



Sen. John G. Mulroe

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10000SB1286sam001

LRB100 06959 AMC 24874 a

1 AMENDMENT TO SENATE BILL 1286

2 AMENDMENT NO. _____. Amend Senate Bill 1286 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Insurance Code is amended by
5 changing Sections 121-2.08, 123C-1, 123C-2, 123C-3, 123C-9,
6 123C-11, 123C-12, 123C-13, 123C-16, 123C-17, 123C-19, and 445
7 and by adding Sections 123C-23, 123C-24, 123C-25, 123C-26,
8 123C-27, and 123C-28 as follows:

9 (215 ILCS 5/121-2.08) (from Ch. 73, par. 733-2.08)

10 Sec. 121-2.08. Transactions in this State involving
11 contracts of insurance independently procured directly from an
12 unauthorized insurer by industrial insureds.

13 (a) As used in this Section:

14 "Exempt commercial purchaser" means exempt commercial
15 purchaser as the term is defined in subsection (1) of Section
16 445 of this Code.

1 "Home state" means home state as the term is defined in
2 subsection (1) of Section 445 of this Code.

3 "Industrial insured" means an insured:

4 (i) that procures the insurance of any risk or risks of
5 the kinds specified in Classes 2 and 3 of Section 4 of this
6 Code by use of the services of a full-time employee who is
7 a qualified risk manager or the services of a regularly and
8 continuously retained consultant who is a qualified risk
9 manager;

10 (ii) that procures the insurance directly from an
11 unauthorized insurer without the services of an
12 intermediary insurance producer; and

13 (iii) that is an exempt commercial purchaser whose home
14 state is Illinois.

15 "Insurance producer" means insurance producer as the term
16 is defined in Section 500-10 of this Code.

17 "Qualified risk manager" means qualified risk manager as
18 the term is defined in subsection (1) of Section 445 of this
19 Code.

20 "Unauthorized insurer" means unauthorized insurer as the
21 term is defined in subsection (1) of Section 445 of this Code.

22 (b) For contracts of insurance effective January 1, 2015 or
23 later, within 90 days after the effective date of each contract
24 of insurance issued under this Section, the insured shall file
25 a report with the Director by submitting the report to the
26 Surplus Line Association of Illinois in writing or in a

1 computer readable format and provide information as designated
2 by the Surplus Line Association of Illinois. The information in
3 the report shall be substantially similar to that required for
4 surplus line submissions as described in subsection (5) of
5 Section 445 of this Code. Where applicable, the report shall
6 satisfy, with respect to the subject insurance, the reporting
7 requirement of Section 12 of the Fire Investigation Act.

8 (c) For contracts of insurance effective January 1, 2015 or
9 later, within 30 days after filing the report, the insured
10 shall pay to the Director for the use and benefit of the State
11 a sum equal to the gross premium of the contract of insurance
12 multiplied by the surplus line tax rate, as described in
13 paragraph (3) of subsection (a) of Section 445 of this Code,
14 and shall pay the fire marshal tax that would otherwise be due
15 annually in March for insurance subject to tax under Section 12
16 of the Fire Investigation Act. For contracts of insurance
17 effective January 1, 2015 or later, within 30 days after filing
18 the report, the insured shall pay to the Surplus Line
19 Association of Illinois a countersigning fee that shall be
20 assessed at the same rate charged to members pursuant to
21 subsection (4) of Section 445.1 of this Code.

22 (d) For contracts of insurance effective January 1, 2015 or
23 later, the insured shall withhold the amount of the taxes and
24 countersignature fee from the amount of premium charged by and
25 otherwise payable to the insurer for the insurance. If the
26 insured fails to withhold the tax and countersignature fee from

1 the premium, then the insured shall be liable for the amounts
2 thereof and shall pay the amounts as prescribed in subsection
3 (c) of this Section.

4 (e) Contracts of insurance with an industrial insured that
5 qualifies as a Safety-Net Hospital are not subject to
6 subsections (b) through (d) of this Section.

7 (Source: P.A. 98-978, eff. 1-1-15.)

8 (215 ILCS 5/123C-1) (from Ch. 73, par. 735C-1)

9 (Section scheduled to be repealed on January 1, 2027)

10 Sec. 123C-1. Definitions. As used in this Article:

11 A. "Affiliate" or "Affiliated company" includes a parent
12 entity that controls a captive insurance company and:

13 (1) is an affiliate of another entity if the entity
14 directly or indirectly, through one or more
15 intermediaries, controls, is controlled by, or is under
16 common control with the other entity.

17 (2) is an affiliate of another entity if the entity is
18 an affiliate of and is controlled by the other entity
19 directly or indirectly through one or more intermediaries.

20 A subsidiary or holding company of an entity is an affiliate of
21 that entity. ~~shall have the meaning set forth in subsection (a)~~
22 ~~of Section 131.1 (and, for purposes of such definition, the~~
23 ~~definitions of "control" and "person", as set forth in~~
24 ~~subsections (b) and (c) of Section 131.1, respectively, shall~~
25 ~~be applicable).~~

1 B. "Association" means any entity meeting the requirements
2 set forth in either of the following paragraphs (1), (2) or
3 (3):

4 (1) any organized association of individuals, legal
5 representatives, corporations (whether for profit or not
6 for profit), partnerships, trusts, associations, units of
7 government or other organizations, or any combination of
8 the foregoing, that has been in continuous existence for at
9 least one year, the member organizations of which
10 collectively:

11 (a) own, control, or hold with power to vote
12 (directly or indirectly) all of the outstanding voting
13 securities of an association captive insurance company
14 incorporated as a stock insurer; or

15 (b) have complete voting control (directly or
16 indirectly) over an association captive insurance
17 company organized as a mutual insurer;

18 (2) any organized association of individuals, legal
19 representatives, corporations (whether for profit or not
20 for profit), partnerships, trusts, associations, units of
21 government or other organizations, or any combination of
22 the foregoing:

23 (a) whose member organizations are engaged in
24 businesses or activities similar or related with
25 respect to the liability of which such members are
26 exposed by virtue of any related, similar, or common

1 business, trade, product, services, premises, or
2 operations; and

3 (b) whose member organizations:

4 (i) directly or indirectly own or control, and
5 hold with power to vote, at least 80% of all of the
6 outstanding voting securities of an association
7 captive insurance company incorporated as a stock
8 insurer; or

9 (ii) directly or indirectly have at least 80%
10 of the voting control over an association captive
11 insurance company organized as a mutual insurer;
12 or

13 (3) any risk retention group, as defined in subsection
14 (11) of Section 123B-2, domiciled in this State and
15 organized under this Article; however, beginning 6 months
16 after the effective date of this amendatory Act of 1995, a
17 risk retention group shall no longer qualify as an
18 association under this Article.

19 Provided, however, that with respect to each of the
20 associations described in paragraphs (1), (2) and (3) above, no
21 member organization may (i) own, control, or hold with power to
22 vote in excess of 25% of the voting securities of an
23 association captive insurance company incorporated as a stock
24 insurer, or (ii) have more than 25% of the voting control of an
25 association captive insurance company organized as a mutual
26 insurer.

1 C. "Association captive insurance company" means any
2 company that insures risks of (i) the member organizations of
3 an association, and (ii) their affiliated companies.

4 D. "Captive insurance company" means any pure captive
5 insurance company, association captive insurance company or
6 industrial insured captive insurance company organized under
7 the provisions of this Article.

