designed to assist such brokers to comply with such law. The director may delegate to such an organization the responsibility, under his general supervision, for the determination of the eligibility for export of particular proposed coverages; and

(d) Regulation of the fees and charges to be required of the insured in addition to the premium as fixed by the insurer.

(2) Such rules and regulations shall be subject to the procedures and carry the penalty provided by section [41-211](#), Idaho Code, (rules and regulations).

[41-1232, added 1961, ch. 330, sec. 276, p. 645; am. 1969, ch. 214, sec. 41, p. 625; am. 1993, ch. 22, sec. 6, p. 81.]

41-1233. REPORT AND TAX OF INDEPENDENTLY PROCURED COVERAGES. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this state so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus line broker pursuant to the surplus line law of this state or exempted from tax pursuant to section [41-1212](#), Idaho Code, shall within thirty (30) days after the date such insurance policy was so received by the insured, continued or renewed file a written report of the same with the surplus line association on forms designated by the director and furnished to the insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as the director reasonably requests. If the insurance covers also a subject of insurance resident, located or to be performed outside this state a proper pro rata portion of the entire premium payable for all such insurance shall be allocated to this state for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) of this section.

(3) The insured with respect to the obligation, chose in action, or right represented by such insurance shall be subject to section [41-1229](#), Idaho Code, as it pertains to premium tax. Within thirty (30) days after the insurance policy was so received by the insured, continued or renewed, and coincidentally with the filing with the surplus line association of the report provided for in subsection (1) of this section, the insured shall pay the amount of the tax to the director and a stamping fee to the surplus line association.

(4) The tax imposed hereunder if delinquent shall bear interest at the rate of six percent (6%) per annum, compounded annually.

(5) The tax shall be collectible from the insured by civil action brought by the director, or by distraint.

(6) This section does not abrogate or modify any provision of sections [41-1201](#) (representing or aiding unauthorized insurer prohibited), [41-1202](#) (representing or aiding unauthorized insurer prohibited -- penalty), or [41-1203](#) (suits by unauthorized insurer prohibited), Idaho Code.

(7) This section does not apply as to life or disability insurances.

[41-1233, added 1961, ch. 330, sec. 277, p. 645; am. 1988, ch. 366, sec. 5, p. 1080; am. 1993, ch. 22, sec. 7, p. 82; am. 2002, ch. 91, sec. 13, p. 232; am. 2004, ch. 387, sec. 2, p. 1164.]

41-1234. RECORDS OF INSURED. In order that the director may effectively administer the various provisions of this chapter, every person as to whom insurance has been placed with an unauthorized insurer shall, upon the director's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the director the amount of premiums paid or agreed to be paid for the insurance. For each refusal to obey such order such person shall, upon conviction thereof, be

guilty of a misdemeanor punishable by a fine of not more than five hundred dollars (\$500).

[41-1234, added 1961, ch. 330, sec. 278, p. 645.]

41-1235. FALSE ADVERTISING ACT. Sections [41-1235](#) through [41-1237](#)[, Idaho Code,] of this act constitute and may be referred to as the unauthorized insurers false advertising process act.

[I.C., sec. 41-1235, as added by 1969, ch. 214, sec. 42, p. 625.]

41-1236. MISREPRESENTATION BY UNAUTHORIZED INSURER. No unauthorized insurer through any estimate, illustration, circular, pamphlet, letter, announcement, statement or any other means or medium shall misrepresent to any person in this state its financial condition or the terms of any contract issued or to be issued by it or the advantages thereof, or the dividends or share to be received thereon. Whenever the director has reason to believe that any such insurer is so misrepresenting, he shall notify the insurer and the insurance supervisory officer of the insurer's domiciliary state or province by registered or certified mail.

[I.C., sec. 41-1236, as added by 1969, ch. 214, sec. 43, p. 625.]

41-1237. MISREPRESENTATION -- ACTION AND PENALTIES. (1) If within twenty-one (21) days following the giving of the notice provided for in section [41-1236](#), Idaho Code, the insurer has not ceased such dissemination, and if the director has reason to believe that such insurer is soliciting, issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or performing any other transaction in connection with such insurance, and that a proceeding by him in respect to such matters would be in the interest of the public, he shall order the insurer to desist the prohibited practices.

(2) If the director finds that the insurer has misrepresented as referred to in section [41-1236](#), Idaho Code, he shall by order on such hearing require the insurer to cease and desist from such violation, and shall mail a copy of the order by registered or certified mail to the insurer at its principal place of business last of record with the director and to the insurance supervisory officer of the insurer's domiciliary state or province. Each violation thereafter of such desist order shall subject the insurer to a penalty of two thousand dollars (\$2,000), to be recovered by a civil action brought against the insurer by the director. Service of process upon the insurer in such action may be made upon the director pursuant to section [41-1207](#), Idaho Code, or in any other lawful manner.

[41-1237, added 1969, ch. 214, sec. 44, p. 625; am. 2005, ch. 78, sec. 2, p. 272.]