



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB6302

by Rep. Jim Durkin, John D. Anthony, Patricia R. Bellock, Dan Brady, Rich Brauer, et al.

SYNOPSIS AS INTRODUCED:

215 ILCS 5/121-2.08	from Ch. 73, par. 733-2.08
215 ILCS 5/412	from Ch. 73, par. 1024
215 ILCS 5/445	from Ch. 73, par. 1057

Amends the Illinois Insurance Code. In the provision concerning transactions in the State involving industrial insureds' contracts of insurance, restores the language that was deleted by Public Act 98-978 and deletes the language that was added by Public Act 98-978. Deletes the references to the provision concerning transactions in the State involving industrial insureds' contracts of insurance that were added by Public Act 98-978. Deletes language in the definition of "home state" that was added by Public Act 98-978. Contains a nonacceleration provision. Effective January 1, 2015.

LRB098 22654 RPM 61581 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning regulation.

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 121-2.08, 412, and 445 as follows:

6 (215 ILCS 5/121-2.08) (from Ch. 73, par. 733-2.08)

7 (Text of Section before amendment by P.A. 98-978)

8 Sec. 121-2.08. Transactions in this State involving
9 contracts of insurance issued to one or more industrial
10 insureds. For purposes of this Section "industrial insured" is
11 an insured:

12 (a) which procures the insurance of any risk or risks other
13 than life and annuity contracts by use of the services of a
14 full time employee acting as an insurance manager or buyer or
15 the services of a regularly and continuously retained qualified
16 insurance consultant;

17 (b) whose aggregate annual premiums for insurance on all
18 risks, except for life and accident and health insurance, total
19 at least \$100,000; and

20 (c) which either (i) has at least 25 full time employees,
21 (ii) has gross assets in excess of \$3,000,000, or (iii) has
22 annual gross revenues in excess of \$5,000,000.

23 (Source: P.A. 90-794, eff. 8-14-98.)

1 (Text of Section after amendment by P.A. 98-978)

2 Sec. 121-2.08. Transactions in this State involving
3 contracts of insurance issued to one or more independently
4 ~~procured directly from an unauthorized insurer by~~ industrial
5 insureds. For the purposes of this Section, "industrial
6 insured" is an insured:

7 (a) which procures the insurance of any risk or risks other
8 than life and annuity contracts by use of the services of a
9 full-time employee acting as an insurance manager or buyer or
10 the services of a regularly and continuously retained qualified
11 insurance consultant;

12 (b) whose aggregate annual premiums for insurance on all
13 risks, except for life and accident and health insurance, total
14 at least \$100,000; and

15 (c) which either (i) has at least 25 full-time employees,
16 (ii) has gross assets in excess of \$3,000,000, or (iii) has
17 annual gross revenues in excess of \$5,000,000.

18 ~~(a) As used in this Section:~~

19 ~~"Exempt commercial purchaser" means exempt commercial~~
20 ~~purchaser as the term is defined in subsection (1) of Section~~
21 ~~445 of this Code.~~

22 ~~"Home state" means home state as the term is defined in~~
23 ~~subsection (1) of Section 445 of this Code.~~

24 ~~"Industrial insured" means an insured:~~

25 ~~(i) that procures the insurance of any risk or risks of~~

1 ~~the kinds specified in Classes 2 and 3 of Section 4 of this~~
2 ~~Code by use of the services of a full-time employee who is~~
3 ~~a qualified risk manager or the services of a regularly and~~
4 ~~continuously retained consultant who is a qualified risk~~
5 ~~manager;~~

6 ~~(ii) that procures the insurance directly from an~~
7 ~~unauthorized insurer without the services of an~~
8 ~~intermediary insurance producer; and~~

9 ~~(iii) that is an exempt commercial purchaser whose home~~
10 ~~state is Illinois.~~

11 ~~"Insurance producer" means insurance producer as the term~~
12 ~~is defined in Section 500-10 of this Code.~~

13 ~~"Qualified risk manager" means qualified risk manager as~~
14 ~~the term is defined in subsection (1) of Section 445 of this~~
15 ~~Code.~~