8 E. "Director" means the Director of the Department of
9 Insurance.

10 F. "Industrial insured" means an insured which (together
11 with its affiliates) at the time of its initial procurement of
12 insurance from an industrial insured captive insurance
13 company:

14 (1) has available to it advice with respect to the
15 purchase of insurance through the use of the services of a
16 full-time employee acting as an insurance manager or buyer
17 or the services of a regularly and continuously retained
18 qualified insurance consultant; and

19 (2) pays aggregate annual premiums in excess of
20 \$100,000 for insurance on all risks except for life,
21 accident and health; and

22 (3) either (i) has at least 25 full-time employees, or
23 (ii) has gross assets in excess of \$3,000,000, or (iii) has
24 annual gross revenues in excess of \$5,000,000.

25 G. "Industrial insured captive insurance company" means
26 any company that insures risks of industrial insureds that are

1 members of the industrial insured group, and their affiliated
2 companies.

3 H. "Industrial insured group" means any group of industrial
4 insureds that collectively:

5 (1) directly or indirectly (including ownership or
6 control through a company which is wholly owned by such
7 group of industrial insureds) own or control, and hold with
8 power to vote, all of the outstanding voting securities of
9 an industrial insured captive insurance company
10 incorporated as a stock insurer; or

11 (2) directly or indirectly (including control through
12 a company which is wholly owned by such group of industrial
13 insureds) have complete voting control over an industrial
14 insured captive insurance company organized as a mutual
15 insurer; provided, however, that no member organization
16 may (i) own, control, or hold with power to vote in excess
17 of 25% of the voting securities of an industrial insured
18 captive insurance company incorporated as a stock insurer,
19 or (ii) have more than 25% of the voting control of an
20 industrial insured captive insurance company organized as
21 a mutual insurer.

22 I. "Member organization" means any individual, legal
23 representative, corporation (whether for profit or not for
24 profit), partnership, association, unit of government, trust
25 or other organization that belongs to an association or an
26 industrial insured group.

1 J. "Parent" means a corporation, partnership, individual
2 or other legal entity that directly or indirectly owns,
3 controls, or holds with power to vote more than 50% of the
4 outstanding voting securities of a company.

5 K. "Personal risk liability" means liability to other
6 persons for (i) damage because of injury to any person, (ii)
7 damage to property, or (iii) other loss or damage, in each case
8 resulting from any personal, familial, or household
9 responsibilities or activities, but does not include legal
10 liability for damages (including costs of defense, legal costs
11 and fees, and other claims expenses) because of injuries to
12 other persons, damage to their property, or other damage or
13 loss to such other persons resulting from or arising out of:

14 (i) any business (whether for profit or not for
15 profit), trade, product, services (including professional
16 services), premises, or operations; or

17 (ii) any activity of any state or local government, or
18 any agency or political subdivision thereof.

19 L. "Pure captive insurance company" means any company that
20 insures only risks of its parent or affiliated companies or
21 both.

22 M. "Unit of government" includes any state, regional or
23 local government, or any agency or political subdivision
24 thereof, or any district, authority, public educational
25 institution or school district, public corporation or other
26 unit of government in this State or any similar unit of

1 government in any other state.

2 N. "Control" means the power to direct, or cause the
3 direction of, the management and policies of an entity, other
4 than the power that results from an official position with or
5 corporate office held in the entity. The power may be possessed
6 directly or indirectly by any means, including through the
7 ownership of voting securities or by contract, other than a
8 commercial contract for goods or non-management services.

9 O. "Qualified independent actuary" means a person that is
10 either:

11 (1) a member in good standing with the Casualty
12 Actuarial Society; or

13 (2) a member in good standing with the American Academy
14 of Actuaries who has been approved as qualified for signing
15 casualty loss reserve opinions by the Casualty Practice
16 Council of the American Academy of Actuaries.

17 P. "Controlled unaffiliated business" means an entity:

18 (1) that is not an affiliate;

19 (2) that has an existing contractual relationship with
20 an affiliate under which the affiliate bears a potential
21 financial loss; and

22 (3) whose risks are managed by a captive insurance
23 company under Section 123C-24 of this Code.

24 Q. "Operational risk" means any potential financial loss of
25 an affiliate, except for a loss arising from an insurance
26 policy issued by a captive or insurance affiliate.

1 R. "Captive management company" means an entity providing
2 administrative services to a captive insurance company.

3 S. "Safety-Net Hospital" means an Illinois hospital that
4 qualifies as a Safety-Net Hospital under Section 5-5e.1 of the
5 Illinois Public Aid Code.

6 (Source: P.A. 89-97, eff. 7-7-95; 90-794, eff. 8-14-98.)

7 (215 ILCS 5/123C-2) (from Ch. 73, par. 735C-2)

8 (Section scheduled to be repealed on January 1, 2027)

9 Sec. 123C-2. Authority of captives; restrictions.

10 A. Except as provided by this Section, a captive insurance
11 company may write any type of insurance, but may only insure
12 the operational risks of the company's affiliates and risks of
13 a controlled unaffiliated business. Any captive insurance
14 company, when permitted by its articles of association or
15 charter, may apply to the Director for a certificate of
16 authority to transact any and all insurance in classes 2 and 3
17 of Section 4 of this Code, except that:

18 ~~(1) no pure captive insurance company may insure any~~
19 ~~risks other than those of its parent and affiliated~~
20 ~~companies;~~

21 ~~(2) no association captive insurance company may~~
22 ~~insure any risks other than those of the member~~
23 ~~organizations of its association, and their affiliated~~
24 ~~companies;~~

25 ~~(3) no industrial insured captive insurance company~~

1 ~~may insure any risks other than those of the members of the~~
2 ~~industrial insured group, and their affiliated companies;~~
3 ~~and~~

4 ~~(4) no captive insurance company may provide:~~

5 ~~(i) personal motor vehicle coverage or homeowner's~~
6 ~~insurance coverage or any component thereof, or~~

7 ~~(ii) personal coverage for personal risk~~
8 ~~liability, or~~

9 ~~(iii) coverage for an employer's liability to its~~
10 ~~employees other than legal liability under the federal~~
11 ~~Employers' Liability Act (45 U.S.C. 51 et seq.),~~
12 ~~provided, however, this exclusion does not preclude~~
13 ~~reinsurance of such employer's liability, or~~

14 ~~(iv) accident and health insurance as provided in~~
15 ~~clause (a) of Class 2 of Section 4, provided, however,~~
16 ~~this exclusion does not preclude stop loss insurance~~
17 ~~or reinsurance of a single employer self funded~~
18 ~~employee disability benefit plan or an employee~~
19 ~~welfare plan as described in 29 U.S.C. 1001 et seq.~~

20 A-5. A captive insurance company may not issue:

21 (1) life insurance;

22 (2) annuities;

23 (3) accident and health insurance for the company's
24 parent and affiliates, except to insure employee benefits
25 that are subject to the federal Employee Retirement Income
26 Security Act of 1974;

1 (4) title insurance;

2 (5) mortgage guaranty insurance;

3 (6) financial guaranty insurance;

4 (7) residential property insurance;

5 (8) personal automobile insurance; or

6 (9) workers' compensation insurance.

7 A-10. A captive insurance company may not issue a type of
8 insurance, including automobile liability insurance, that is
9 required under the laws of this State or a political
10 subdivision of this State as a prerequisite for obtaining a
11 license or permit if the law requires that the liability
12 insurance be issued by an insurer authorized to engage in the
13 business of insurance in this State.

