



Sen. Michael E. Hastings

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10200SB1753sam001

LRB102 10455 BMS 23322 a

1 AMENDMENT TO SENATE BILL 1753

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1753 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Insurance Code is amended by  
5 changing Sections 412, 445, 445.1, 445.2, and 445.3 as  
6 follows:

7 (215 ILCS 5/412) (from Ch. 73, par. 1024)

8 Sec. 412. Refunds; penalties; collection.

9 (1)(a) Whenever it appears to the satisfaction of the  
10 Director that because of some mistake of fact, error in  
11 calculation, or erroneous interpretation of a statute of this  
12 or any other state, any authorized company, surplus line  
13 producer, or industrial insured has paid to him, pursuant to  
14 any provision of law, taxes, fees, or other charges in excess  
15 of the amount legally chargeable against it, during the 6 year  
16 period immediately preceding the discovery of such

1 overpayment, he shall have power to refund to such company,  
2 surplus line producer, or industrial insured the amount of the  
3 excess or excesses by applying the amount or amounts thereof  
4 toward the payment of taxes, fees, or other charges already  
5 due, or which may thereafter become due from that company  
6 until such excess or excesses have been fully refunded, or  
7 upon a written request from the authorized company, surplus  
8 line producer, or industrial insured, the Director shall  
9 provide a cash refund within 120 days after receipt of the  
10 written request if all necessary information has been filed  
11 with the Department in order for it to perform an audit of the  
12 tax report for the transaction or period or annual return for  
13 the year in which the overpayment occurred or within 120 days  
14 after the date the Department receives all the necessary  
15 information to perform such audit. The Director shall not  
16 provide a cash refund if there are insufficient funds in the  
17 Insurance Premium Tax Refund Fund to provide a cash refund, if  
18 the amount of the overpayment is less than \$100, or if the  
19 amount of the overpayment can be fully offset against the  
20 taxpayer's estimated liability for the year following the year  
21 of the cash refund request. Any cash refund shall be paid from  
22 the Insurance Premium Tax Refund Fund, a special fund hereby  
23 created in the State treasury.

24 (b) Beginning January 1, 2000 and thereafter, the  
25 Department shall deposit a percentage of the amounts collected  
26 under Sections 409, 444, and 444.1 of this Code into the

1 Insurance Premium Tax Refund Fund. The percentage deposited  
2 into the Insurance Premium Tax Refund Fund shall be the annual  
3 percentage. The annual percentage shall be calculated as a  
4 fraction, the numerator of which shall be the amount of cash  
5 refunds approved by the Director for payment and paid during  
6 the preceding calendar year as a result of overpayment of tax  
7 liability under Sections 121-2.08, 409, 444, 444.1, and 445 of  
8 this Code and the denominator of which shall be the amounts  
9 collected pursuant to Sections 121-2.08, 409, 444, 444.1, and  
10 445 of this Code during the preceding calendar year. However,  
11 if there were no cash refunds paid in a preceding calendar  
12 year, the Department shall deposit 5% of the amount collected  
13 in that preceding calendar year pursuant to Sections 121-2.08,  
14 409, 444, 444.1, and 445 of this Code into the Insurance  
15 Premium Tax Refund Fund instead of an amount calculated by  
16 using the annual percentage.

17 (c) Beginning July 1, 1999, moneys in the Insurance  
18 Premium Tax Refund Fund shall be expended exclusively for the  
19 purpose of paying cash refunds resulting from overpayment of  
20 tax liability under Sections 121-2.08, 409, 444, 444.1, and  
21 445 of this Code as determined by the Director pursuant to  
22 subsection 1(a) of this Section. Cash refunds made in  
23 accordance with this Section may be made from the Insurance  
24 Premium Tax Refund Fund only to the extent that amounts have  
25 been deposited and retained in the Insurance Premium Tax  
26 Refund Fund.

1 (d) This Section shall constitute an irrevocable and  
2 continuing appropriation from the Insurance Premium Tax Refund  
3 Fund for the purpose of paying cash refunds pursuant to the  
4 provisions of this Section.

5 (2)(a) When any insurance company fails to file any tax  
6 return required under Sections 408.1, 409, 444, and 444.1 of  
7 this Code or Section 12 of the Fire Investigation Act on the  
8 date prescribed, including any extensions, there shall be  
9 added as a penalty \$400 or 10% of the amount of such tax,  
10 whichever is greater, for each month or part of a month of  
11 failure to file, the entire penalty not to exceed \$2,000 or 50%  
12 of the tax due, whichever is greater.

