

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 an
10 Illinois risk of the kinds specified in Classes 2 and 3 of
11 Section 4 of this Code procured from an unauthorized insurer ~~or~~
12 ~~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 market
22 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 any
26 similar association, organization, or other entity.

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

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

1 and may procure that insurance only from an unauthorized
2 insurer ~~or from a domestic surplus line insurer as defined in~~
3 ~~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 that
10 are adequate for the protection of policyholders; and

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

17 Insurance producers shall not procure from an unauthorized
18 insurer an insurance policy:

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

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

28 (iii) that insures any Illinois personal lines risk, as
29 defined in subsection (a), (b), or (c) of Section 143.13 of
30 this Code, that is eligible for residual market mechanism
31 coverage, unless the insured or prospective insured
32 requests limits of liability greater than the limits
33 provided by the residual market mechanism. In the course of
34 making a diligent effort to procure insurance from
35 authorized insurers, an insurance producer shall not be
36 required to submit a risk to a residual market mechanism

1 when the risk is not eligible for coverage or exceeds the
2 limits available in the residual market mechanism.

3 Where there is an insurance policy issued by an authorized
4 insurer or residual market mechanism insuring a risk described
5 in item (i), (ii), or (iii) above, nothing in this paragraph
6 shall be construed to prohibit a surplus line producer from
7 procuring from an unauthorized insurer a policy insuring the
8 risk on an excess or umbrella basis where the excess or
9 umbrella policy is written over one or more underlying
10 policies.

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

15 (a) completing a prelicensing course of study. The
16 course provided for by this Section shall be conducted
17 under rules and regulations prescribed by the Director. The
18 Director may administer the course or may make
19 arrangements, including contracting with an outside
20 educational service, for administering the course and
21 collecting the non-refundable application fee provided for
22 in this subsection. Any charges assessed by the Director or
23 the educational service for administering the course shall
24 be paid directly by the individual applicants. Each
25 applicant required to take the course shall enclose with
26 the application a non-refundable \$20 application fee
27 payable to the Director plus a separate course
28 administration fee. An applicant who fails to appear for
29 the course as scheduled, or appears but fails to complete
30 the course, shall not be entitled to any refund, and shall
31 be required to submit a new request to attend the course
32 together with all the requisite fees before being
33 rescheduled for another course at a later date; and

34 (b) payment of an annual license fee of \$400; and

35 (c) procurement of the surety bond required in
36 subsection (4) of this Section.

1 A surplus line producer so licensed shall keep a separate
2 account of the business transacted thereunder which shall be
3 open at all times to the inspection of the Director or his
4 representative.

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

10 (3) Taxes and reports.

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

12 A surplus line producer shall file with the Director on
13 or before February 1 and August 1 of each year a report in
14 the form prescribed by the Director on all surplus line
15 insurance procured from unauthorized insurers during the
16 preceding 6 month period ending December 31 or June 30
17 respectively, and on the filing of such report shall pay to
18 the Director for the use and benefit of the State a sum
19 equal to 3.5% of the gross premiums less returned premiums
20 upon all surplus line insurance procured or cancelled
21 during the preceding 6 months.

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

32 (b) Fire Marshal Tax.

33 Each surplus line producer shall file with the Director
34 on or before March 31 of each year a report in the form
35 prescribed by the Director on all fire insurance procured
36 from unauthorized insurers subject to tax under Section 12

1 of the Fire Investigation Act and shall pay to the Director
2 the fire marshal tax required thereunder.

3 (c) Taxes and fees charged to insured. The taxes
4 imposed under this subsection and the countersigning fees
5 charged by the Surplus Line Association of Illinois may be
6 charged to and collected from surplus line insureds.

7 (4) Bond. Each surplus line producer, as a condition to
8 receiving a surplus line producer's license, shall execute and
9 deliver to the Director a surety bond to the People of the
10 State in the penal sum of \$20,000, with a surety which is
11 authorized to transact business in this State, conditioned that
12 the surplus line producer will pay to the Director the tax,
13 interest and penalties levied under subsection (3) of this
14 Section.

15 (5) Submission of documents to Surplus Line Association of
16 Illinois. A surplus line producer shall submit every insurance
17 contract issued under his or her license to the Surplus Line
18 Association of Illinois for recording and countersignature.
19 The submission and countersignature may be effected through
20 electronic means. The 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) the amount insured;

25 (d) the gross premiums charged or returned;

26 (e) the name of the unauthorized insurer ~~or domestic~~
27 ~~surplus line insurer as defined in Section 445a~~ from whom
28 coverage has been procured;

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

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

32 Proposals, endorsements, and other documents which are
33 incidental to the insurance but which do not affect the
34 premium charged are exempted from filing and
35 countersignature.

36 The submission of insuring contracts to the Surplus

1 Line Association of Illinois constitutes a certification
2 by the surplus line producer or by the insurance producer
3 who presented the risk to the surplus line producer for
4 placement as a surplus line risk that after diligent effort
5 the required insurance could not be procured from
6 authorized insurers ~~which are authorized to transact~~
7 ~~business in this State other than domestic surplus line~~
8 ~~insurers as defined in Section 445a~~ and that such
9 procurement was otherwise in accordance with the surplus
10 line law.

11 (6) Countersignature required. It shall be unlawful for an
12 insurance producer to deliver any unauthorized insurer
13 contract ~~or domestic surplus line insurer contract~~ unless such
14 insurance contract is countersigned by the Surplus Line
15 Association of Illinois.

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

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

29 (9) Director may declare insurer ineligible. If the
30 Director determines that the further assumption of risks might
31 be hazardous to the policyholders of an unauthorized insurer,
32 the Director may order the Surplus Line Association of Illinois
33 not to countersign insurance contracts evidencing insurance in
34 such insurer and order surplus line producers to cease
35 procuring insurance from such insurer.

36 (10) Service of process upon Director. Insurance contracts

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

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

32 (11) The Illinois Surplus Line law does not apply to
33 insurance of property and operations of railroads or aircraft
34 engaged in interstate or foreign commerce, insurance of
35 vessels, crafts or hulls, cargoes, marine builder's risks,
36 marine protection and indemnity, or other risks including

1 strikes and war risks insured under ocean or wet marine forms
2 of policies.

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

11 (Source: P.A. 92-386, eff. 1-1-02; 93-29, eff. 6-20-03; 93-32,
12 eff. 7-1-03.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.