14 A-15. A captive insurance company is authorized to issue a
15 contractual reimbursement policy to:

16 (1) an affiliated certified self-insurer authorized
17 under the Workers' Compensation Act or a similar affiliated
18 entity expressly authorized by analogous laws of another
19 state; or

20 (2) an affiliate that is insured by a workers'
21 compensation insurance policy with a negotiated deductible
22 endorsement.

23 B. No captive insurance company shall do any insurance
24 business in this State unless:

25 (1) it first obtains from the Director a certificate of
26 authority authorizing it to do such insurance business in

1 this State; and

2 (2) it appoints a resident registered agent to accept
3 service of process and to otherwise act on its behalf in
4 this State.

5 C. No captive insurance company shall adopt a name that is
6 the same as, deceptively similar to, or likely to be confused
7 with or mistaken for, any other existing business name
8 registered in this State.

9 D. Each captive insurance company, or the organizations
10 providing the principal administrative or management services
11 to such captive insurance company, shall maintain a place of
12 business in this State.

13 (Source: P.A. 91-357, eff. 7-29-99.)

14 (215 ILCS 5/123C-3) (from Ch. 73, par. 735C-3)

15 (Section scheduled to be repealed on January 1, 2027)

16 Sec. 123C-3. Minimum capital and surplus.

17 A. The Department may not issue a certificate of authority
18 to a captive insurance company unless the company possesses and
19 maintains unencumbered capital and surplus in an amount
20 determined by the Director after considering:

21 (1) the amount of premium written by the captive
22 insurance company;

23 (2) the characteristics of the assets held by the
24 captive insurance company;

25 (3) the terms of reinsurance arrangements entered into

1 by the captive insurance company;

2 (4) the type of business covered in policies issued by
3 the captive insurance company;

4 (5) the underwriting practices and procedures of the
5 captive insurance company; and

6 (6) any other criteria that has an impact on the
7 operations of the captive insurance company determined to
8 be significant by the Director. ~~No pure captive insurance~~
9 ~~company, association captive insurance company~~
10 ~~incorporated as a stock insurer, or industrial insured~~
11 ~~captive insurance company incorporated as a stock insurer~~
12 ~~shall be issued a certificate of authority unless it shall~~
13 ~~possess and thereafter maintain unimpaired paid-in capital~~
14 ~~of not less than the minimum capital requirement applicable~~
15 ~~to the class or classes and clause or clauses of Section 4~~
16 ~~describing the kind or kinds of insurance which such~~
17 ~~captive insurance company is authorized to write, as set~~
18 ~~forth in subsection (1) of Section 13.~~

19 B. The amount of capital and surplus determined by the
20 Director under subsection A of this Section may not be less
21 than \$250,000 for a pure captive insurance company, \$500,000
22 for an industrial insured captive insurance company, and
23 \$750,000 for an association captive insurance company. ~~Such~~
24 ~~capital may be in the form of (1) all cash or cash equivalents,~~
25 ~~or (2) cash or cash equivalents representing at least 20% of~~
26 ~~the requisite capital, together with an irrevocable letter of~~

1 ~~credit for the remainder of the requisite capital, which letter~~
2 ~~of credit must (a) be approved by the Director, (b) be issued~~
3 ~~or unconditionally confirmed by (i) a bank chartered by this~~
4 ~~State, (ii) a member bank of the Federal Reserve System or~~
5 ~~(iii) a United States office of a foreign banking corporation~~
6 ~~that is: (A) licensed under the laws of the United States or~~
7 ~~any state thereof, (B) regulated, supervised and examined by~~
8 ~~United States federal or state authorities having regulatory~~
9 ~~authority over banks and trust companies, and (C) designated by~~
10 ~~the Securities Valuation Office of the National Association of~~
11 ~~Insurance Commissioners as meeting its credit standards for~~
12 ~~issuing or confirming letters of credit or, in the event that~~
13 ~~the Director elects to establish credit standards by rule, in~~
14 ~~compliance with rules promulgated by the Director establishing~~
15 ~~reasonable standards of safety and soundness substantially~~
16 ~~equivalent to those of the Securities Valuation Office of the~~
17 ~~National Association of Insurance Commissioners, and (c)~~
18 ~~satisfy the requirements of Section 123C 19; or (3) cash or~~
19 ~~cash equivalents representing at least 33% of the requisite~~
20 ~~capital, together with irrevocable contractual obligations of~~
21 ~~the member organizations of the captive insurance company for~~
22 ~~the payment of the remainder of the requisite capital in no~~
23 ~~more than 3 equal installments in each of the 3 calendar years~~
24 ~~following the date of the grant of the certificate of authority~~
25 ~~to the captive insurance company, which irrevocable~~
26 ~~contractual obligations shall by contract be subject to~~

1 ~~acceleration (in a manner acceptable to the Director) by the~~
2 ~~Company at the direction of the Director and shall be secured~~
3 ~~by a letter of credit or other form of guarantee or security~~
4 ~~acceptable to the Director.~~

5 C. The capital and surplus required by subsection A of this
6 Section must be in the form of:

7 (1) United States currency;

8 (2) an irrevocable letter of credit, in a form approved
9 by the Director and not secured by a guarantee from an
10 affiliate, naming the Director as beneficiary for the
11 security of the captive insurance company's policyholders
12 and issued by a bank approved by the Director;

13 (3) bonds of this State; or

14 (4) bonds or other evidences of indebtedness of the
15 United States, the principal and interest of which are
16 guaranteed by the United States.

17 (Source: P.A. 86-632.)

18 (215 ILCS 5/123C-9) (from Ch. 73, par. 735C-9)

19 (Section scheduled to be repealed on January 1, 2027)

20 Sec. 123C-9. Reports, statements and mandatory reserves.

21 A. Captive insurance companies shall not be required to
22 make any annual report except as provided in this Article.

23 B. (1) On or before ~~Prior to~~ March 1 of each year, each
24 captive insurance company shall submit to the Director a report
25 of its financial condition, verified by oath of 2 of its

1 executive officers and including (i) a balance sheet reporting
2 assets, liabilities, capital and surplus, (ii) a statement of
3 gain or loss from operations, (iii) a statement of changes in
4 financial position, (iv) a statement of changes in capital and
5 surplus, ~~and~~ (v) in the case of industrial insured captive
6 insurance companies, an analysis of loss reserve development,
7 information on risks ceded and assumed under reinsurance
8 agreements, on forms prescribed by the Director, and a schedule
9 of its invested assets on forms prescribed by the Director, and
10 (vi) a statement of actuarial opinion by a qualified
11 independent actuary concerning the reasonableness of the
12 captive insurance company's loss and loss adjustment expense
13 reserves in such form and of such content as specified in the
14 National Association of Insurance Commissioners Annual
15 Statement Instructions: Property and Casualty.

16 (2) In addition, prior to March 1 of each year, each
17 association captive insurance company shall submit to the
18 Director such additional data or information, which the
19 Director may from time to time require, on a form specified by
20 the Director.

21 (3) On or before June 1 of each year, each captive
22 insurance company shall submit to the Director a report of its
23 financial condition at last year's end with an independent
24 certified public accountant's opinion of the company's
25 financial condition. ~~Prior to June 1 of each year, each~~
26 ~~association and industrial insured captive insurance company~~

1 ~~shall submit to the Director a report of its financial~~
2 ~~condition, certified by a recognized firm of independent public~~
3 ~~accountants acceptable to the Director and including the items~~
4 ~~referred to in items (i), (ii), (iii) and (iv) of paragraph (1)~~
5 ~~of this subsection B.~~

6 (4) Unless the Director permits otherwise, the reports of
7 financial condition referred to in paragraphs (1) and (3) of
8 this subsection B are to be prepared in accordance with the
9 Accounting Practices and Procedures Manual adopted by the
10 National Association of Insurance Commissioners. The Director
11 shall have authority to extend the time for filing any report
12 or statement by any company for reasons which he considers good
13 and sufficient.