13 (b) When any industrial insured or surplus line producer  
14 fails to file any tax return or report required under Sections  
15 121-2.08 and 445 of this Code or Section 12 of the Fire  
16 Investigation Act on the date prescribed, including any  
17 extensions, there shall be added:

18 (i) as a late fee, if the return or report is received  
19 at least one day but not more than 7 days after the  
20 prescribed due date, \$400 or 10% of the tax due, whichever  
21 is greater, the entire fee not to exceed \$1,000;

22 (ii) as a late fee, if the return or report is received  
23 at least 8 days but not more than 14 days after the  
24 prescribed due date, \$400 or 10% of the tax due, whichever  
25 is greater, the entire fee not to exceed \$1,500;

26 (iii) as a late fee, if the return or report is

1 received at least 15 days but not more than 21 days after  
2 the prescribed due date, \$400 or 10% of the tax due,  
3 whichever is greater, the entire fee not to exceed \$2,000;  
4 or

5 (iv) as a penalty, if the return or report is received  
6 more than 21 days after the prescribed due date, \$400 or  
7 10% of the tax due, whichever is greater, for each month or  
8 part of a month of failure to file, the entire penalty not  
9 to exceed \$2,000 or 50% of the tax due, whichever is  
10 greater.

11 A tax return or report shall be deemed received as of the  
12 date mailed as evidenced by a postmark, proof of mailing on a  
13 recognized United States Postal Service form or a form  
14 acceptable to the United States Postal Service or other  
15 commercial mail delivery service, or other evidence acceptable  
16 to the Director. Whenever it appears to the satisfaction of  
17 the Director that the circumstances of a late filing warrant a  
18 reduction or waiver of the fees or penalties in paragraph (b)  
19 of this subsection (2), the fees or penalties may be reduced or  
20 waived at the discretion of the Director.

21 (3)(a) When any insurance company fails to pay the full  
22 amount due under the provisions of this Section, Sections  
23 408.1, 409, 444, or 444.1 of this Code, or Section 12 of the  
24 Fire Investigation Act, there shall be added to the amount due  
25 as a penalty an amount equal to 10% of the deficiency.

26 (a-5) When any industrial insured or surplus line producer

1 fails to pay the full amount due under the provisions of this  
2 Section, Sections 121-2.08 or 445 of this Code, or Section 12  
3 of the Fire Investigation Act on the date prescribed, there  
4 shall be added:

5 (i) as a late fee, if the payment is received at least  
6 one day but not more than 7 days after the prescribed due  
7 date, 10% of the tax due, the entire fee not to exceed  
8 \$1,000;

9 (ii) as a late fee, if the payment is received at least  
10 8 days but not more than 14 days after the prescribed due  
11 date, 10% of the tax due, the entire fee not to exceed  
12 \$1,500;

13 (iii) as a late fee, if the payment is received at  
14 least 15 days but not more than 21 days after the  
15 prescribed due date, 10% of the tax due, the entire fee not  
16 to exceed \$2,000; or

17 (iv) as a penalty, if the return or report is received  
18 more than 21 days after the prescribed due date, 10% of the  
19 tax due.

20 A tax payment shall be deemed received as of the date  
21 mailed as evidenced by a postmark, proof of mailing on a  
22 recognized United States Postal Service form or a form  
23 acceptable to the United States Postal Service or other  
24 commercial mail delivery service, or other evidence acceptable  
25 to the Director. Whenever it appears to the satisfaction of  
26 the Director that the circumstances of a late payment warrant

1 a reduction or waiver of the fees or penalties in this  
2 paragraph, the fees or penalties may be reduced or waived at  
3 the discretion of the Director.

4 (b) If such failure to pay is determined by the Director to  
5 be willful ~~wilful~~, after a hearing under Sections 402 and 403,  
6 there shall be added to the tax as a penalty an amount equal to  
7 the greater of 50% of the deficiency or 10% of the amount due  
8 and unpaid for each month or part of a month that the  
9 deficiency remains unpaid commencing with the date that the  
10 amount becomes due. Such amount shall be in lieu of any  
11 determined under paragraph (a) or (a-5).

12 (4) Any insurance company, industrial insured, or surplus  
13 line producer that fails to pay the full amount due under this  
14 Section or Sections 121-2.08, 408.1, 409, 444, 444.1, or 445  
15 of this Code, or Section 12 of the Fire Investigation Act is  
16 liable, in addition to the tax and any late fees and penalties,  
17 for interest on such deficiency at the rate of 12% per annum,  
18 or at such higher adjusted rates as are or may be established  
19 under subsection (b) of Section 6621 of the Internal Revenue  
20 Code, from the date that payment of any such tax was due,  
21 determined without regard to any extensions, to the date of  
22 payment of such amount.

23 (5) The Director, through the Attorney General, may  
24 institute an action in the name of the People of the State of  
25 Illinois, in any court of competent jurisdiction, for the  
26 recovery of the amount of such taxes, fees, and penalties due,

1 and prosecute the same to final judgment, and take such steps  
2 as are necessary to collect the same.

