



Sen. Michael E. Hastings

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10200SB1753sam002

LRB102 10455 BMS 25092 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 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

1 (B) the entity controls in any manner the election of
2 a majority of the directors or trustees of the other
3 entity.

4 "Affiliated group" means any group of entities that are
5 all affiliated.

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

11 "Exempt commercial purchaser" means any person purchasing
12 commercial insurance that, at the time of placement, meets the
13 following requirements:

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

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

19 (C) The person meets at least one of the following
20 criteria:

21 (I) The person possesses a net worth in excess of
22 \$20,000,000, as such amount is adjusted pursuant to
23 the provision in this definition concerning percentage
24 change.

25 (II) The person generates annual revenues in
26 excess of \$50,000,000, as such amount is adjusted

1 pursuant to the provision in this definition
2 concerning percentage change.

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

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

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

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

20 "Home state" means the following:

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

23 (I) the state in which an insured maintains its
24 principal place of business or, in the case of an
25 individual, the individual's principal residence; or

26 (II) if 100% of the insured risk is located out of

1 the state referred to in subitem (I), the state to
2 which the greatest percentage of the insured's taxable
3 premium for that insurance contract is allocated.

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

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

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

22 (II) otherwise, "home state" means the home state,
23 as determined pursuant to item (A) of this definition,
24 of the group.

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

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

9 "Multi-State risk" means a risk with insured exposures in
10 more than one State.

11 "NAIC" means the National Association of Insurance
12 Commissioners or any successor entity.

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

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

19 "Program business" means a clearly defined group of
20 insurance contracts procured by a licensed surplus line
21 producer from an unauthorized insurer, under a single
22 agreement between the producer and insurer, for insureds with
23 the same or similar characteristics and containing the same or
24 similar contract terms.

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

1 of the following requirements:

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

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

7 (C) With regard to the person:

8 (I) the person has:

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

15 (b) the following:

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

20 (ii) alternatively has:

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

26 (BB) a designation as an Associate in

1 Risk Management (ARM) issued by the
2 American Institute for CPCU/Insurance
3 Institute of America;

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

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

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

16 (II) the person has:

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

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

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

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

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

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

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

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

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

23 (C) where Illinois is the home state of the insured,
24 for policies effective, renewed or extended on July 21,
25 2011 or later and for multiyear policies upon the policy
26 anniversary that falls on or after July 21, 2011; and

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

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

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

9 (1.5) Procuring surplus line insurance; surplus line
10 insurer requirements.

11 (a) License required. Insurance producers may procure
12 surplus line insurance only if licensed as a surplus line
13 producer under this Section.

14 (b) Domestic and foreign insurer eligibility. Licensed
15 surplus line producers may procure surplus line insurance
16 from an unauthorized insurer domiciled in any state ~~the~~
17 ~~United States~~ only if the insurer:

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

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

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

26 Where an unauthorized insurer does not meet the

1 standards set forth in (ii) and (iii) above, a surplus
2 line producer may, if necessary, procure insurance from
3 that insurer only if prior written warning of such fact or
4 condition is given to the insured by the insurance
5 producer or surplus line producer.

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

17 (d) Prohibited transactions. Insurance producers shall
18 not procure from an unauthorized insurer an insurance
19 policy:

20 (i) that is designed to satisfy the proof of
21 financial responsibility and insurance requirements in
22 any Illinois law where the law requires that the proof
23 of insurance is issued by an authorized insurer or
24 residual market mechanism;

25 (ii) that covers the risk of accidental injury to
26 employees arising out of and in the course of

1 employment according to the provisions of the Workers'
2 Compensation Act; or

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

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

23 (e) Exempt commercial purchaser diligent effort.
24 Licensed surplus line producers may procure surplus line
25 insurance from an unauthorized insurer for an exempt
26 commercial purchaser without making the required diligent

1 effort to procure the insurance from authorized insurers
2 if:

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

8 (ii) the exempt commercial purchaser has
9 subsequently in writing requested the producer to
10 procure such insurance from an unauthorized insurer.

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

20 (g) Master policy diligent effort. For a master policy
21 insurance contract, a licensed surplus line producer may
22 make the required diligent effort to procure the insurance
23 from authorized insurers annually for the master policy
24 rather than individually for each insured that is added
25 during the policy period. The diligent effort shall
26 include all variable provisions of the master policy.

1 (h) Program business diligent effort. For program
2 business, a licensed surplus line producer may make the
3 required diligent effort to procure the insurance from
4 authorized insurers annually for the program rather than
5 individually for each contract. The diligent effort shall
6 include all variable provisions of the master policy.

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

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

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

20 (3) Taxes and reports.

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

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

26 (ii) 3.5% for policies or contracts with an

1 effective date of July 1, 2003 or later.

