

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 445 and 445.1 as follows:

6 (215 ILCS 5/445) (from Ch. 73, par. 1057)
7 Sec. 445. Surplus line.

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

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

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

17 (B) the entity controls in any manner the election of
18 a majority of the directors or trustees of the other
19 entity.

20 "Affiliated group" means any group of entities that are
21 all affiliated.

22 "Authorized insurer" means an insurer that holds a
23 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
16 the 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
23 or full-time equivalent employees per individual
24 insured or is a member of an affiliated group
25 employing more 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
3 is adjusted pursuant to the provision in this
4 definition 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
3 insurance 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
13 as a separate surplus line contract for the purposes
14 of 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 "Master policy" means a surplus line insurance contract
21 with a single set of general contractual terms that are
22 designed to apply on a group basis to multiple insureds who may
23 or may not be affiliated and who may be added to or removed
24 from the contract throughout the course of the contract
25 period. A master policy may include certain provisions that
26 vary for each insured depending on the insured's

1 characteristics and the coverage sought.

2 "Multi-State risk" means a risk with insured exposures in
3 more than one State.

4 "NAIC" means the National Association of Insurance
5 Commissioners or any successor entity.

6 "Personal lines insurance" means insurance as defined in
7 subsection (a), (b), or (c) of Section 143.13 of this Code.

8 "Premium" means any amount designated as premium on the
9 declarations page or elsewhere in a policy and on any
10 endorsement, but does not include taxes, the Surplus Line
11 Association of Illinois recording fee, or any other fee.

12 "Program business" means a clearly defined group of
13 insurance contracts procured by a licensed surplus line
14 producer from an unauthorized insurer, under a single
15 agreement between the producer and insurer, for insureds with
16 the same or similar characteristics and containing the same or
17 similar contract terms.

18 "Qualified risk manager" means, with respect to a
19 policyholder of commercial insurance, a person who meets all
20 of the following requirements:

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

23 (B) The person provides skilled services in loss
24 prevention, loss reduction, or risk and insurance coverage
25 analysis, and purchase of insurance.

26 (C) With regard to the person:

1 (I) the person has:

2 (a) a bachelor's degree or higher from an
3 accredited college or university in risk
4 management, business administration, finance,
5 economics, or any other field determined by the
6 Director or his designee to demonstrate minimum
7 competence in risk management; and

8 (b) the following:

9 (i) three years of experience in risk
10 financing, claims administration, loss
11 prevention, risk and insurance analysis, or
12 purchasing commercial lines of insurance; or

13 (ii) alternatively has:

14 (AA) a designation as a Chartered
15 Property and Casualty Underwriter (in this
16 subparagraph (ii) referred to as "CPCU")
17 issued by the American Institute for
18 CPCU/Insurance Institute of America;

19 (BB) a designation as an Associate in
20 Risk Management (ARM) issued by the
21 American Institute for CPCU/Insurance
22 Institute of America;

23 (CC) a designation as Certified Risk
24 Manager (CRM) issued by the National
25 Alliance for Insurance Education &
26 Research;

1 (DD) a designation as a RIMS Fellow
2 (RF) issued by the Global Risk Management
3 Institute; or

4 (EE) any other designation,
5 certification, or license determined by
6 the Director or his designee to
7 demonstrate minimum competency in risk
8 management;

9 (II) the person has:

10 (a) at least 7 years of experience in risk
11 financing, claims administration, loss prevention,
12 risk and insurance coverage analysis, or
13 purchasing commercial lines of insurance; and

14 (b) has any one of the designations specified
15 in subparagraph (ii) of paragraph (b);

16 (III) the person has at least 10 years of
17 experience in risk financing, claims administration,
18 loss prevention, risk and insurance coverage analysis,
19 or purchasing commercial lines of insurance; or

20 (IV) the person has a graduate degree from an
21 accredited college or university in risk management,
22 business administration, finance, economics, or any
23 other field determined by the Director or his or her
24 designee to demonstrate minimum competence in risk
25 management.