3 (6) In the event that the certificate of authority of a  
4 foreign or alien company is revoked for any cause or the  
5 company withdraws from this State prior to the renewal date of  
6 the certificate of authority as provided in Section 114, the  
7 company may recover the amount of any such tax paid in advance.  
8 Except as provided in this subsection, no revocation or  
9 withdrawal excuses payment of or constitutes grounds for the  
10 recovery of any taxes or penalties imposed by this Code.

11 (7) When an insurance company or domestic affiliated group  
12 fails to pay the full amount of any fee of \$200 or more due  
13 under Section 408 of this Code, there shall be added to the  
14 amount due as a penalty the greater of \$100 or an amount equal  
15 to 10% of the deficiency for each month or part of a month that  
16 the deficiency remains unpaid.

17 (8) The Department shall have a lien for the taxes, fees,  
18 charges, fines, penalties, interest, other charges, or any  
19 portion thereof, imposed or assessed pursuant to this Code,  
20 upon all the real and personal property of any company or  
21 person to whom the assessment or final order has been issued or  
22 whenever a tax return is filed without payment of the tax or  
23 penalty shown therein to be due, including all such property  
24 of the company or person acquired after receipt of the  
25 assessment, issuance of the order, or filing of the return.  
26 The company or person is liable for the filing fee incurred by



1 the Department for filing the lien and the filing fee incurred  
2 by the Department to file the release of that lien. The filing  
3 fees shall be paid to the Department in addition to payment of  
4 the tax, fee, charge, fine, penalty, interest, other charges,  
5 or any portion thereof, included in the amount of the lien.  
6 However, where the lien arises because of the issuance of a  
7 final order of the Director or tax assessment by the  
8 Department, the lien shall not attach and the notice referred  
9 to in this Section shall not be filed until all administrative  
10 proceedings or proceedings in court for review of the final  
11 order or assessment have terminated or the time for the taking  
12 thereof has expired without such proceedings being instituted.

13 Upon the granting of Department review after a lien has  
14 attached, the lien shall remain in full force except to the  
15 extent to which the final assessment may be reduced by a  
16 revised final assessment following the rehearing or review.  
17 The lien created by the issuance of a final assessment shall  
18 terminate, unless a notice of lien is filed, within 3 years  
19 after the date all proceedings in court for the review of the  
20 final assessment have terminated or the time for the taking  
21 thereof has expired without such proceedings being instituted,  
22 or (in the case of a revised final assessment issued pursuant  
23 to a rehearing or review by the Department) within 3 years  
24 after the date all proceedings in court for the review of such  
25 revised final assessment have terminated or the time for the  
26 taking thereof has expired without such proceedings being

1 instituted. Where the lien results from the filing of a tax  
2 return without payment of the tax or penalty shown therein to  
3 be due, the lien shall terminate, unless a notice of lien is  
4 filed, within 3 years after the date when the return is filed  
5 with the Department.

6 The time limitation period on the Department's right to  
7 file a notice of lien shall not run during any period of time  
8 in which the order of any court has the effect of enjoining or  
9 restraining the Department from filing such notice of lien. If  
10 the Department finds that a company or person is about to  
11 depart from the State, to conceal himself or his property, or  
12 to do any other act tending to prejudice or to render wholly or  
13 partly ineffectual proceedings to collect the amount due and  
14 owing to the Department unless such proceedings are brought  
15 without delay, or if the Department finds that the collection  
16 of the amount due from any company or person will be  
17 jeopardized by delay, the Department shall give the company or  
18 person notice of such findings and shall make demand for  
19 immediate return and payment of the amount, whereupon the  
20 amount shall become immediately due and payable. If the  
21 company or person, within 5 days after the notice (or within  
22 such extension of time as the Department may grant), does not  
23 comply with the notice or show to the Department that the  
24 findings in the notice are erroneous, the Department may file  
25 a notice of jeopardy assessment lien in the office of the  
26 recorder of the county in which any property of the company or

1 person may be located and shall notify the company or person of  
2 the filing. The jeopardy assessment lien shall have the same  
3 scope and effect as the statutory lien provided for in this  
4 Section. If the company or person believes that the company or  
5 person does not owe some or all of the tax for which the  
6 jeopardy assessment lien against the company or person has  
7 been filed, or that no jeopardy to the revenue in fact exists,  
8 the company or person may protest within 20 days after being  
9 notified by the Department of the filing of the jeopardy  
10 assessment lien and request a hearing, whereupon the  
11 Department shall hold a hearing in conformity with the  
12 provisions of this Code and, pursuant thereto, shall notify  
13 the company or person of its findings as to whether or not the  
14 jeopardy assessment lien will be released. If not, and if the  
15 company or person is aggrieved by this decision, the company  
16 or person may file an action for judicial review of the final  
17 determination of the Department in accordance with the  
18 Administrative Review Law. If, pursuant to such hearing (or  
19 after an independent determination of the facts by the  
20 Department without a hearing), the Department determines that  
21 some or all of the amount due covered by the jeopardy  
22 assessment lien is not owed by the company or person, or that  
23 no jeopardy to the revenue exists, or if on judicial review the  
24 final judgment of the court is that the company or person does  
25 not owe some or all of the amount due covered by the jeopardy  
26 assessment lien against them, or that no jeopardy to the