16 ~~"Unauthorized insurer" means unauthorized insurer as the~~
17 ~~term is defined in subsection (1) of Section 445 of this Code.~~

18 ~~(b) For contracts of insurance effective January 1, 2015 or~~
19 ~~later, within 90 days after the effective date of each contract~~
20 ~~of insurance issued under this Section, the insured shall file~~
21 ~~a report with the Director by submitting the report to the~~
22 ~~Surplus Line Association of Illinois in writing or in a~~
23 ~~computer readable format and provide information as designated~~
24 ~~by the Surplus Line Association of Illinois. The information in~~
25 ~~the report shall be substantially similar to that required for~~
26 ~~surplus line submissions as described in subsection (5) of~~

1 ~~Section 445 of this Code. Where applicable, the report shall~~
2 ~~satisfy, with respect to the subject insurance, the reporting~~
3 ~~requirement of Section 12 of the Fire Investigation Act.~~

4 ~~(c) For contracts of insurance effective January 1, 2015 or~~
5 ~~later, within 30 days after filing the report, the insured~~
6 ~~shall pay to the Director for the use and benefit of the State~~
7 ~~a sum equal to the gross premium of the contract of insurance~~
8 ~~multiplied by the surplus line tax rate, as described in~~
9 ~~paragraph (3) of subsection (a) of Section 445 of this Code,~~
10 ~~and shall pay the fire marshal tax that would otherwise be due~~
11 ~~annually in March for insurance subject to tax under Section 12~~
12 ~~of the Fire Investigation Act. For contracts of insurance~~
13 ~~effective January 1, 2015 or later, within 30 days after filing~~
14 ~~the report, the insured shall pay to the Surplus Line~~
15 ~~Association of Illinois a countersigning fee that shall be~~
16 ~~assessed at the same rate charged to members pursuant to~~
17 ~~subsection (4) of Section 445.1 of this Code.~~

18 ~~(d) For contracts of insurance effective January 1, 2015 or~~
19 ~~later, the insured shall withhold the amount of the taxes and~~
20 ~~countersignature fee from the amount of premium charged by and~~
21 ~~otherwise payable to the insurer for the insurance. If the~~
22 ~~insured fails to withhold the tax and countersignature fee from~~
23 ~~the premium, then the insured shall be liable for the amounts~~
24 ~~thereof and shall pay the amounts as prescribed in subsection~~
25 ~~(c) of this Section.~~

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

1 (215 ILCS 5/412) (from Ch. 73, par. 1024)

2 (Text of Section before amendment by P.A. 98-978)

3 Sec. 412. Refunds; penalties; collection.

4 (1)(a) Whenever it appears to the satisfaction of the
5 Director that because of some mistake of fact, error in
6 calculation, or erroneous interpretation of a statute of this
7 or any other state, any authorized company has paid to him,
8 pursuant to any provision of law, taxes, fees, or other charges
9 in excess of the amount legally chargeable against it, during
10 the 6 year period immediately preceding the discovery of such
11 overpayment, he shall have power to refund to such company the
12 amount of the excess or excesses by applying the amount or
13 amounts thereof toward the payment of taxes, fees, or other
14 charges already due, or which may thereafter become due from
15 that company until such excess or excesses have been fully
16 refunded, or upon a written request from the authorized
17 company, the Director shall provide a cash refund within 120
18 days after receipt of the written request if all necessary
19 information has been filed with the Department in order for it
20 to perform an audit of the annual return for the year in which
21 the overpayment occurred or within 120 days after the date the
22 Department receives all the necessary information to perform
23 such audit. The Director shall not provide a cash refund if
24 there are insufficient funds in the Insurance Premium Tax
25 Refund Fund to provide a cash refund, if the amount of the

1 overpayment is less than \$100, or if the amount of the
2 overpayment can be fully offset against the taxpayer's
3 estimated liability for the year following the year of the cash
4 refund request. Any cash refund shall be paid from the
5 Insurance Premium Tax Refund Fund, a special fund hereby
6 created in the State treasury.