14 C. In addition, any captive insurance company may be
15 required by the Director, when he considers such action to be
16 necessary and appropriate for the protection of policyholders,
17 creditors, shareholders or claimants, to file, within 60 days
18 after mailing to the company of a notice that such is required,
19 a supplemental summary statement as of the last day of any
20 calendar month occurring during the 100 days next preceding the
21 mailing of such notice designated by him on forms prescribed
22 and furnished by the Director. No company shall be required to
23 file more than 4 supplemental summary statements during any
24 consecutive 12 month period.

25 D. Every captive insurance company shall, at all times,
26 maintain reserves in an amount estimated in the aggregate to

1 provide for the payment of all losses and claims incurred,
2 whether reported or unreported, which are unpaid and for which
3 such company may be liable, and to provide for the expenses of
4 adjustment or settlement of such losses and claims. The
5 aggregate reserves shall be reduced by reinsurance ceded which
6 meets the requirements of Section 123C-13. For the purpose of
7 such reserves, the company shall keep a complete and itemized
8 record showing all losses and claims on which it has received
9 notice, including all notices received by it of the occurrence
10 of any event which may result in a loss. Such record shall be
11 opened in chronological receipt order, with each notice of loss
12 or claim identified by appropriate number or coding.

13 E. Every captive insurance company shall maintain an
14 unearned premium reserve on all policies in force which reserve
15 shall be charged as a liability. The portions of the gross
16 premiums in force, after deducting reinsurance qualifying
17 under Section 123C-13, which shall be held as a premium
18 reserve, shall never be less in the aggregate than the
19 company's actual liability to all its insureds for the return
20 of gross unearned premiums. In the calculation of the company's
21 actual liability to all its insureds, the reserve shall be
22 computed pursuant to the method commonly referred to as the
23 monthly pro rata method; provided, however, that the Director
24 may require that such reserve shall be equal to the unearned
25 portions of the gross premiums in force, after deducting
26 reinsurance qualifying under Section 123C-13, in which case the

1 reserve shall be computed on each respective risk from the date
2 of the issuance of the policy.

3 E-5. A captive insurance company may make a written
4 application to the Director for filing its annual report
5 required under this Section on a fiscal year's end. If an
6 alternative filing date is granted, the company shall file:

7 (1) the annual report, including a statement of
8 actuarial opinion by a qualified independent actuary
9 concerning the reasonableness of the captive insurance
10 company's loss and loss adjustment expense reserves in such
11 form and of such content as specified in the National
12 Association of Insurance Commissioners Annual Statement
13 Instructions: Property and Casualty, no later than the 60th
14 day after the date of the company's fiscal year's end;

15 (2) the report of its financial condition at last
16 year's end with an independent certified public
17 accountant's opinion of the company's financial condition;
18 and

19 (3) its balance sheet, income statement, and statement
20 of cash flows, verified by 2 of its executive officers,
21 before March 1 of each year to provide sufficient detail to
22 support a premium tax return.

23 F. The reports required by this Section shall be prepared
24 and filed on a calendar year basis.

25 G. Notwithstanding the requirements of this Section, a
26 captive insurance company may prepare and issue financial

1 statements prepared in accordance with generally accepted
2 accounting principles.

3 (Source: P.A. 85-131; 86-1155; 86-1156.)

4 (215 ILCS 5/123C-11) (from Ch. 73, par. 735C-11)

5 (Section scheduled to be repealed on January 1, 2027)

6 Sec. 123C-11. Grounds and procedures for suspension or
7 revocation of certificate of authority.

8 A. The certificate of authority of a captive insurance
9 company to do an insurance business in this State may be
10 suspended or revoked by the Director for any of the following
11 reasons:

12 (1) insolvency or impairment of required capital or
13 surplus to policy holders;

14 (2) failure to meet the requirements of Sections 123C-3
15 or 123C-4;

16 (3) refusal or failure to submit an annual report, as
17 required by Section 123C-9, or any other report or
18 statement required by law or by lawful order of the
19 Director;

20 (4) failure to comply with the provisions of its own
21 charter or bylaws (or, in the case of an industrial insured
22 captive, with the provisions of the investment policy set
23 forth in its plan of operation as approved from time to
24 time by the Director);

25 (5) failure to submit to examination or any legal

1 obligation relative thereto, as required by Section
2 123C-10;

3 (6) refusal or failure to pay expenses, ~~and~~ charges, ~~and~~
4 and taxes as required by Sections 408, 409, 123C-10, and
5 123C-17;

6 (7) use of methods that, although not otherwise
7 specifically prohibited by law, nevertheless render its
8 operation detrimental or its condition unsound with
9 respect to the public or to its policyholders; or

10 (8) failure otherwise to comply with the laws of this
11 State.

12 B. If the Director finds, upon examination, hearing, or
13 other evidence, that any captive insurance company has
14 committed any of the acts specified in subsection A, he may
15 suspend or revoke such certificate of authority if he deems it
16 in the best interest of the public and the policyholders of
17 such captive insurance company, notwithstanding any other
18 provision of this Article.

19 C. The provisions of Articles XIII and XIII 1/2 shall apply
20 to and govern the conservation, rehabilitation, liquidation
21 and dissolution of captive insurance companies.

22 (Source: P.A. 85-131.)

23 (215 ILCS 5/123C-12) (from Ch. 73, par. 735C-12)

24 (Section scheduled to be repealed on January 1, 2027)

25 Sec. 123C-12. Legal investments.

1 A. The provisions of Article VIII and of Sections 131.2 and
2 131.3 shall apply to association captive insurance companies.

3 B. No pure captive insurance company or industrial insured
4 captive insurance company shall be subject to any restrictions
5 on allowable investments whatever, including those limitations
6 contained in Articles VIII and VIII 1/2; provided, however,
7 that the Director may prohibit or limit any investment or type
8 of investment that threatens the solvency or liquidity of any
9 such company; and provided further that an industrial insured
10 captive insurance company must adhere to the investment policy
11 set forth in its plan of operation as approved from time to
12 time by the Director.

13 C. A captive insurance company may make loans to its
14 affiliates with the prior approval of the Director. Each loan
15 must be evidenced by a note approved by the Director. A captive
16 insurance company may not make a loan of the minimum capital
17 and surplus funds required by this Article.

18 D. The Director may prohibit or limit an investment that
19 threatens the solvency or liquidity of a captive insurance
20 company.

21 (Source: P.A. 85-131.)

22 (215 ILCS 5/123C-13) (from Ch. 73, par. 735C-13)

23 (Section scheduled to be repealed on January 1, 2027)

24 Sec. 123C-13. Reinsurance.

25 A. Any captive insurance company may provide reinsurance on

1 risks ceded by any other insurer; provided, however, that the
2 risks so assumed are the same as the captive insurance company
3 could legally insure on a direct basis.