1 revenue exists, the Department shall release its jeopardy  
2 assessment lien to the extent of such finding of nonliability  
3 for the amount, or to the extent of such finding of no jeopardy  
4 to the revenue. The Department shall also release its jeopardy  
5 assessment lien against the company or person whenever the  
6 amount due and owing covered by the lien, plus any interest  
7 which may be due, are paid and the company or person has paid  
8 the Department in cash or by guaranteed remittance an amount  
9 representing the filing fee for the lien and the filing fee for  
10 the release of that lien. The Department shall file that  
11 release of lien with the recorder of the county where that lien  
12 was filed.

13 Nothing in this Section shall be construed to give the  
14 Department a preference over the rights of any bona fide  
15 purchaser, holder of a security interest, mechanics  
16 lienholder, mortgagee, or judgment lien creditor arising prior  
17 to the filing of a regular notice of lien or a notice of  
18 jeopardy assessment lien in the office of the recorder in the  
19 county in which the property subject to the lien is located.  
20 For purposes of this Section, "bona fide" shall not include  
21 any mortgage of real or personal property or any other credit  
22 transaction that results in the mortgagee or the holder of the  
23 security acting as trustee for unsecured creditors of the  
24 company or person mentioned in the notice of lien who executed  
25 such chattel or real property mortgage or the document  
26 evidencing such credit transaction. The lien shall be inferior

1 to the lien of general taxes, special assessments, and special  
2 taxes levied by any political subdivision of this State. In  
3 case title to land to be affected by the notice of lien or  
4 notice of jeopardy assessment lien is registered under the  
5 provisions of the Registered Titles (Torrens) Act, such notice  
6 shall be filed in the office of the Registrar of Titles of the  
7 county within which the property subject to the lien is  
8 situated and shall be entered upon the register of titles as a  
9 memorial or charge upon each folium of the register of titles  
10 affected by such notice, and the Department shall not have a  
11 preference over the rights of any bona fide purchaser,  
12 mortgagee, judgment creditor, or other lienholder arising  
13 prior to the registration of such notice. The regular lien or  
14 jeopardy assessment lien shall not be effective against any  
15 purchaser with respect to any item in a retailer's stock in  
16 trade purchased from the retailer in the usual course of the  
17 retailer's business.

18 (Source: P.A. 98-158, eff. 8-2-13; 98-978, eff. 1-1-15.)

19 (215 ILCS 5/445) (from Ch. 73, par. 1057)

20 Sec. 445. Surplus line.

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

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

1 (A) the entity directly or indirectly or acting  
2 through one or more other persons owns, controls, or has  
3 the power to vote 25% or more of any class of voting  
4 securities of the other entity; or

5 (B) the entity controls in any manner the election of  
6 a majority of the directors or trustees of the other  
7 entity.

8 "Affiliated group" means any group of entities that are  
9 all affiliated.

10 "Authorized insurer" means an insurer that holds a  
11 certificate of authority issued by the Director but, for the  
12 purposes of this Section, does not include a domestic surplus  
13 line insurer as defined in Section 445a or any residual market  
14 mechanism.

15 "Exempt commercial purchaser" means any person purchasing  
16 commercial insurance that, at the time of placement, meets the  
17 following requirements:

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

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

23 (C) The person meets at least one of the following  
24 criteria:

25 (I) The person possesses a net worth in excess of  
26 \$20,000,000, as such amount is adjusted pursuant to

1 the provision in this definition concerning percentage  
2 change.

3 (II) The person generates annual revenues in  
4 excess of \$50,000,000, as such amount is adjusted  
5 pursuant to the provision in this definition  
6 concerning percentage change.

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

11 (IV) The person is a not-for-profit organization  
12 or public entity generating annual budgeted  
13 expenditures of at least \$30,000,000, as such amount  
14 is adjusted pursuant to the provision in this  
15 definition concerning percentage change.

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

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

24 "Home state" means the following:

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

1 (I) the state in which an insured maintains its  
2 principal place of business or, in the case of an  
3 individual, the individual's principal residence; or

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

8 (B) If more than one insured from an affiliated group  
9 are named insureds on a single surplus line insurance  
10 contract, then "home state" means the home state, as  
11 determined pursuant to item (A) of this definition, of the  
12 member of the affiliated group that has the largest  
13 percentage of premium attributed to it under such  
14 insurance contract.

