

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 is 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 ~~er-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 but, for the
20 purposes of this Section, does not include a domestic surplus
21 line insurer as defined in Section 445a or any residual
22 market mechanism.

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

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

31 Insurance producers may procure surplus line insurance

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

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

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

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

19 Insurance producers shall not procure from an
20 unauthorized insurer an insurance policy:

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

26 (ii) that covers the risk of accidental injury to
27 employees arising out of and in the course of employment
28 according to the provisions of the Workers' Compensation
29 Act; or

30 (iii) that insures any Illinois personal lines
31 risk, as defined in subsection (a), (b), or (c) of
32 Section 143.13 of this Code, that is eligible for
33 residual market mechanism coverage, unless the insured or
34 prospective insured requests limits of liability greater

1 than the limits provided by the residual market
 2 mechanism. In the course of making a diligent effort to
 3 procure insurance from authorized insurers, an insurance
 4 producer shall not be required to submit a risk to a
 5 residual market mechanism when the risk is not eligible
 6 for coverage or exceeds the limits available in the
 7 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 in
 11 this paragraph shall be construed to prohibit a surplus line
 12 producer from procuring from an unauthorized insurer a policy
 13 insuring the risk on an excess or umbrella basis where the
 14 excess or umbrella policy is written over one or more
 15 underlying policies.

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

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

1 to complete the course, shall not be entitled to any
 2 refund, and shall be required to submit a new request to
 3 attend the course together with all the requisite fees
 4 before being rescheduled for another course at a later
 5 date; and

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

7 (c) procurement of the surety bond required in
 8 subsection (4) of this Section.

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

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

18 (3) Taxes and reports.

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

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

31 Any surplus line producer who fails to pay the full
 32 amount due under this subsection is liable, in addition
 33 to the amount due, for such penalty and interest charges
 34 as are provided for under Section 412 of this Code. The

1 Director, through the Attorney General, may institute an
2 action in the name of the People of the State of
3 Illinois, in any court of competent jurisdiction, for the
4 recovery of the amount of such taxes and penalties due,
5 and prosecute the same to final judgment, and take such
6 steps as are necessary to collect the same.

7 (b) Fire Marshal Tax.

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

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

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

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

33 (a) the name of the insured;

34 (b) the description and location of the insured

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

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

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

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

30 (7) Inspection of records. A surplus line producer
 31 shall maintain separate records of the business transacted
 32 under his or her license, including complete copies of
 33 surplus line insurance contracts maintained on paper or by
 34 electronic means, which records shall be open at all times

1 for inspection by the Director and by the Surplus Line
2 Association of Illinois.

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

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

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

34 (11) The Illinois Surplus Line law does not apply to

1 insurance of property and operations of railroads or aircraft
2 engaged in interstate or foreign commerce, insurance of
3 vessels, crafts or hulls, cargoes, marine builder's risks,
4 marine protection and indemnity, or other risks including
5 strikes and war risks insured under ocean or wet marine forms
6 of policies.

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

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

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.