4 The provisions of Section 174.1 shall not apply to any
5 captive insurance company providing reinsurance.

6 B. Subject to the provisions of Article XI, any captive
7 insurance company may cede, and may take credit for in the
8 establishment of reserves, all or any part of its risks.
9 Furthermore, in addition to Section 173.1, any pure or
10 industrial insured captive insurance company may take credit,
11 as either an asset or a deduction from liability, for
12 reinsurance so ceded to the extent:

13 (1) The reinsurer satisfies all of the following (a)
14 through (g):

15 (a) the principal business of the reinsurer (other
16 than investments in subsidiaries and other investment
17 activities) is to accept reinsurance from captive
18 insurance companies organized under Article VIIC, of
19 which the company accepting the reinsurance directly
20 or indirectly owns, controls, or holds with power to
21 vote more than 80% of the outstanding voting securities
22 if organized as a stock company or more than 80% of the
23 voting control if organized as a mutual company and to
24 provide insurance related services;

25 (b) is licensed to transact insurance or
26 reinsurance in its jurisdiction of domicile;

1 (c) submits to this State's authority to examine
2 its books and records and agrees to pay the cost
3 thereof;

4 (d) files annually with the Director a copy of its
5 most recent audited financial statements;

6 (e) maintains a surplus as regards policyholders
7 in an amount that is not less than \$20,000,000;

8 (f) files with the Department the following:

9 (i) evidence of its submission to the
10 jurisdiction of any court of competent
11 jurisdiction in any state of the United States and
12 its agreement to comply with all requirements
13 necessary to give the court jurisdiction and to
14 abide by the final decision of the court or of any
15 appellate court in the event of an appeal; and

16 (ii) an instrument designating the Director or
17 a designated attorney as its true and lawful
18 attorney upon whom may be served any lawful process
19 in any action, suit, or proceeding instituted by or
20 on behalf of the ceding company;

21 (g) has not been the subject of an order of the
22 Director entered after notice and hearing prohibiting
23 the reinsurer from utilizing this paragraph (1); or
24 (2) the taking of credit by the captive insurance
25 company has otherwise received the prior approval of the
26 Director.

1 C. A captive insurance company shall provide notice to the
2 Director of a reinsurance agreement to which the company
3 becomes a party not later than the 30th day after the date of
4 the execution of the agreement.

5 D. A captive insurance company shall provide notice of a
6 termination of a previously filed reinsurance agreement to the
7 Director not later than the 30th day after the date of
8 termination.

9 E. Notwithstanding Section 123C-15 of this Code, a captive
10 insurance company, with the Director's approval, may accept
11 risks from and cede risks to or take credit for reserves on
12 risks ceded to:

13 (1) a captive reinsurance pool composed only of other
14 captive insurance companies holding a certificate of
15 authority under this Article or a similar law of another
16 jurisdiction; or

17 (2) an affiliated captive insurance company holding a
18 certificate of authority under this Article or a similar
19 law of another jurisdiction.

20 (Source: P.A. 87-108.)

21 (215 ILCS 5/123C-16) (from Ch. 73, par. 735C-16)

22 (Section scheduled to be repealed on January 1, 2027)

23 Sec. 123C-16. Tax.

24 A. Every captive insurance company organized under the
25 provisions of this Article and doing business in this State

1 shall, for the privilege of doing business in this State, pay
2 to the Director for the State treasury the State tax imposed
3 under Section 409 to the same extent and in the same manner as
4 a domestic insurance company using a tax form prescribed by the
5 Director on or before March 15 of each year.

6 B. Domestic captive insurance companies shall be insurance
7 companies subject to the rules now provided for such companies
8 under the Illinois Income Tax Act.

9 C. A domestic captive insurance company that has engaged
10 one or more administrative or management service organizations
11 in order to comply with subsection D of Section 123C-2 shall be
12 deemed to meet the requirements of Section 409(4)(a) through
13 (d) provided that the company and such organizations when
14 viewed collectively as a group:

15 (a) maintain a place of business in this State; and

16 (b) maintain in this State personnel knowledgeable of
17 and responsible for the company's operations, books,
18 records, administration and annual statement; and

19 (c) conduct in this State substantially all of the
20 company's underwriting, policy issuing and servicing
21 operations relating to the company's policyholders and
22 certificate holders; and

23 (d) comply with the provisions of Section 133(2) with
24 respect to such domestic captive insurance company's
25 books, records, documents, accounts, vouchers and
26 securities.

1 D. Annually, 15% of the premium tax revenues collected
2 pursuant to this Section shall be transferred to the Department
3 for the regulation of captive insurance companies under this
4 Article.

5 (Source: P.A. 86-632; 86-634.)

6 (215 ILCS 5/123C-17) (from Ch. 73, par. 735C-17)

7 (Section scheduled to be repealed on January 1, 2027)

8 Sec. 123C-17. Fees.

9 A. The Director shall charge, collect, and give proper
10 acquittances for the payment of the following fees and charges
11 with respect to a captive insurance company:

12 1. For filing all documents submitted for the
13 incorporation or organization or certification of a
14 captive insurance company, \$2,000 ~~\$7,000~~.

15 2. For filing requests for approval of changes in the
16 elements of a plan of operations, \$200.

17 B. Except as otherwise provided in subsection A of this
18 Section and in Section 123C-10, the provisions of Section 408
19 shall apply to captive insurance companies.

20 C. Any funds collected from captive insurance companies
21 pursuant to this Section shall be treated in the manner
22 provided in subsection (11) of Section 408.

23 (Source: P.A. 93-32, eff. 7-1-03.)

24 (215 ILCS 5/123C-19) (from Ch. 73, par. 735C-19)

1 (Section scheduled to be repealed on January 1, 2027)

2 Sec. 123C-19. Letters of credit.

3 A. Any letter of credit used to meet the requirements set
4 forth in Sections 123C-3 and 123C-4:

5 (1) (blank); ~~may not be used to provide more than 80%~~
6 ~~of the amount required in Section 123C-3 and may not be~~
7 ~~used to provide more than 80% of the amount required in~~
8 ~~Section 123C-4;~~

9 (2) may not be allowed to expire without the prior
10 written approval of the Director and shall provide for 30
11 days' advance written notice to the Director of the
12 proposed expiration of the letter of credit; and

13 (3) must be provided pursuant to arrangements,
14 acceptable to the Director, wherein all funds obtained by
15 the company under the letter of credit are free of claims
16 of any party which may arise on account of the company's
17 resort to the letter of credit.

18 B. If letters of credit are used to provide surplus in
19 excess of the amounts required in Section 123C-4:

20 (1) the aggregate amount of all such letters of credit
21 shall not exceed the policyholder surplus of the company;

22 (2) without the prior written approval of the Director,
23 no such letter of credit may be allowed to expire, in any
24 period of 12 consecutive months ending on the date of such
25 expiration, in an amount greater than the greater of (a)
26 10% of the company's surplus as regards policyholders as of

1 the 31st day of December next preceding, or (b) the net
2 income of the company for the 12 month period ending the
3 31st ~~31st~~ day of December next preceding. For purposes of
4 this Section, net income includes net realized capital
5 gains in an amount not to exceed 20% of net unrealized
6 capital gains; and

7 (3) each such letter of credit shall provide for 30
8 days' advance written notice to the Director of the
9 proposed expiration of the letter of credit.

10 C. (Blank). ~~The Director may require any company to draw~~
11 ~~upon its letters of credit, in amounts determined by the~~
12 ~~Director, if the Director determines that such action is~~
13 ~~necessary for the protection of the interests of policyholders.~~

14 D. (Blank). ~~Any company including amounts supported by~~
15 ~~letters of credit in its capital or surplus shall, prior to the~~
16 ~~time any person becomes a policyholder, notify such person of~~
17 ~~the amounts supported by letters of credit and included in the~~
18 ~~company's capital or surplus.~~

19 (Source: P.A. 85-131.)