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

18 (I) if individual group members pay 100% of the  
19 premium for the insurance from their own funds, "home  
20 state" means the home state, as determined pursuant to  
21 item (A) of this definition, of each individual group  
22 member; each individual group member's coverage under  
23 the surplus line insurance contract shall be treated  
24 as a separate surplus line contract for the purposes  
25 of this Section;

26 (II) otherwise, "home state" means the home state,



1 as determined pursuant to item (A) of this definition,  
2 of the group.

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

5 "Master policy" means a surplus line insurance contract  
6 with a single set of general contractual terms that are  
7 designed to apply on a group basis to multiple insureds who may  
8 or may not be affiliated and who may be added to or removed  
9 from the contract throughout the course of the contract  
10 period. A master policy may include certain provisions that  
11 vary for each insured depending on the insured's  
12 characteristics and the coverage sought.

13 "Multi-State risk" means a risk with insured exposures in  
14 more than one State.

15 "NAIC" means the National Association of Insurance  
16 Commissioners or any successor entity.

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

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

23 "Program business" means a clearly defined group of  
24 insurance contracts procured by a licensed surplus line  
25 producer from an unauthorized insurer, under a single  
26 agreement between the producer and insurer, for insureds with

1 the same or similar characteristics and containing the same or  
2 similar contract terms.

3 "Qualified risk manager" means, with respect to a  
4 policyholder of commercial insurance, a person who meets all  
5 of the following requirements:

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

8 (B) The person provides skilled services in loss  
9 prevention, loss reduction, or risk and insurance coverage  
10 analysis, and purchase of insurance.

11 (C) With regard to the person:

12 (I) the person has:

13 (a) a bachelor's degree or higher from an  
14 accredited college or university in risk  
15 management, business administration, finance,  
16 economics, or any other field determined by the  
17 Director or his designee to demonstrate minimum  
18 competence in risk management; and

19 (b) the following:

20 (i) three years of experience in risk  
21 financing, claims administration, loss  
22 prevention, risk and insurance analysis, or  
23 purchasing commercial lines of insurance; or

24 (ii) alternatively has:

25 (AA) a designation as a Chartered  
26 Property and Casualty Underwriter (in this



1 (III) the person has at least 10 years of  
2 experience in risk financing, claims administration,  
3 loss prevention, risk and insurance coverage analysis,  
4 or purchasing commercial lines of insurance; or

5 (IV) the person has a graduate degree from an  
6 accredited college or university in risk management,  
7 business administration, finance, economics, or any  
8 other field determined by the Director or his or her  
9 designee to demonstrate minimum competence in risk  
10 management.

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

15 "State" means any state of the United States, the District  
16 of Columbia, the Commonwealth of Puerto Rico, Guam, the  
17 Northern Mariana Islands, the Virgin Islands, and American  
18 Samoa.

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

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

22 (B) that is procured from an unauthorized insurer  
23 after the insurance producer representing the insured or  
24 the surplus line producer is unable, after diligent  
25 effort, to procure the insurance from authorized insurers;  
26 and

1 (C) where Illinois is the home state of the insured,  
2 for policies effective, renewed or extended on July 21,  
3 2011 or later and for multiyear policies upon the policy  
4 anniversary that falls on or after July 21, 2011; and

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

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

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

13 (1.5) Procuring surplus line insurance; surplus line  
14 insurer requirements.

15 (a) License required. Insurance producers may procure  
16 surplus line insurance only if licensed as a surplus line  
17 producer under this Section.

18 (b) Domestic and foreign insurer eligibility. Licensed  
19 surplus line producers may procure surplus line insurance  
20 from an unauthorized insurer domiciled in any state ~~the~~  
21 ~~United States~~ only if the insurer:

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

24 (ii) has, based upon information available to the  
25 surplus line producer, a policyholders surplus of not  
26 less than \$15,000,000 determined in accordance with

1 the laws of its domiciliary jurisdiction; and

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

4 Where an unauthorized insurer does not meet the  
5 standards set forth in (ii) and (iii) above, a surplus  
6 line producer may, if necessary, procure insurance from  
7 that insurer only if prior written warning of such fact or  
8 condition is given to the insured by the insurance  
9 producer or surplus line producer.

10 (c) Alien insurer eligibility. Licensed surplus line  
11 producers may procure surplus line insurance from an  
12 unauthorized insurer not domiciled in any state ~~outside of~~  
13 ~~the United States~~ only if the insurer meets the standards  
14 for unauthorized insurers domiciled in any state ~~the~~  
15 ~~United States~~ in paragraph (b) of this subsection (1.5) or  
16 is listed on the Quarterly Listing of Alien Insurers  
17 maintained by the International Insurers Department of the  
18 NAIC at the time of procurement. The Director shall make  
19 the Quarterly Listing of Alien Insurers available to  
20 surplus line producers without charge.