26 "Residual market mechanism" means an association,

1 organization, or other entity described in Article XXXIII of
2 this Code or Section 7-501 of the Illinois Vehicle Code or any
3 similar association, organization, or other entity.

4 "State" means any state of the United States, the District
5 of Columbia, the Commonwealth of Puerto Rico, Guam, the
6 Northern Mariana Islands, the Virgin Islands, and American
7 Samoa.

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

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

11 (B) that is procured from an unauthorized insurer
12 after the insurance producer representing the insured or
13 the surplus line producer is unable, after diligent
14 effort, to procure the insurance from authorized insurers;
15 and

16 (C) where Illinois is the home state of the insured,
17 for policies effective, renewed or extended on July 21,
18 2011 or later and for multiyear policies upon the policy
19 anniversary that falls on or after July 21, 2011; and

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

22 "Taxable premium" means a premium for any risk that is
23 located in or attributed to any state.

24 "Unauthorized insurer" means an insurer that does not hold
25 a valid certificate of authority issued by the Director but,
26 for the purposes of this Section, shall also include a

1 domestic surplus line insurer as defined in Section 445a.

2 (1.5) Procuring surplus line insurance; surplus line
3 insurer requirements.

4 (a) License required. Insurance producers may procure
5 surplus line insurance only if licensed as a surplus line
6 producer under this Section.

7 (b) Domestic and foreign insurer eligibility. Licensed
8 surplus line producers may procure surplus line insurance
9 from an unauthorized insurer domiciled in any state ~~the~~
10 ~~United States~~ only if the insurer:

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

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

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

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

25 (c) Alien insurer eligibility. Licensed surplus line
26 producers may procure surplus line insurance from an

1 unauthorized insurer not domiciled in any state ~~outside of~~
2 ~~the United States~~ only if the insurer meets the standards
3 for unauthorized insurers domiciled in any state ~~the~~
4 ~~United States~~ in paragraph (b) of this subsection (1.5) or
5 is listed on the Quarterly Listing of Alien Insurers
6 maintained by the International Insurers Department of the
7 NAIC at the time of procurement. The Director shall make
8 the Quarterly Listing of Alien Insurers available to
9 surplus line producers without charge.

10 (d) Prohibited transactions. Insurance producers shall
11 not procure from an unauthorized insurer an insurance
12 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
2 market mechanism. In the course of making a diligent
3 effort to procure insurance from authorized insurers,
4 an insurance producer shall not be required to submit
5 a 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
13 a 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) Exempt commercial purchaser diligent effort.

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

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

1 (ii) the exempt commercial purchaser has
2 subsequently in writing requested the producer to
3 procure such insurance from an unauthorized insurer.

4 (f) Commercial wholesale transaction diligent effort.

5 A licensed surplus line producer may procure a surplus
6 line insurance contract, other than a personal lines
7 insurance contract, from an unauthorized insurer without
8 making the required diligent effort to procure the
9 insurance from authorized insurers if the risk was
10 referred to the surplus line producer by an
11 Illinois-licensed insurance producer who is not affiliated
12 with the surplus line producer.

13 (g) Master policy diligent effort. For a master policy
14 insurance contract, a licensed surplus line producer may
15 make the required diligent effort to procure the insurance
16 from authorized insurers annually for the master policy
17 rather than individually for each insured that is added
18 during the policy period. The diligent effort shall
19 include all variable provisions of the master policy.

20 (h) Program business diligent effort. For program
21 business, a licensed surplus line producer may make the
22 required diligent effort to procure the insurance from
23 authorized insurers annually for the program rather than
24 individually for each contract. The diligent effort shall
25 include all variable provisions of the master policy.

26 (2) Surplus line producer; license. Any licensed producer

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

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

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

13 (3) Taxes and reports.

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

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

19 (ii) 3.5% for policies or contracts with an
20 effective date of July 1, 2003 or later.