20 (215 ILCS 5/123C-23 new)

21 Sec. 123C-23. Approval of captive reinsurance pools.
22 Before determining whether to approve a captive insurance
23 company's participation in a captive reinsurance pool under
24 Section 123C-13 of this Code, the Director may:

25 (1) require the captive insurance company provide to

1 the Director evidence that the captive reinsurance pool:

2 (a) is composed only of other captive insurance
3 companies holding a certificate of authority under
4 this Article or a similar law of another jurisdiction;
5 and

6 (b) will be able to meet the pool's financial
7 obligations; and

8 (2) impose any other limitation or requirement on the
9 captive insurance company that is necessary and proper to
10 provide adequate security for the captive insurance
11 company.

12 (215 ILCS 5/123C-24 new)

13 Sec. 123C-24. Standards for risk management of controlled
14 unaffiliated business. The Director may adopt rules
15 establishing standards to ensure that an affiliated company is
16 able to exercise control of the risk management function of any
17 controlled unaffiliated business to be insured by the captive
18 insurance company.

19 (215 ILCS 5/123C-25 new)

20 Sec. 123C-25. Captive managers. Before providing captive
21 management services to a licensed captive insurance company, a
22 captive management company shall register with the Director by
23 providing the information required on a form adopted by the
24 Director.

1 (215 ILCS 5/123C-26 new)

2 Sec. 123C-26. Dividends.

3 A. A captive insurance company shall notify the Director in
4 writing when issuing policyholder dividends.

5 B. A captive insurance company, with the Director's
6 approval, may issue dividends or distributions to the holders
7 of an equity interest in the captive insurance company. The
8 Director shall adopt rules to implement this subsection B.

9 (215 ILCS 5/123C-27 new)

10 Sec. 123C-27. Rulemaking authority. The Director may adopt
11 reasonable rules as necessary to implement the purposes and
12 provisions of this Article.

13 (215 ILCS 5/123C-28 new)

14 Sec. 123C-28. Confidentiality.

15 A. Any information filed by an applicant or captive
16 insurance company under this Article is confidential and
17 privileged for all purposes, including for purposes of the
18 Freedom of Information Act, a response to a subpoena, or
19 evidence in a civil action. Except as provided by subsections B
20 and C of this Section, the information may not be disclosed
21 without the prior written consent of the applicant or captive
22 insurance company to which the information pertains.

23 B. If the recipient of the information described by

1 subsection A of this Section has the legal authority to
2 maintain the confidential or privileged status of the
3 information and verifies that authority in writing, the
4 Director or his or her designee may disclose the information to
5 any of the following entities functioning in an official
6 capacity:

7 (1) a director of insurance or an insurance department
8 of another state;

9 (2) an authorized law enforcement official;

10 (3) a State's Attorney of this State;

11 (4) the Attorney General;

12 (5) a grand jury;

13 (6) the National Association of Insurance
14 Commissioners if the captive insurance company is
15 affiliated with an insurance company that is part of an
16 insurance holding company system as described in Article
17 VIII 1/2 of this Code;

18 (7) another state or federal regulator if the applicant
19 or captive insurance company to which the information
20 relates operates in the entity's jurisdiction;

21 (8) an international insurance regulator or analogous
22 financial agency if the captive insurance company is
23 affiliated with an insurance company that is part of an
24 insurance holding company system as described in Article
25 VIII 1/2 of this Code and the holding company system
26 operates in the entity's jurisdiction; or

1 (9) members of a supervisory college described by
2 Section 131.20c of this Code, if the captive insurance
3 company is affiliated with an insurance company that is
4 part of an insurance holding company system as described in
5 Article VIII 1/2 of this Code.

6 C. The Director may use information described by subsection
7 A of this Section in the furtherance of a legal or regulatory
8 action relating to the administration of this Code.

9 (215 ILCS 5/445) (from Ch. 73, par. 1057)

10 Sec. 445. Surplus line.

11 (1) Definitions. For the purposes of this Section:

12 "Affiliate" means, with respect to an insured, any entity
13 that controls, is controlled by, or is under common control
14 with the insured. For the purpose of this definition, an entity
15 has control over another entity if:

16 (A) the entity directly or indirectly or acting through
17 one or more other persons owns, controls, or has the power
18 to vote 25% or more of any class of voting securities of
19 the other entity; or

20 (B) the entity controls in any manner the election of a
21 majority of the directors or trustees of the other entity.

22 "Affiliated group" means any group of entities that are all
23 affiliated.

24 "Authorized insurer" means an insurer that holds a
25 certificate of authority issued by the Director but, for the

1 purposes of this Section, does not include a domestic surplus
2 line insurer as defined in Section 445a or any residual market
3 mechanism.

4 "Exempt commercial purchaser" means any person purchasing
5 commercial insurance that, at the time of placement, meets the
6 following requirements:

7 (A) The person employs or retains a qualified risk
8 manager to negotiate insurance coverage.

9 (B) The person has paid aggregate nationwide
10 commercial property and casualty insurance premiums in
11 excess of \$100,000 in the immediately preceding 12 months.

12 (C) The person meets at least one of the following
13 criteria:

14 (I) The person possesses a net worth in excess of
15 \$20,000,000, as such amount is adjusted pursuant to the
16 provision in this definition concerning percentage
17 change.

18 (II) The person generates annual revenues in
19 excess of \$50,000,000, as such amount is adjusted
20 pursuant to the provision in this definition
21 concerning percentage change.

22 (III) The person employs more than 500 full-time or
23 full-time equivalent employees per individual insured
24 or is a member of an affiliated group employing more
25 than 1,000 employees in the aggregate.

26 (IV) The person is a not-for-profit organization

1 or public entity generating annual budgeted
2 expenditures of at least \$30,000,000, as such amount is
3 adjusted pursuant to the provision in this definition
4 concerning percentage change.

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

7 Effective on January 1, 2015 and each fifth January 1
8 occurring thereafter, the amounts in subitems (I), (II), and
9 (IV) of item (C) of this definition shall be adjusted to
10 reflect the percentage change for such 5-year period in the
11 Consumer Price Index for All Urban Consumers published by the
12 Bureau of Labor Statistics of the Department of Labor.

13 "Home state" means the following:

14 (A) With respect to an insured, except as provided in
15 item (B) of this definition:

16 (I) the state in which an insured maintains its
17 principal place of business or, in the case of an
18 individual, the individual's principal residence; or

19 (II) if 100% of the insured risk is located out of
20 the state referred to in subitem (I), the state to
21 which the greatest percentage of the insured's taxable
22 premium for that insurance contract is allocated.

23 (B) If more than one insured from an affiliated group
24 are named insureds on a single surplus line insurance
25 contract, then "home state" means the home state, as
26 determined pursuant to item (A) of this definition, of the

1 member of the affiliated group that has the largest
2 percentage of premium attributed to it under such insurance
3 contract.

4 If more than one insured from a group that is not
5 affiliated are named insureds on a single surplus line
6 insurance contract, then:

7 (I) if individual group members pay 100% of the
8 premium for the insurance from their own funds, "home
9 state" means the home state, as determined pursuant to
10 item (A) of this definition, of each individual group
11 member; each individual group member's coverage under
12 the surplus line insurance contract shall be treated as
13 a separate surplus line contract for the purposes of
14 this Section;

15 (II) otherwise, "home state" means the home state,
16 as determined pursuant to item (A) of this definition,
17 of the group.

18 Nothing in this definition shall be construed to alter the
19 terms of the surplus line insurance contract.

20 "Multi-State risk" means a risk with insured exposures in
21 more than one State.

