



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1244

Introduced 2/8/2011, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

215 ILCS 5/445
215 ILCS 5/445.1

from Ch. 73, par. 1057
from Ch. 73, par. 1057.1

Amends the Illinois Insurance Code. Deletes certain provisions concerning licensure requirements for surplus line producers. Makes changes to the provision concerning surplus line taxes and penalties for late payment. Sets forth provisions concerning multi-state agreements. Deletes provisions concerning surety bonds and application of the Illinois Surplus Line law. Makes changes to a provision concerning the Surplus Line Association of Illinois. Effective immediately.

LRB097 06760 RPM 46849 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 Sections 445 and 445.1 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 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
12 after the insurance producer representing the insured or the
13 surplus line producer is unable, after diligent effort, to
14 procure said insurance from authorized insurers.

15 "Authorized insurer" means an insurer that holds a
16 certificate of authority issued by the Director but, for the
17 purposes of this Section, does not include a domestic surplus
18 line insurer as defined in Section 445a or any residual market
19 mechanism.

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

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

5 Insurance producers may procure surplus line insurance
6 only if licensed as a surplus line producer under this Section
7 and may procure that insurance only from an unauthorized
8 insurer:

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

14 (b) that has standards of solvency and management that
15 are adequate for the protection of policyholders; and

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

22 Insurance producers shall not procure from an unauthorized
23 insurer an insurance policy:

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

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

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

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

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

26 (2) Surplus line producer; license. Any licensed producer

1 who is a resident of this State, or any nonresident who
2 qualifies under Section 500-40, may be licensed as a surplus
3 line producer upon: ~~(a) completing a prelicensing course of~~
4 ~~study. The course provided for by this Section shall be~~
5 ~~conducted under rules and regulations prescribed by the~~
6 ~~Director. The Director may administer the course or may make~~
7 ~~arrangements, including contracting with an outside~~
8 ~~educational service, for administering the course and~~
9 ~~collecting the non refundable application fee provided for in~~
10 ~~this subsection. Any charges assessed by the Director or the~~
11 ~~educational service for administering the course shall be paid~~
12 ~~directly by the individual applicants. Each applicant required~~
13 ~~to take the course shall enclose with the application a~~
14 ~~non refundable \$20 application fee payable to the Director plus~~
15 ~~a separate course administration fee. An applicant who fails to~~
16 ~~appear for the course as scheduled, or appears but fails to~~
17 ~~complete the course, shall not be entitled to any refund, and~~
18 ~~shall be required to submit a new request to attend the course~~
19 ~~together with all the requisite fees before being rescheduled~~
20 ~~for another course at a later date; and (b) payment of an~~
21 ~~annual license fee of \$400; and (c) procurement of the surety~~
22 ~~bond required in subsection (4) of this Section.~~

23 A surplus line producer so licensed shall keep a separate
24 account of the business transacted thereunder which shall be
25 open at all times to the inspection of the Director or his
26 representative.

1 ~~The prelicensing course of study requirement in (a) above~~
2 ~~shall not apply to insurance producers who were licensed under~~
3 ~~the Illinois surplus line law on or before January 1, 2002.~~

4 (3) Taxes and reports.

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

6 A surplus line producer shall file with the Director or
7 the Director's clearinghouse designee on or before
8 February 15 for the quarter ending the preceding December
9 31, May 15 for the quarter ending the preceding March 31, †
10 ~~and~~ August 15 for the quarter ending the preceding June 30,
11 and November 15 for the quarter ending the preceding
12 September 30 † of each year a report in the form prescribed
13 by the Director on all surplus line insurance procured from
14 unauthorized insurers during the preceding quarter ~~6 month~~
15 ~~period ending December 31 or June 30 respectively,~~ and on
16 the filing of such report shall pay to the Director or the
17 Director's clearinghouse designee for the use and benefit
18 of the State a sum equal to 3.5% of the gross premiums less
19 returned premiums upon all surplus line insurance procured
20 or cancelled during the preceding quarter ~~6 months~~.

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

1 in any court of competent jurisdiction, for the recovery of
2 the amount of such taxes and penalties due, and prosecute
3 the same to final judgment, and take such steps as are
4 necessary to collect the same.

5 (b) Fire Marshal Tax.