21 A surplus line producer shall file with the Director
22 on or before February 1 and August 1 of each year a report
23 in the form prescribed by the Director on all surplus line
24 insurance procured from unauthorized insurers and
25 submitted to the Surplus Line Association of Illinois
26 during the preceding 6 month period ending December 31 or

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

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

19 (b) Fire Marshal Tax. Each surplus line producer shall
20 file with the Director on or before February 1 ~~March 31~~ of
21 each year a report in the form prescribed by the Director
22 on all fire insurance procured from unauthorized insurers
23 and submitted to the Surplus Line Association of Illinois
24 during the previous year that is subject to tax under
25 Section 12 of the Fire Investigation Act and shall pay to
26 the Director the fire marshal tax required thereunder.

1 (c) Taxes and fees charged to insured. The taxes
2 imposed under this subsection and the recording
3 ~~countersigning~~ fees charged by the Surplus Line
4 Association of Illinois may be charged to and collected
5 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 and premium-bearing endorsement issued under his or
10 her license to the Surplus Line Association of Illinois for
11 recording ~~and countersignature~~. The submission and recording
12 ~~countersignature~~ may be effected through electronic means. The
13 submission shall set forth:

14 (a) the name of the insured;

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

17 (c) (blank); ~~the amount insured;~~

18 (d) the gross premiums charged or returned;

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

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

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

24 Proposals, endorsements, and other documents which are
25 incidental to the insurance but which do not affect the
26 premium charged are exempted from the submission and recording

1 ~~requirements filing and countersignature.~~

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

10 (6) Evidence of recording ~~Countersignature~~ required. It
11 shall be unlawful for an insurance producer to deliver any
12 unauthorized insurer contract or premium-bearing endorsement
13 unless it contains evidence of recording ~~such insurance~~
14 ~~contract is countersigned~~ by the Surplus Line Association of
15 Illinois.

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

23 (8) Violations and penalties. The Director may suspend or
24 revoke or refuse to renew a surplus line producer license for
25 any violation of this Code. In addition to or in lieu of
26 suspension or revocation, the Director may subject a surplus

1 line producer to a civil penalty of up to \$2,000 for each cause
2 for suspension or revocation. Such penalty is enforceable
3 under subsection (5) of Section 403A of this Code.

4 Whenever it appears to the satisfaction of the Director
5 that a surplus line producer has made a documented good faith
6 determination of the home state for a surplus line insurance
7 contract and has paid the surplus line taxes to a state other
8 than Illinois, and the Director determines that the producer's
9 good faith determination was incorrect and the home state is
10 Illinois, the surplus line producer may, at the discretion of
11 the Director, be required to submit the contract to the
12 Surplus Line Association of Illinois and pay applicable taxes
13 and recording fees, but there shall be no penalty, interest,
14 or late fee assessed.

15 (9) Director may declare insurer ineligible. If the
16 Director determines that the further assumption of risks might
17 be hazardous to the policyholders of an unauthorized insurer,
18 the Director may order the Surplus Line Association of
19 Illinois not to accept and record ~~countersign~~ insurance
20 contracts evidencing insurance in such insurer and order
21 surplus line producers to cease procuring insurance from such
22 insurer.

23 (10) Service of process upon Director. Insurance contracts
24 delivered under this Section from unauthorized insurers, other
25 than domestic surplus line insurers as defined in Section
26 445a, shall contain a provision designating the Director and

1 his successors in office the true and lawful attorney of the
2 insurer upon whom may be served all lawful process in any
3 action, suit or proceeding arising out of such insurance.
4 Service of process made upon the Director to be valid
5 hereunder must state the name of the insured, the name of the
6 unauthorized insurer and identify the contract of insurance.
7 The Director at his option is authorized to forward a copy of
8 the process to the Surplus Line Association of Illinois for
9 delivery to the unauthorized insurer or the Director may
10 deliver the process to the unauthorized insurer by other means
11 which he considers to be reasonably prompt and certain.