7 (b) Beginning January 1, 2000 and thereafter, the
8 Department shall deposit a percentage of the amounts collected
9 under Sections 409, 444, and 444.1 of this Code into the
10 Insurance Premium Tax Refund Fund. The percentage deposited
11 into the Insurance Premium Tax Refund Fund shall be the annual
12 percentage. The annual percentage shall be calculated as a
13 fraction, the numerator of which shall be the amount of cash
14 refunds approved by the Director for payment and paid during
15 the preceding calendar year as a result of overpayment of tax
16 liability under Sections 409, 444, and 444.1 of this Code and
17 the denominator of which shall be the amounts collected
18 pursuant to Sections 409, 444, and 444.1 of this Code during
19 the preceding calendar year. However, if there were no cash
20 refunds paid in a preceding calendar year, the Department shall
21 deposit 5% of the amount collected in that preceding calendar
22 year pursuant to Sections 409, 444, and 444.1 of this Code into
23 the Insurance Premium Tax Refund Fund instead of an amount
24 calculated by using the annual percentage.

25 (c) Beginning July 1, 1999, moneys in the Insurance Premium
26 Tax Refund Fund shall be expended exclusively for the purpose

1 of paying cash refunds resulting from overpayment of tax
2 liability under Sections 409, 444, and 444.1 of this Code as
3 determined by the Director pursuant to subsection 1(a) of this
4 Section. Cash refunds made in accordance with this Section may
5 be made from the Insurance Premium Tax Refund Fund only to the
6 extent that amounts have been deposited and retained in the
7 Insurance Premium Tax Refund Fund.

8 (d) This Section shall constitute an irrevocable and
9 continuing appropriation from the Insurance Premium Tax Refund
10 Fund for the purpose of paying cash refunds pursuant to the
11 provisions of this Section.

12 (2) When any insurance company or any surplus line producer
13 fails to file any tax return required under Sections 408.1,
14 409, 444, 444.1 and 445 of this Code or Section 12 of the Fire
15 Investigation Act on the date prescribed, including any
16 extensions, there shall be added as a penalty \$400 or 10% of
17 the amount of such tax, whichever is greater, for each month or
18 part of a month of failure to file, the entire penalty not to
19 exceed \$2,000 or 50% of the tax due, whichever is greater.

20 (3)(a) When any insurance company or any surplus line
21 producer fails to pay the full amount due under the provisions
22 of this Section, Sections 408.1, 409, 444, 444.1 or 445 of this
23 Code, or Section 12 of the Fire Investigation Act, there shall
24 be added to the amount due as a penalty an amount equal to 10%
25 of the deficiency.

26 (b) If such failure to pay is determined by the Director to

1 be wilful, after a hearing under Sections 402 and 403, there
2 shall be added to the tax as a penalty an amount equal to the
3 greater of 50% of the deficiency or 10% of the amount due and
4 unpaid for each month or part of a month that the deficiency
5 remains unpaid commencing with the date that the amount becomes
6 due. Such amount shall be in lieu of any determined under
7 paragraph (a).

8 (4) Any insurance company or any surplus line producer
9 which fails to pay the full amount due under this Section or
10 Sections 408.1, 409, 444, 444.1 or 445 of this Code, or Section
11 12 of the Fire Investigation Act is liable, in addition to the
12 tax and any penalties, for interest on such deficiency at the
13 rate of 12% per annum, or at such higher adjusted rates as are
14 or may be established under subsection (b) of Section 6621 of
15 the Internal Revenue Code, from the date that payment of any
16 such tax was due, determined without regard to any extensions,
17 to the date of payment of such amount.

18 (5) The Director, through the Attorney General, may
19 institute an action in the name of the People of the State of
20 Illinois, in any court of competent jurisdiction, for the
21 recovery of the amount of such taxes, fees, and penalties due,
22 and prosecute the same to final judgment, and take such steps
23 as are necessary to collect the same.

24 (6) In the event that the certificate of authority of a
25 foreign or alien company is revoked for any cause or the
26 company withdraws from this State prior to the renewal date of

1 the certificate of authority as provided in Section 114, the
2 company may recover the amount of any such tax paid in advance.
3 Except as provided in this subsection, no revocation or
4 withdrawal excuses payment of or constitutes grounds for the
5 recovery of any taxes or penalties imposed by this Code.