2 A surplus line producer shall file with the Director
3 on or before February 1 and August 1 of each year a report
4 in the form prescribed by the Director on all surplus line
5 insurance procured from unauthorized insurers and
6 submitted to the Surplus Line Association of Illinois
7 during the preceding 6 month period ending December 31 or
8 June 30 respectively, and on the filing of such report
9 shall pay to the Director for the use and benefit of the
10 State a sum equal to the surplus line tax rate multiplied
11 by the gross taxable premiums less returned taxable
12 premiums upon all surplus line insurance submitted to the
13 Surplus Line Association of Illinois during the preceding
14 6 months.

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

26 (b) Fire Marshal Tax. Each surplus line producer shall

1 file with the Director on or before February 1 ~~March 31~~ of
2 each year a report in the form prescribed by the Director
3 on all fire insurance procured from unauthorized insurers
4 and submitted to the Surplus Line Association of Illinois
5 during the previous year that is subject to tax under
6 Section 12 of the Fire Investigation Act and shall pay to
7 the Director the fire marshal tax required thereunder.

8 (c) Taxes and fees charged to insured. The taxes
9 imposed under this subsection and the recording
10 ~~countersigning~~ fees charged by the Surplus Line
11 Association of Illinois may be charged to and collected
12 from surplus line insureds.

13 (4) (Blank).

14 (5) Submission of documents to Surplus Line Association of
15 Illinois. A surplus line producer shall submit every insurance
16 contract and premium-bearing endorsement issued under his or
17 her license to the Surplus Line Association of Illinois for
18 recording ~~and countersignature~~. The submission and recording
19 ~~countersignature~~ may be effected through electronic means. The
20 submission shall set forth:

21 (a) the name of the insured;

22 (b) the description and location of the insured
23 property or risk;

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

25 (d) the gross premiums charged or returned;

26 (e) the name of the unauthorized insurer from whom

1 coverage has been procured;

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

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

5 Proposals, endorsements, and other documents which are
6 incidental to the insurance but which do not affect the
7 premium charged are exempted from the submission and recording
8 requirements ~~filing and countersignature~~.

9 The submission of insuring contracts to the Surplus Line
10 Association of Illinois constitutes a certification by the
11 surplus line producer or by the insurance producer who
12 presented the risk to the surplus line producer for placement
13 as a surplus line risk that after diligent effort, where
14 required, the required insurance could not be procured from
15 authorized insurers and that such procurement was otherwise in
16 accordance with the surplus line law.

17 (6) Evidence of recording ~~Countersignature~~ required. It
18 shall be unlawful for an insurance producer to deliver any
19 unauthorized insurer contract or premium-bearing endorsement
20 unless it contains evidence of recording ~~such insurance~~
21 ~~contract is countersigned~~ by the Surplus Line Association of
22 Illinois.

23 (7) Inspection of records. A surplus line producer shall
24 maintain separate records of the business transacted under his
25 or her license for 7 years from the policy effective date,
26 including complete copies of surplus line insurance contracts

1 maintained on paper or by electronic means, which records
2 shall be open at all times for inspection by the Director and
3 by the Surplus Line Association of Illinois.

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

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

22 (9) Director may declare insurer ineligible. If the
23 Director determines that the further assumption of risks might
24 be hazardous to the policyholders of an unauthorized insurer,
25 the Director may order the Surplus Line Association of
26 Illinois not to accept and record ~~countersign~~ insurance

1 contracts evidencing insurance in such insurer and order
2 surplus line producers to cease procuring insurance from such
3 insurer.

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

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

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

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

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

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

1 (215 ILCS 5/445.1) (from Ch. 73, par. 1057.1)

2 Sec. 445.1. Surplus Line Association of Illinois. There is
3 hereby created a non-profit association to be known as the
4 Surplus Line Association of Illinois. All surplus line
5 producers shall be and must remain individual members of the
6 Association as a condition of their holding a license as a
7 surplus line producer in this State. The Association must
8 perform its functions under the plan of operation established
9 and approved under Section 445.3 and must exercise its powers
10 through a board of directors established under Section 445.2
11 of this Code. The Association shall be supervised by the
12 Director and is subject to the applicable provisions of the
13 Illinois Insurance Code. The Association shall be authorized
14 and have the duty to:

15 (1) receive ~~and~~ record ~~and countersign~~ all surplus
16 line insurance contracts ~~that~~ ~~which~~ surplus line producers
17 are required to file with the Association under subsection
18 (5) of Section 445;

19 (2) prepare monthly reports for the Director on
20 surplus line insurance procured by its members during the
21 preceding month in such form and providing such
22 information as the Director may prescribe;

23 (3) prepare and deliver to the Director and, at the
24 discretion of the Director, to each licensee the reports
25 of surplus line business prescribed in subsection (3) of

1 Section 445;

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

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

7 (6) borrow money as necessary to effect the purposes
8 of the Association;

9 (7) enter contracts as necessary to effect the
10 purposes of the Association;

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

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

16 Nothing in this Act shall be construed as giving the
17 Association any discretionary authority to enforce this Act or
18 to withhold or decline acceptance and recording
19 ~~countersignature~~ of insurance contracts that ~~which~~ meet the
20 requirements of subsection (5) of Section 445.

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

22 Section 99. Effective date. This Act takes effect January
23 1, 2022."