21 (d) Prohibited transactions. Insurance producers shall  
22 not procure from an unauthorized insurer an insurance  
23 policy:

24 (i) that is designed to satisfy the proof of  
25 financial responsibility and insurance requirements in  
26 any Illinois law where the law requires that the proof

1 of insurance is issued by an authorized insurer or  
2 residual market mechanism;

3 (ii) that covers the risk of accidental injury to  
4 employees arising out of and in the course of  
5 employment according to the provisions of the Workers'  
6 Compensation Act; or

7 (iii) that insures any Illinois personal lines  
8 risk, ~~as defined in subsection (a), (b), or (c) of~~  
9 ~~Section 143.13 of this Code,~~ that is eligible for  
10 residual market mechanism coverage, unless the insured  
11 or prospective insured requests limits of liability  
12 greater than the limits provided by the residual  
13 market mechanism. In the course of making a diligent  
14 effort to procure insurance from authorized insurers,  
15 an insurance producer shall not be required to submit  
16 a risk to a residual market mechanism when the risk is  
17 not eligible for coverage or exceeds the limits  
18 available in the residual market mechanism.

19 Where there is an insurance policy issued by an  
20 authorized insurer or residual market mechanism insuring a  
21 risk described in item (i), (ii), or (iii) above, nothing  
22 in this paragraph shall be construed to prohibit a surplus  
23 line producer from procuring from an unauthorized insurer  
24 a policy insuring the risk on an excess or umbrella basis  
25 where the excess or umbrella policy is written over one or  
26 more underlying policies.

1           (e) Exempt commercial purchaser diligent effort.

2 Licensed surplus line producers may procure surplus line  
3 insurance from an unauthorized insurer for an exempt  
4 commercial purchaser without making the required diligent  
5 effort to procure the insurance from authorized insurers  
6 if:

7           (i) the producer has disclosed to the exempt  
8 commercial purchaser that such insurance may or may  
9 not be available from authorized insurers that may  
10 provide greater protection with more regulatory  
11 oversight; and

12           (ii) the exempt commercial purchaser has  
13 subsequently in writing requested the producer to  
14 procure such insurance from an unauthorized insurer.

15           (f) Wholesale transaction diligent effort. A licensed  
16 surplus line producer may procure a surplus line insurance  
17 contract, other than a personal line insurance contract,  
18 from an unauthorized insurer without making the required  
19 diligent effort to procure the insurance from authorized  
20 insurers if the risk was referred to the surplus line  
21 producer by an Illinois-licensed insurance producer who is  
22 not affiliated with the surplus line producer.

23           (g) Master policy diligent effort. For master policy  
24 insurance contracts, a licensed surplus line producer may  
25 make the required diligent effort to procure the insurance  
26 from authorized insurers annually for the master policy



1       rather than individually for each insured that is added  
2       during the policy period.

3       (h) Program business diligent effort. For program  
4       business, a licensed surplus line producer may make the  
5       required diligent effort to procure the insurance from  
6       authorized insurers annually for the program rather than  
7       individually for each contract.

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

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

16      No later than July 21, 2012, the State of Illinois shall  
17      participate in the national insurance producer database of the  
18      NAIC, or any other equivalent uniform national database, for  
19      the licensure of surplus line producers and the renewal of  
20      such licenses.

21      (3) Taxes and reports.

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

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

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

3           A surplus line producer shall file with the Director  
4           on or before February 1 and August 1 of each year a report  
5           in the form prescribed by the Director on all surplus line  
6           insurance procured from unauthorized insurers and  
7           submitted to the Surplus Line Association of Illinois  
8           during the preceding 6 month period ending December 31 or  
9           June 30 respectively, and on the filing of such report  
10          shall pay to the Director for the use and benefit of the  
11          State a sum equal to the surplus line tax rate multiplied  
12          by the gross taxable premiums less returned taxable  
13          premiums upon all surplus line insurance submitted to the  
14          Surplus Line Association of Illinois during the preceding  
15          6 months. However, if no insurance was procured from  
16          unauthorized insurers and submitted to the Surplus Line  
17          Association of Illinois during the period, no report shall  
18          be required.

19          Any surplus line producer who fails to pay the full  
20          amount due under this subsection is liable, in addition to  
21          the amount due, for such late fee, penalty, and interest  
22          charges as are provided for under Section 412 of this  
23          Code. The Director, through the Attorney General, may  
24          institute an action in the name of the People of the State  
25          of Illinois, in any court of competent jurisdiction, for  
26          the recovery of the amount of such taxes, late fees,

1 interest, and penalties due, and prosecute the same to  
2 final judgment, and take such steps as are necessary to  
3 collect the same.