6 (7) When an insurance company or domestic affiliated group
7 fails to pay the full amount of any fee of \$200 or more due
8 under Section 408 of this Code, there shall be added to the
9 amount due as a penalty the greater of \$100 or an amount equal
10 to 10% of the deficiency for each month or part of a month that
11 the deficiency remains unpaid.

12 (8) The Department shall have a lien for the taxes, fees,
13 charges, fines, penalties, interest, other charges, or any
14 portion thereof, imposed or assessed pursuant to this Code,
15 upon all the real and personal property of any company or
16 person to whom the assessment or final order has been issued or
17 whenever a tax return is filed without payment of the tax or
18 penalty shown therein to be due, including all such property of
19 the company or person acquired after receipt of the assessment,
20 issuance of the order, or filing of the return. The company or
21 person is liable for the filing fee incurred by the Department
22 for filing the lien and the filing fee incurred by the
23 Department to file the release of that lien. The filing fees
24 shall be paid to the Department in addition to payment of the
25 tax, fee, charge, fine, penalty, interest, other charges, or
26 any portion thereof, included in the amount of the lien.

1 However, where the lien arises because of the issuance of a
2 final order of the Director or tax assessment by the
3 Department, the lien shall not attach and the notice referred
4 to in this Section shall not be filed until all administrative
5 proceedings or proceedings in court for review of the final
6 order or assessment have terminated or the time for the taking
7 thereof has expired without such proceedings being instituted.

8 Upon the granting of Department review after a lien has
9 attached, the lien shall remain in full force except to the
10 extent to which the final assessment may be reduced by a
11 revised final assessment following the rehearing or review. The
12 lien created by the issuance of a final assessment shall
13 terminate, unless a notice of lien is filed, within 3 years
14 after the date all proceedings in court for the review of the
15 final assessment have terminated or the time for the taking
16 thereof has expired without such proceedings being instituted,
17 or (in the case of a revised final assessment issued pursuant
18 to a rehearing or review by the Department) within 3 years
19 after the date all proceedings in court for the review of such
20 revised final assessment have terminated or the time for the
21 taking thereof has expired without such proceedings being
22 instituted. Where the lien results from the filing of a tax
23 return without payment of the tax or penalty shown therein to
24 be due, the lien shall terminate, unless a notice of lien is
25 filed, within 3 years after the date when the return is filed
26 with the Department.

1 The time limitation period on the Department's right to
2 file a notice of lien shall not run during any period of time
3 in which the order of any court has the effect of enjoining or
4 restraining the Department from filing such notice of lien. If
5 the Department finds that a company or person is about to
6 depart from the State, to conceal himself or his property, or
7 to do any other act tending to prejudice or to render wholly or
8 partly ineffectual proceedings to collect the amount due and
9 owing to the Department unless such proceedings are brought
10 without delay, or if the Department finds that the collection
11 of the amount due from any company or person will be
12 jeopardized by delay, the Department shall give the company or
13 person notice of such findings and shall make demand for
14 immediate return and payment of the amount, whereupon the
15 amount shall become immediately due and payable. If the company
16 or person, within 5 days after the notice (or within such
17 extension of time as the Department may grant), does not comply
18 with the notice or show to the Department that the findings in
19 the notice are erroneous, the Department may file a notice of
20 jeopardy assessment lien in the office of the recorder of the
21 county in which any property of the company or person may be
22 located and shall notify the company or person of the filing.
23 The jeopardy assessment lien shall have the same scope and
24 effect as the statutory lien provided for in this Section. If
25 the company or person believes that the company or person does
26 not owe some or all of the tax for which the jeopardy