12 (10.5) Required notice to policyholder. Insurance
13 contracts delivered under this Section from unauthorized
14 insurers, other than domestic surplus line insurers as defined
15 in Section 445a, shall have stamped or imprinted on the first
16 page thereof in not less than 12-pt. bold face type the
17 following legend: "Notice to Policyholder: This contract is
18 issued, pursuant to Section 445 of the Illinois Insurance
19 Code, by a company not authorized and licensed to transact
20 business in Illinois and as such is not covered by the Illinois
21 Insurance Guaranty Fund." Insurance contracts delivered under
22 this Section from domestic surplus line insurers as defined in
23 Section 445a shall have stamped or imprinted on the first page
24 thereof in not less than 12-pt. bold face type the following
25 legend: "Notice to Policyholder: This contract is issued by a
26 domestic surplus line insurer, as defined in Section 445a of

1 the Illinois Insurance Code, pursuant to Section 445, and as
2 such is not covered by the Illinois Insurance Guaranty Fund."

3 (11) Marine, aviation, and transportation. The Illinois
4 Surplus Line law does not apply to insurance of property and
5 operations of railroads or aircraft engaged in interstate or
6 foreign commerce, insurance of vessels, crafts or hulls,
7 cargoes, marine builder's risks, marine protection and
8 indemnity, or other risks including strikes and war risks
9 insured under ocean or wet marine forms of policies.

10 (12) Applicability of Illinois Insurance Code. Surplus
11 line insurance procured under this Section, including
12 insurance procured from a domestic surplus line insurer, is
13 not subject to the provisions of the Illinois Insurance Code
14 other than Sections 123, 123.1, 401, 401.1, 402, 403, 403A,
15 408, 412, 445, 445a, 445.1, 445.2, 445.3, 445.4, and all of the
16 provisions of Article XXXI to the extent that the provisions
17 of Article XXXI are not inconsistent with the terms of this
18 Act.

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

20 (215 ILCS 5/445.1) (from Ch. 73, par. 1057.1)

21 Sec. 445.1. Surplus Line Association of Illinois. There is
22 hereby created a non-profit association to be known as the
23 Surplus Line Association of Illinois. All surplus line
24 producers shall be and must remain individual members of the
25 Association as a condition of their holding a license as a

1 surplus line producer in this State. The Association must
2 perform its functions under the plan of operation established
3 and approved under Section 445.3 and must exercise its powers
4 through a board of directors established under Section 445.2
5 of this Code. The Association shall be supervised by the
6 Director and is subject to the applicable provisions of the
7 Illinois Insurance Code. The Association shall be authorized
8 and have the duty to:

9 (1) receive ~~and~~, record ~~and countersign~~ all surplus
10 line insurance contracts that ~~which~~ surplus line producers
11 are required to file with the Association under subsection
12 (5) of Section 445;

13 (2) prepare monthly reports for the Director on
14 surplus line insurance procured by its members during the
15 preceding month in such form and providing such
16 information as the Director may prescribe;

17 (3) prepare and deliver to the Director and, at the
18 discretion of the Director, to each licensee the reports
19 of surplus line business prescribed in subsection (3) of
20 Section 445;

21 (4) assess its members for costs of operations in
22 accordance with a schedule adopted by the Board of
23 Directors of the Association and approved by the Director;

24 (5) employ and retain such persons as are necessary to
25 carry out the duties of the Association;

26 (6) borrow money as necessary to effect the purposes

1 of the Association;

2 (7) enter contracts as necessary to effect the
3 purposes of the Association;

4 (8) perform such other acts as will facilitate and
5 encourage compliance by its members with the surplus line
6 law of this State and rules promulgated thereunder; and

7 (9) provide such other services to its members as are
8 incidental or related to the purposes of the Association.

9 Nothing in this Act shall be construed as giving the
10 Association any discretionary authority to enforce this Act or
11 to withhold or decline acceptance and recording
12 ~~countersignature~~ of insurance contracts that ~~which~~ meet the
13 requirements of subsection (5) of Section 445.

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

15 Section 99. Effective date. This Act takes effect January
16 1, 2022.