

1 AN ACT concerning insurance.

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 Section 445 as follows:

6 (215 ILCS 5/445) (from Ch. 73, par. 1057)

7 Sec. 445. Surplus line.

8 (1) Surplus line defined; surplus line insurer
9 requirements. "Surplus line insurance" means insurance on
10 an Illinois risk of the kinds specified in Classes 2 and 3 of
11 Section 4 of this Code procured from an unauthorized insurer
12 ~~or a domestic surplus line insurer as defined in Section 445a~~
13 after the insurance producer representing the insured or the
14 surplus line producer is unable, after diligent effort, to
15 procure said insurance from authorized insurers which--are
16 ~~authorized--to--transact--business--in--this--State--other--than~~
17 ~~domestic surplus line insurers as defined in Section 445a.~~

18 "Authorized insurer" means an insurer that holds a
19 certificate of authority issued by the Director, other than a
20 domestic surplus line insurer as defined in Section 445a, and
21 does not include any residual market mechanism.

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

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

30 Insurance producers may procure surplus line insurance
31 only if licensed as a surplus line producer under this

1 Section and may procure that insurance only from an
2 unauthorized insurer ~~or from a domestic surplus line insurer~~
3 ~~as defined in Section 445a:~~

4 (a) that based upon information available to the
5 surplus line producer has a policyholders surplus of not
6 less than \$15,000,000 determined in accordance with
7 accounting rules that are applicable to authorized
8 insurers; and

9 (b) that has standards of solvency and management
10 that are adequate for the protection of policyholders;
11 and

12 (c) where an unauthorized insurer does not meet the
13 standards set forth in (a) and (b) above, a surplus line
14 producer may, if necessary, procure insurance from that
15 insurer only if prior written warning of such fact or
16 condition is given to the insured by the insurance
17 producer or surplus line producer.

18 (2) Surplus line producer; license. Any licensed
19 producer who is a resident of this State, or any nonresident
20 who qualifies under Section 500-40, may be licensed as a
21 surplus line producer upon:

22 (a) completing a prelicensing course of study. The
23 course provided for by this Section shall be conducted
24 under rules and regulations prescribed by the Director.
25 The Director may administer the course or may make
26 arrangements, including contracting with an outside
27 educational service, for administering the course and
28 collecting the non-refundable application fee provided
29 for in this subsection. Any charges assessed by the
30 Director or the educational service for administering the
31 course shall be paid directly by the individual
32 applicants. Each applicant required to take the course
33 shall enclose with the application a non-refundable \$10
34 application fee payable to the Director plus a separate

1 course administration fee. An applicant who fails to
2 appear for the course as scheduled, or appears but fails
3 to complete the course, shall not be entitled to any
4 refund, and shall be required to submit a new request to
5 attend the course together with all the requisite fees
6 before being rescheduled for another course at a later
7 date; and

8 (b) payment of an annual license fee of \$200; and

9 (c) procurement of the surety bond required in
10 subsection (4) of this Section.

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

15 The prelicensing course of study requirement in (a) above
16 shall not apply to insurance producers who were licensed
17 under the Illinois surplus line law on or before January 1,
18 2002 ~~the-effective-date-of-this-amendatory-Act--of--the--92nd~~
19 ~~General-Assembly.~~

20 (3) Taxes and reports.

21 (a) Surplus line tax and penalty for late payment.

22 A surplus line producer shall file with the Director
23 on or before February 1 and August 1 of each year a
24 report in the form prescribed by the Director on all
25 surplus line insurance procured from unauthorized
26 insurers during the preceding 6 month period ending
27 December 31 or June 30 respectively, and on the filing of
28 such report shall pay to the Director for the use and
29 benefit of the State a sum equal to 3% of the gross
30 premiums less returned premiums upon all surplus line
31 insurance procured or cancelled during the preceding 6
32 months.

33 Any surplus line producer who fails to pay the full
34 amount due under this subsection is liable, in addition

1 to the amount due, for such penalty and interest charges
2 as are provided for under Section 412 of this Code. The
3 Director, through the Attorney General, may institute an
4 action in the name of the People of the State of
5 Illinois, in any court of competent jurisdiction, for the
6 recovery of the amount of such taxes and penalties due,
7 and prosecute the same to final judgment, and take such
8 steps as are necessary to collect the same.

9 (b) Fire Marshal Tax.

10 Each surplus line producer shall file with the
11 Director on or before March 31 of each year a report in
12 the form prescribed by the Director on all fire insurance
13 procured from unauthorized insurers subject to tax under
14 Section 12 of the Fire Investigation Act and shall pay to
15 the Director the fire marshal tax required thereunder.

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

20 (4) Bond. Each surplus line producer, as a condition to
21 receiving a surplus line producer's license, shall execute
22 and deliver to the Director a surety bond to the People of
23 the State in the penal sum of \$20,000, with a surety which is
24 authorized to transact business in this State, conditioned
25 that the surplus line producer will pay to the Director the
26 tax, interest and penalties levied under subsection (3) of
27 this Section.

28 (5) Submission of documents to Surplus Line Association
29 of Illinois. A surplus line producer shall submit every
30 insurance contract issued under his or her license to the
31 Surplus Line Association of Illinois for recording and
32 countersignature. The submission and countersignature may be
33 effected through electronic means. The submission shall set
34 forth:

- 1 (a) the name of the insured;
- 2 (b) the description and location of the insured
- 3 property or risk;
- 4 (c) the amount insured;
- 5 (d) the gross premiums charged or returned;
- 6 (e) the name of the unauthorized insurer or
- 7 ~~domestic--surplus-line-insurer-as-defined-in-Section-445a~~
- 8 from whom coverage has been procured;
- 9 (f) the kind or kinds of insurance procured; and
- 10 (g) amount of premium subject to tax required by
- 11 Section 12 of the Fire Investigation Act.

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

16 The submission of insuring contracts to the Surplus
 17 Line Association of Illinois constitutes a certification
 18 by the surplus line producer or by the insurance producer
 19 who presented the risk to the surplus line producer for
 20 placement as a surplus line risk that after diligent
 21 effort the required insurance could not be procured from
 22 authorized insurers ~~which--are--authorized--to--transact~~
 23 ~~business-in-this-State-other-than-domestic--surplus--line~~
 24 ~~insurers--as--defined--in--Section--445a~~ and that such
 25 procurement was otherwise in accordance with the surplus
 26 line law.

27 (6) Countersignature required. It shall be unlawful for
 28 an insurance producer to deliver any unauthorized insurer
 29 contract ~~or--domestic--surplus--line-insurer-contract~~ unless
 30 such insurance contract is countersigned by the Surplus Line
 31 Association of Illinois.

32 (7) Inspection of records. A surplus line producer
 33 shall maintain separate records of the business transacted
 34 under his or her license, including complete copies of

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

5 (8) Violations and penalties. The Director may suspend
6 or revoke or refuse to renew a surplus line producer license
7 for any violation of this Code. In addition to or in lieu of
8 suspension or revocation, the Director may subject a surplus
9 line producer to a civil penalty of up to \$1,000 for each
10 cause for suspension or revocation. Such penalty is
11 enforceable under subsection (5) of Section 403A of this
12 Code.

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

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

1 reasonably prompt and certain.

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

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

17 (Source: P.A. 92-386, eff. 1-1-02.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.