22 "NAIC" means the National Association of Insurance
23 Commissioners or any successor entity.

24 "Qualified risk manager" means, with respect to a
25 policyholder of commercial insurance, a person who meets all of
26 the following requirements:

1 (A) The person is an employee of, or third-party
2 consultant retained by, the commercial policyholder.

3 (B) The person provides skilled services in loss
4 prevention, loss reduction, or risk and insurance coverage
5 analysis, and purchase of insurance.

6 (C) With regard to the person:

7 (I) the person has:

8 (a) a bachelor's degree or higher from an
9 accredited college or university in risk
10 management, business administration, finance,
11 economics, or any other field determined by the
12 Director or his designee to demonstrate minimum
13 competence in risk management; and

14 (b) the following:

15 (i) three years of experience in risk
16 financing, claims administration, loss
17 prevention, risk and insurance analysis, or
18 purchasing commercial lines of insurance; or

19 (ii) alternatively has:

20 (AA) a designation as a Chartered
21 Property and Casualty Underwriter (in this
22 subparagraph (ii) referred to as "CPCU")
23 issued by the American Institute for
24 CPCU/Insurance Institute of America;

25 (BB) a designation as an Associate in
26 Risk Management (ARM) issued by the

1 American Institute for CPCU/Insurance
2 Institute of America;

3 (CC) a designation as Certified Risk
4 Manager (CRM) issued by the National
5 Alliance for Insurance Education &
6 Research;

7 (DD) a designation as a RIMS Fellow
8 (RF) issued by the Global Risk Management
9 Institute; or

10 (EE) any other designation,
11 certification, or license determined by
12 the Director or his designee to
13 demonstrate minimum competency in risk
14 management;

15 (II) the person has:

16 (a) at least 7 years of experience in risk
17 financing, claims administration, loss prevention,
18 risk and insurance coverage analysis, or
19 purchasing commercial lines of insurance; and

20 (b) has any one of the designations specified
21 in subparagraph (ii) of paragraph (b);

22 (III) the person has at least 10 years of
23 experience in risk financing, claims administration,
24 loss prevention, risk and insurance coverage analysis,
25 or purchasing commercial lines of insurance; or

26 (IV) the person has a graduate degree from an

1 accredited college or university in risk management,
2 business administration, finance, economics, or any
3 other field determined by the Director or his or her
4 designee to demonstrate minimum competence in risk
5 management.

6 "Residual market mechanism" means an association,
7 organization, or other entity described in Article XXXIII of
8 this Code or Section 7-501 of the Illinois Vehicle Code or any
9 similar association, organization, or other entity.

10 "State" means any state of the United States, the District
11 of Columbia, the Commonwealth of Puerto Rico, Guam, the
12 Northern Mariana Islands, the Virgin Islands, and American
13 Samoa.

14 "Surplus line insurance" means insurance on a risk:

15 (A) of the kinds specified in Classes 2 and 3 of
16 Section 4 of this Code; and

17 (B) that is procured from an unauthorized insurer after
18 the insurance producer representing the insured or the
19 surplus line producer is unable, after diligent effort, to
20 procure the insurance from authorized insurers; and

21 (C) where Illinois is the home state of the insured,
22 for policies effective, renewed or extended on July 21,
23 2011 or later and for multiyear policies upon the policy
24 anniversary that falls on or after July 21, 2011; and

25 (D) that is located in Illinois, for policies effective
26 prior to July 21, 2011.

1 "Unauthorized insurer" means an insurer that does not hold
2 a valid certificate of authority issued by the Director but,
3 for the purposes of this Section, shall also include a domestic
4 surplus line insurer as defined in Section 445a.

5 (1.5) Procuring surplus line insurance; surplus line
6 insurer requirements.

7 (a) Insurance producers may procure surplus line
8 insurance only if licensed as a surplus line producer under
9 this Section.

10 (b) Licensed surplus line producers may procure
11 surplus line insurance from an unauthorized insurer
12 domiciled in the United States only if the insurer:

13 (i) is permitted in its domiciliary jurisdiction
14 to write the type of insurance involved; and

15 (ii) has, based upon information available to the
16 surplus line producer, a policyholders surplus of not
17 less than \$15,000,000 determined in accordance with
18 the laws of its domiciliary jurisdiction; and

19 (iii) has standards of solvency and management
20 that are adequate for the protection of policyholders.

21 Where an unauthorized insurer does not meet the
22 standards set forth in (ii) and (iii) above, a surplus line
23 producer may, if necessary, procure insurance from that
24 insurer only if prior written warning of such fact or
25 condition is given to the insured by the insurance producer
26 or surplus line producer.

1 (c) Licensed surplus line producers may procure
2 surplus line insurance from an unauthorized insurer
3 domiciled outside of the United States only if the insurer
4 meets the standards for unauthorized insurers domiciled in
5 the United States in paragraph (b) of this subsection (1.5)
6 or is listed on the Quarterly Listing of Alien Insurers
7 maintained by the International Insurers Department of the
8 NAIC. The Director shall make the Quarterly Listing of
9 Alien Insurers available to surplus line producers without
10 charge.

11 (d) Insurance producers shall not procure from an
12 unauthorized insurer an insurance policy:

13 (i) that is designed to satisfy the proof of
14 financial responsibility and insurance requirements in
15 any Illinois law where the law requires that the proof
16 of insurance is issued by an authorized insurer or
17 residual market mechanism;

18 (ii) that covers the risk of accidental injury to
19 employees arising out of and in the course of
20 employment according to the provisions of the Workers'
21 Compensation Act; or

22 (iii) that insures any Illinois personal lines
23 risk, as defined in subsection (a), (b), or (c) of
24 Section 143.13 of this Code, that is eligible for
25 residual market mechanism coverage, unless the insured
26 or prospective insured requests limits of liability

1 greater than the limits provided by the residual market
2 mechanism. In the course of making a diligent effort to
3 procure insurance from authorized insurers, an
4 insurance producer shall not be required to submit a
5 risk to a residual market mechanism when the risk is
6 not eligible for coverage or exceeds the limits
7 available in the residual market mechanism.

8 Where there is an insurance policy issued by an
9 authorized insurer or residual market mechanism insuring a
10 risk described in item (i), (ii), or (iii) above, nothing
11 in this paragraph shall be construed to prohibit a surplus
12 line producer from procuring from an unauthorized insurer a
13 policy insuring the risk on an excess or umbrella basis
14 where the excess or umbrella policy is written over one or
15 more underlying policies.

16 (e) Licensed surplus line producers may procure
17 surplus line insurance from an unauthorized insurer for an
18 exempt commercial purchaser without making the required
19 diligent effort to procure the insurance from authorized
20 insurers if:

21 (i) the producer has disclosed to the exempt
22 commercial purchaser that such insurance may or may not
23 be available from authorized insurers that may provide
24 greater protection with more regulatory oversight; and

25 (ii) the exempt commercial purchaser has
26 subsequently in writing requested the producer to

1 procure such insurance from an unauthorized insurer.

2 (2) Surplus line producer; license. Any licensed producer
3 who is a resident of this State, or any nonresident who
4 qualifies under Section 500-40, may be licensed as a surplus
5 line producer upon payment of an annual license fee of \$400.

6 A surplus line producer so licensed shall keep a separate
7 account of the business transacted thereunder for 7 years from
8 the policy effective date which shall be open at all times to
9 the inspection of the Director or his representative.