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

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

16 (d) Multi-state agreements. Each surplus line producer
17 shall comply with the provisions of any cooperative
18 agreement or compact that the Director is hereby authorized
19 to enter into with other states for provision of a
20 clearinghouse, nationwide uniform requirements, forms, and
21 procedures that facilitate the reporting, payment,
22 collection, and allocation of taxes imposed by this State
23 and the other states on premiums for surplus line
24 insurance. The Director may contract with a
25 non-governmental entity, including the National
26 Association of Insurance commissioners (NAIC), or any of

1 its affiliates or subsidiaries that the NAIC oversees, to
2 perform any ministerial functions that the Director deems
3 appropriate relating to the reporting, payment,
4 collection, and allocation of such taxes.

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

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

19 (a) the name of the insured;

20 (b) the description and location of the insured
21 property or risk;

22 (c) the amount insured;

23 (d) the gross premiums charged or returned;

24 (e) the name of the unauthorized insurer from whom
25 coverage has been procured;

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

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

3 Proposals, endorsements, and other documents which are
4 incidental to the insurance but which do not affect the premium
5 charged are exempted from filing and countersignature.

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

14 (6) Countersignature required. It shall be unlawful for an
15 insurance producer to deliver any unauthorized insurer
16 contract unless such insurance contract is countersigned by the
17 Surplus Line Association of Illinois.

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

24 (8) Violations and penalties. The Director may suspend or
25 revoke or refuse to renew a surplus line producer license for
26 any violation of this Code. In addition to or in lieu of

1 suspension or revocation, the Director may subject a surplus
2 line producer to a civil penalty of up to \$2,000 for each cause
3 for suspension or revocation. Such penalty is enforceable under
4 subsection (5) of Section 403A of this Code.

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

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

1 (10.5) Insurance contracts delivered under this Section
2 from unauthorized insurers, other than domestic surplus line
3 insurers as defined in Section 445a, shall have stamped or
4 imprinted on the first page thereof in not less than 12-pt.
5 bold face type the following legend: "Notice to Policyholder:
6 This contract is issued, pursuant to Section 445 of the
7 Illinois Insurance Code, by a company not authorized and
8 licensed to transact business in Illinois and as such is not
9 covered by the Illinois Insurance Guaranty Fund." Insurance
10 contracts delivered under this Section from domestic surplus
11 line insurers as defined in Section 445a shall have stamped or
12 imprinted on the first page thereof in not less than 12-pt.
13 bold face type the following legend: "Notice to Policyholder:
14 This contract is issued by a domestic surplus line insurer, as
15 defined in Section 445a of the Illinois Insurance Code,
16 pursuant to Section 445, and as such is not covered by the
17 Illinois Insurance Guaranty Fund."

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

25 (12) Surplus line insurance procured under this Section,
26 including insurance procured from a domestic surplus line

1 insurer, is not subject to the provisions of the Illinois
2 Insurance Code other than Sections 123, 123.1, 401, 401.1, 402,
3 403, 403A, 408, 412, 445, 445.1, 445.2, 445.3, 445.4, and all
4 of the provisions of Article XXXI to the extent that the
5 provisions of Article XXXI are not inconsistent with the terms
6 of this Act.

7 (Source: P.A. 92-386, eff. 1-1-02; 93-29, eff. 6-20-03; 93-32,
8 eff. 7-1-03; 93-876, eff. 8-6-04.)

9 (215 ILCS 5/445.1) (from Ch. 73, par. 1057.1)

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

23 (1) receive, record and countersign all surplus line
24 insurance contracts which surplus line producers are required
25 to file with the Association under subsection (5) of Section

1 445;

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

6 (3) prepare and deliver to each licensee and to the
7 Director the reports of surplus line business prescribed in
8 subsection (3) of Section 445;

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

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

14 (6) borrow money as necessary to effect the purposes of the
15 Association;

16 (7) enter contracts as necessary to effect the purposes of
17 the Association;

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

21 (9) provide such other services to its members as are
22 incidental or related to the purposes of the Association.
23 Nothing in this Act shall be construed as giving the
24 Association any discretionary authority to enforce this Act or
25 to withhold countersignature of insurance contracts which meet
26 the requirements of subsection (5) of Section 445.

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

2 Section 99. Effective date. This Act takes effect July 1,
3 2012.