1 assessment lien against the company or person has been filed,
2 or that no jeopardy to the revenue in fact exists, the company
3 or person may protest within 20 days after being notified by
4 the Department of the filing of the jeopardy assessment lien
5 and request a hearing, whereupon the Department shall hold a
6 hearing in conformity with the provisions of this Code and,
7 pursuant thereto, shall notify the company or person of its
8 findings as to whether or not the jeopardy assessment lien will
9 be released. If not, and if the company or person is aggrieved
10 by this decision, the company or person may file an action for
11 judicial review of the final determination of the Department in
12 accordance with the Administrative Review Law. If, pursuant to
13 such hearing (or after an independent determination of the
14 facts by the Department without a hearing), the Department
15 determines that some or all of the amount due covered by the
16 jeopardy assessment lien is not owed by the company or person,
17 or that no jeopardy to the revenue exists, or if on judicial
18 review the final judgment of the court is that the company or
19 person does not owe some or all of the amount due covered by
20 the jeopardy assessment lien against them, or that no jeopardy
21 to the revenue exists, the Department shall release its
22 jeopardy assessment lien to the extent of such finding of
23 nonliability for the amount, or to the extent of such finding
24 of no jeopardy to the revenue. The Department shall also
25 release its jeopardy assessment lien against the company or
26 person whenever the amount due and owing covered by the lien,

1 plus any interest which may be due, are paid and the company or
2 person has paid the Department in cash or by guaranteed
3 remittance an amount representing the filing fee for the lien
4 and the filing fee for the release of that lien. The Department
5 shall file that release of lien with the recorder of the county
6 where that lien was filed.

7 Nothing in this Section shall be construed to give the
8 Department a preference over the rights of any bona fide
9 purchaser, holder of a security interest, mechanics
10 lienholder, mortgagee, or judgment lien creditor arising prior
11 to the filing of a regular notice of lien or a notice of
12 jeopardy assessment lien in the office of the recorder in the
13 county in which the property subject to the lien is located.
14 For purposes of this Section, "bona fide" shall not include any
15 mortgage of real or personal property or any other credit
16 transaction that results in the mortgagee or the holder of the
17 security acting as trustee for unsecured creditors of the
18 company or person mentioned in the notice of lien who executed
19 such chattel or real property mortgage or the document
20 evidencing such credit transaction. The lien shall be inferior
21 to the lien of general taxes, special assessments, and special
22 taxes levied by any political subdivision of this State. In
23 case title to land to be affected by the notice of lien or
24 notice of jeopardy assessment lien is registered under the
25 provisions of the Registered Titles (Torrens) Act, such notice
26 shall be filed in the office of the Registrar of Titles of the

1 county within which the property subject to the lien is
2 situated and shall be entered upon the register of titles as a
3 memorial or charge upon each folium of the register of titles
4 affected by such notice, and the Department shall not have a
5 preference over the rights of any bona fide purchaser,
6 mortgagee, judgment creditor, or other lienholder arising
7 prior to the registration of such notice. The regular lien or
8 jeopardy assessment lien shall not be effective against any
9 purchaser with respect to any item in a retailer's stock in
10 trade purchased from the retailer in the usual course of the
11 retailer's business.

12 (Source: P.A. 98-158, eff. 8-2-13.)

13 (Text of Section after amendment by P.A. 98-978)

14 Sec. 412. Refunds; penalties; collection.

15 (1)(a) Whenever it appears to the satisfaction of the
16 Director that because of some mistake of fact, error in
17 calculation, or erroneous interpretation of a statute of this
18 or any other state, any authorized company or surplus line
19 producer, ~~or industrial insured~~ has paid to him, pursuant to
20 any provision of law, taxes, fees, or other charges in excess
21 of the amount legally chargeable against it, during the 6 year
22 period immediately preceding the discovery of such
23 overpayment, he shall have power to refund to such company or
24 surplus line producer, ~~or industrial insured~~ the amount of the
25 excess or excesses by applying the amount or amounts thereof

1 toward the payment of taxes, fees, or other charges already
2 due, or which may thereafter become due from that company until
3 such excess or excesses have been fully refunded, or upon a
4 written request from the authorized company or, surplus line
5 producer, ~~or industrial insured~~, the Director shall provide a
6 cash refund within 120 days after receipt of the written
7 request if all necessary information has been filed with the
8 Department in order for it to perform an audit of the tax
9 report for the transaction or period or annual return for the
10 year in which the overpayment occurred or within 120 days after
11 the date the Department receives all the necessary information
12 to perform such audit. The Director shall not provide a cash
13 refund if there are insufficient funds in the Insurance Premium
14 Tax Refund Fund to provide a cash refund, if the amount of the
15 overpayment is less than \$100, or if the amount of the
16 overpayment can be fully offset against the taxpayer's
17 estimated liability for the year following the year of the cash
18 refund request. Any cash refund shall be paid from the
19 Insurance Premium Tax Refund Fund, a special fund hereby
20 created in the State treasury.