4 (b) Fire Marshal Tax. Each surplus line producer shall  
5 file with the Director on or before February 1 ~~March 31~~ of  
6 each year a report in the form prescribed by the Director  
7 on all fire insurance procured from unauthorized insurers  
8 and submitted to the Surplus Line Association of Illinois  
9 during the previous year that is subject to tax under  
10 Section 12 of the Fire Investigation Act and shall pay to  
11 the Director the fire marshal tax required thereunder.  
12 However, if no fire insurance subject to the tax was  
13 procured from unauthorized insurers and submitted to the  
14 Surplus Line Association of Illinois during that year, no  
15 report shall be required.

16 (c) Taxes and fees charged to insured. The taxes  
17 imposed under this subsection and the recording  
18 ~~countersigning~~ fees charged by the Surplus Line  
19 Association of Illinois may be charged to and collected  
20 from surplus line insureds.

21 (4) (Blank).

22 (5) Submission of documents to Surplus Line Association of  
23 Illinois. A surplus line producer shall submit every insurance  
24 contract and premium-bearing endorsement issued under his or  
25 her license to the Surplus Line Association of Illinois for  
26 recording ~~and countersignature~~. The submission and recording

1 ~~countersignature~~ may be effected through electronic means. The  
2 submission shall set forth:

3 (a) the name of the insured;

4 (b) the description and location of the insured  
5 property or risk;

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

7 (d) the gross premiums charged or returned;

8 (e) the name of the unauthorized insurer from whom  
9 coverage has been procured;

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

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

13 Proposals, endorsements, and other documents which are  
14 incidental to the insurance but which do not affect the  
15 premium charged are exempted from the submission and recording  
16 requirements ~~filing and countersignature~~.

17 The submission of insuring contracts to the Surplus Line  
18 Association of Illinois constitutes a certification by the  
19 surplus line producer or by the referring insurance producer  
20 that the contracts were procured ~~who presented the risk to the~~  
21 ~~surplus line producer for placement as a surplus line risk~~  
22 ~~that after diligent effort the required insurance could not be~~  
23 ~~procured from authorized insurers and that such procurement~~  
24 ~~was otherwise~~ in accordance with the surplus line law and,  
25 where required, the surplus line producer or referring  
26 insurance producer made a diligent effort to procure the

1 required insurance from authorized insurers.

2 (6) Evidence of recording ~~Countersignature~~ required. It  
3 shall be unlawful for an insurance producer to deliver any  
4 unauthorized insurer contract or premium-bearing endorsement  
5 unless it contains evidence of recording ~~such insurance~~  
6 ~~contract is countersigned~~ by the Surplus Line Association of  
7 Illinois.

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

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

22 When a surplus line producer has made a documented good  
23 faith determination of the home state for a surplus line  
24 insurance contract and has paid the surplus line taxes to a  
25 state other than Illinois, if the Director determines that the  
26 producer's good faith determination was incorrect and the home

1 state is Illinois, the surplus line producer can, at the  
2 discretion of the Director, be required to submit the contract  
3 to the Surplus Line Association of Illinois and pay applicable  
4 taxes and recording fees, but there shall be no penalty,  
5 interest, or late fee assessed.

6 (9) Director may declare insurer ineligible. If the  
7 Director determines that the further assumption of risks might  
8 be hazardous to the policyholders of an unauthorized insurer,  
9 the Director may order the Surplus Line Association of  
10 Illinois not to accept and record ~~countersign~~ insurance  
11 contracts evidencing insurance in such insurer and order  
12 surplus line producers to cease procuring insurance from such  
13 insurer.

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

1 deliver the process to the unauthorized insurer by other means  
2 which he considers to be reasonably prompt and certain.

3 (10.5) Required notice to policyholder. Insurance  
4 contracts delivered under this Section from unauthorized  
5 insurers, other than domestic surplus line insurers as defined  
6 in Section 445a, shall have stamped or imprinted on the first  
7 page thereof in not less than 12-pt. bold face type the  
8 following legend: "Notice to Policyholder: This contract is  
9 issued, pursuant to Section 445 of the Illinois Insurance  
10 Code, by a company not authorized and licensed to transact  
11 business in Illinois and as such is not covered by the Illinois  
12 Insurance Guaranty Fund." Insurance contracts delivered under  
13 this Section from domestic surplus line insurers as defined in  
14 Section 445a shall have stamped or imprinted on the first page  
15 thereof in not less than 12-pt. bold face type the following  
16 legend: "Notice to Policyholder: This contract is issued by a  
17 domestic surplus line insurer, as defined in Section 445a of  
18 the Illinois Insurance Code, pursuant to Section 445, and as  
19 such is not covered by the Illinois Insurance Guaranty Fund."

20 (11) Marine, aviation, and transportation. The Illinois  
21 Surplus Line law does not apply to insurance of property and  
22 operations of railroads or aircraft engaged in interstate or  
23 foreign commerce, insurance of vessels, crafts or hulls,  
24 cargoes, marine builder's risks, marine protection and  
25 indemnity, or other risks including strikes and war risks  
26 insured under ocean or wet marine forms of policies.