10 No later than July 21, 2012, the State of Illinois shall
11 participate in the national insurance producer database of the
12 NAIC, or any other equivalent uniform national database, for
13 the licensure of surplus line producers and the renewal of such
14 licenses.

15 (3) Taxes and reports.

16 (a) Surplus line tax and penalty for late payment. The
17 surplus line tax rate for a surplus line insurance policy
18 or contract is determined as follows:

19 (i) 3% for policies or contracts with an effective
20 date prior to July 1, 2003;

21 (ii) 2.5% ~~3.5%~~ for policies or contracts with an
22 effective date of July 1, 2003 or later.

23 A surplus line producer shall file with the Director on
24 or before February 1 and August 1 of each year a report in
25 the form prescribed by the Director on all surplus line
26 insurance procured from unauthorized insurers and

1 submitted to the Surplus Line Association of Illinois
2 during the preceding 6 month period ending December 31 or
3 June 30 respectively, and on the filing of such report
4 shall pay to the Director for the use and benefit of the
5 State a sum equal to the surplus line tax rate multiplied
6 by the gross premiums less returned premiums upon all
7 surplus line insurance submitted to the Surplus Line
8 Association of Illinois during the preceding 6 months.

9 Any surplus line producer who fails to pay the full
10 amount due under this subsection is liable, in addition to
11 the amount due, for such late fee, penalty, and interest
12 charges as are provided for under Section 412 of this Code.
13 The Director, through the Attorney General, may institute
14 an action in the name of the People of the State of
15 Illinois, in any court of competent jurisdiction, for the
16 recovery of the amount of such taxes, late fees, interest,
17 and penalties due, and prosecute the same to final
18 judgment, and take such steps as are necessary to collect
19 the same.

20 (b) Fire Marshal Tax. Each surplus line producer shall
21 file with the Director on or before March 31 of each year a
22 report in the form prescribed by the Director on all fire
23 insurance procured from unauthorized insurers and
24 submitted to the Surplus Line Association of Illinois
25 subject to tax under Section 12 of the Fire Investigation
26 Act and shall pay to the Director the fire marshal tax

1 required thereunder.

2 (c) Taxes and fees charged to insured. The taxes
3 imposed under this subsection and the countersigning fees
4 charged by the Surplus Line Association of Illinois may be
5 charged to and collected from surplus line insureds.

6 (4) (Blank).

7 (5) Submission of documents to Surplus Line Association of
8 Illinois. A surplus line producer shall submit every insurance
9 contract issued under his or her license to the Surplus Line
10 Association of Illinois for recording and countersignature.
11 The submission and countersignature may be effected through
12 electronic means. The submission shall set forth:

13 (a) the name of the insured;

14 (b) the description and location of the insured
15 property or risk;

16 (c) the amount insured;

17 (d) the gross premiums charged or returned;

18 (e) the name of the unauthorized insurer from whom
19 coverage has been procured;

20 (f) the kind or kinds of insurance procured; and

21 (g) amount of premium subject to tax required by
22 Section 12 of the Fire Investigation Act.

23 Proposals, endorsements, and other documents which are
24 incidental to the insurance but which do not affect the premium
25 charged are exempted from filing and countersignature.

26 The submission of insuring contracts to the Surplus Line

1 Association of Illinois constitutes a certification by the
2 surplus line producer or by the insurance producer who
3 presented the risk to the surplus line producer for placement
4 as a surplus line risk that after diligent effort the required
5 insurance could not be procured from authorized insurers and
6 that such procurement was otherwise in accordance with the
7 surplus line law.

8 (6) Countersignature required. It shall be unlawful for an
9 insurance producer to deliver any unauthorized insurer
10 contract unless such insurance contract is countersigned by the
11 Surplus Line Association of Illinois.

12 (7) Inspection of records. A surplus line producer shall
13 maintain separate records of the business transacted under his
14 or her license for 7 years from the policy effective date,
15 including complete copies of surplus line insurance contracts
16 maintained on paper or by electronic means, which records shall
17 be open at all times for inspection by the Director and by the
18 Surplus Line Association of Illinois.

19 (8) Violations and penalties. The Director may suspend or
20 revoke or refuse to renew a surplus line producer license for
21 any violation of this Code. In addition to or in lieu of
22 suspension or revocation, the Director may subject a surplus
23 line producer to a civil penalty of up to \$2,000 for each cause
24 for suspension or revocation. Such penalty is enforceable under
25 subsection (5) of Section 403A of this Code.

26 (9) Director may declare insurer ineligible. If the

1 Director determines that the further assumption of risks might
2 be hazardous to the policyholders of an unauthorized insurer,
3 the Director may order the Surplus Line Association of Illinois
4 not to countersign insurance contracts evidencing insurance in
5 such insurer and order surplus line producers to cease
6 procuring insurance from such insurer.

7 (10) Service of process upon Director. Insurance contracts
8 delivered under this Section from unauthorized insurers, other
9 than domestic surplus line insurers as defined in Section 445a,
10 shall contain a provision designating the Director and his
11 successors in office the true and lawful attorney of the
12 insurer upon whom may be served all lawful process in any
13 action, suit or proceeding arising out of such insurance.
14 Service of process made upon the Director to be valid hereunder
15 must state the name of the insured, the name of the
16 unauthorized insurer and identify the contract of insurance.
17 The Director at his option is authorized to forward a copy of
18 the process to the Surplus Line Association of Illinois for
19 delivery to the unauthorized insurer or the Director may
20 deliver the process to the unauthorized insurer by other means
21 which he considers to be reasonably prompt and certain.

22 (10.5) Insurance contracts delivered under this Section
23 from unauthorized insurers, other than domestic surplus line
24 insurers as defined in Section 445a, shall have stamped or
25 imprinted on the first page thereof in not less than 12-pt.
26 bold face type the following legend: "Notice to Policyholder:

1 This contract is issued, pursuant to Section 445 of the
2 Illinois Insurance Code, by a company not authorized and
3 licensed to transact business in Illinois and as such is not
4 covered by the Illinois Insurance Guaranty Fund." Insurance
5 contracts delivered under this Section from domestic surplus
6 line insurers as defined in Section 445a shall have stamped or
7 imprinted on the first page thereof in not less than 12-pt.
8 bold face type the following legend: "Notice to Policyholder:
9 This contract is issued by a domestic surplus line insurer, as
10 defined in Section 445a of the Illinois Insurance Code,
11 pursuant to Section 445, and as such is not covered by the
12 Illinois Insurance Guaranty Fund."

13 (11) The Illinois Surplus Line law does not apply to
14 insurance of property and operations of railroads or aircraft
15 engaged in interstate or foreign commerce, insurance of
16 vessels, crafts or hulls, cargoes, marine builder's risks,
17 marine protection and indemnity, or other risks including
18 strikes and war risks insured under ocean or wet marine forms
19 of policies.

20 (12) Surplus line insurance procured under this Section,
21 including insurance procured from a domestic surplus line
22 insurer, is not subject to the provisions of the Illinois
23 Insurance Code other than Sections 123, 123.1, 401, 401.1, 402,
24 403, 403A, 408, 412, 445, 445.1, 445.2, 445.3, 445.4, and all
25 of the provisions of Article XXXI to the extent that the
26 provisions of Article XXXI are not inconsistent with the terms

1 of this Act.

2 (Source: P.A. 97-955, eff. 8-14-12; 98-978, eff. 1-1-15.)

3 (215 ILCS 5/123C-4 rep.)

4 Section 10. The Illinois Insurance Code is amended by
5 repealing Section 123C-4."