1           (12) Applicability of Illinois Insurance Code. Surplus  
2 line insurance procured under this Section, including  
3 insurance procured from a domestic surplus line insurer, is  
4 not subject to the provisions of the Illinois Insurance Code  
5 other than Sections 123, 123.1, 401, 401.1, 402, 403, 403A,  
6 408, 412, 445, 445a, 445.1, 445.2, 445.3, 445.4, and all of the  
7 provisions of Article XXXI to the extent that the provisions  
8 of Article XXXI are not inconsistent with the terms of this  
9 Act.

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

11           (215 ILCS 5/445.1) (from Ch. 73, par. 1057.1)

12           Sec. 445.1. Surplus Line Association of Illinois. There is  
13 hereby created a non-profit association to be known as the  
14 Surplus Line Association of Illinois. All surplus line  
15 producers shall be and must remain individual members of the  
16 Association as a condition of their holding a license as a  
17 surplus line producer in this State. The Association must  
18 perform its functions under the plan of operation established  
19 and approved under Section 445.3 and must exercise its powers  
20 through a board of directors established under Section 445.2  
21 of this Code. The Association shall be supervised by the  
22 Director and is subject to the applicable provisions of the  
23 Illinois Insurance Code. The Association shall be authorized  
24 and have the duty to:

25           (1) receive and, record ~~and countersign~~ all surplus



1 line insurance contracts that ~~which~~ surplus line producers  
2 are required to file with the Association under subsection  
3 (5) of Section 445;

4 (2) prepare monthly reports for the Director on  
5 surplus line insurance procured by its members during the  
6 preceding month in such form and providing such  
7 information as the Director may prescribe;

8 (3) prepare and deliver to the Director and, at the  
9 discretion of the Director, to each licensee the reports  
10 of surplus line business prescribed in subsection (3) of  
11 Section 445;

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

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

17 (6) borrow money as necessary to effect the purposes  
18 of the Association;

19 (7) enter contracts as necessary to effect the  
20 purposes of the Association;

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

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

26 Nothing in this Act shall be construed as giving the

1 Association any discretionary authority to enforce this Act or  
2 to withhold or decline acceptance and recording  
3 ~~countersignature~~ of insurance contracts that ~~which~~ meet the  
4 requirements of subsection (5) of Section 445.

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

6 (215 ILCS 5/445.2) (from Ch. 73, par. 1057.2)

7 Sec. 445.2. Board of Directors. The Association shall  
8 function through a Board of Directors elected by the  
9 Association members, and officers who shall be elected by the  
10 Board of Directors.

11 The Board of Directors of the Association shall consist of  
12 not less than 5 nor more than 9 persons serving terms as  
13 established in the plan of operation. The plan of operation  
14 shall provide for the election of a Board of Directors by the  
15 members of the Association from its membership. The plan of  
16 operation shall fix the manner of voting and may weigh each  
17 member's vote to reflect the annual surplus line insurance  
18 premium written by the member. Members employed by the same or  
19 affiliated employers may consolidate their premiums written  
20 and delegate an individual officer or partner to represent the  
21 member in the exercise of Association affairs, including  
22 service on the Association Board of Directors. ~~The Director~~  
23 ~~shall appoint an interim Board of Directors for the sole~~  
24 ~~purpose of conducting an election of Directors. If no Board of~~  
25 ~~Directors is elected within 90 days after the effective date~~

1 ~~of this amendatory Act of 1984, the Director shall appoint the~~  
2 ~~initial members of the Board of Directors.~~

3 The Board of Directors shall elect such officers as may be  
4 provided in the plan of operation.

5 (Source: P.A. 83-1300.)

6 (215 ILCS 5/445.3) (from Ch. 73, par. 1057.3)

7 Sec. 445.3. Plan of Operation.

8 (1) The Association shall submit to the Director a plan of  
9 operation and any amendments thereto to provide operating  
10 procedures for the administration of the Association. The plan  
11 of operation and any amendments thereto shall become effective  
12 upon approval in writing by the Director.

13 (2) (Blank). ~~If the Association fails to submit a suitable~~  
14 ~~plan of operation within 180 days following the effective date~~  
15 ~~of this amendatory Act of 1984, or if at any time thereafter~~  
16 ~~the Association fails to submit required amendments to the~~  
17 ~~plan of operation, the Director shall, after notice and~~  
18 ~~hearing pursuant to Sections 401, 402 and 403 of this Code,~~  
19 ~~adopt and promulgate such rules as are necessary or advisable~~  
20 ~~to effectuate the provisions of this Act. Such rules shall~~  
21 ~~continue in force until modified by the Director or superseded~~  
22 ~~by a plan of operation submitted by the Association and~~  
23 ~~approved by the Director.~~

24 (3) All Association members must comply with the plan of  
25 operation.

1 (Source: P.A. 83-1300.)

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law.".