21 (b) Beginning January 1, 2000 and thereafter, the
22 Department shall deposit a percentage of the amounts collected
23 under Sections 409, 444, and 444.1 of this Code into the
24 Insurance Premium Tax Refund Fund. The percentage deposited
25 into the Insurance Premium Tax Refund Fund shall be the annual
26 percentage. The annual percentage shall be calculated as a

1 fraction, the numerator of which shall be the amount of cash
2 refunds approved by the Director for payment and paid during
3 the preceding calendar year as a result of overpayment of tax
4 liability under Sections ~~121-2.08~~, 409, 444, 444.1, and 445 of
5 this Code and the denominator of which shall be the amounts
6 collected pursuant to Sections ~~121-2.08~~, 409, 444, 444.1, and
7 445 of this Code during the preceding calendar year. However,
8 if there were no cash refunds paid in a preceding calendar
9 year, the Department shall deposit 5% of the amount collected
10 in that preceding calendar year pursuant to Sections ~~121-2.08~~,
11 409, 444, 444.1, and 445 of this Code into the Insurance
12 Premium Tax Refund Fund instead of an amount calculated by
13 using the annual percentage.

14 (c) Beginning July 1, 1999, moneys in the Insurance Premium
15 Tax Refund Fund shall be expended exclusively for the purpose
16 of paying cash refunds resulting from overpayment of tax
17 liability under Sections ~~121-2.08~~, 409, 444, 444.1, and 445 of
18 this Code as determined by the Director pursuant to subsection
19 1(a) of this Section. Cash refunds made in accordance with this
20 Section may be made from the Insurance Premium Tax Refund Fund
21 only to the extent that amounts have been deposited and
22 retained in the Insurance Premium Tax Refund Fund.

23 (d) This Section shall constitute an irrevocable and
24 continuing appropriation from the Insurance Premium Tax Refund
25 Fund for the purpose of paying cash refunds pursuant to the
26 provisions of this Section.

1 (2)(a) When any insurance company fails to file any tax
2 return required under Sections 408.1, 409, 444, and 444.1 of
3 this Code or Section 12 of the Fire Investigation Act on the
4 date prescribed, including any extensions, there shall be added
5 as a penalty \$400 or 10% of the amount of such tax, whichever
6 is greater, for each month or part of a month of failure to
7 file, the entire penalty not to exceed \$2,000 or 50% of the tax
8 due, whichever is greater.

9 (b) When any ~~industrial insured or~~ surplus line producer
10 fails to file any tax return or report required under Section
11 ~~Sections 121-2.08 and~~ 445 of this Code or Section 12 of the
12 Fire Investigation Act on the date prescribed, including any
13 extensions, there shall be added:

14 (i) as a late fee, if the return or report is received
15 at least one day but not more than 7 days after the
16 prescribed due date, \$400 or 10% of the tax due, whichever
17 is greater, the entire fee not to exceed \$1,000;

18 (ii) as a late fee, if the return or report is received
19 at least 8 days but not more than 14 days after the
20 prescribed due date, \$400 or 10% of the tax due, whichever
21 is greater, the entire fee not to exceed \$1,500;

22 (iii) as a late fee, if the return or report is
23 received at least 15 days but not more than 21 days after
24 the prescribed due date, \$400 or 10% of the tax due,
25 whichever is greater, the entire fee not to exceed \$2,000;

26 or

1 (iv) as a penalty, if the return or report is received
2 more than 21 days after the prescribed due date, \$400 or
3 10% of the tax due, whichever is greater, for each month or
4 part of a month of failure to file, the entire penalty not
5 to exceed \$2,000 or 50% of the tax due, whichever is
6 greater.

7 A tax return or report shall be deemed received as of the
8 date mailed as evidenced by a postmark, proof of mailing on a
9 recognized United States Postal Service form or a form
10 acceptable to the United States Postal Service or other
11 commercial mail delivery service, or other evidence acceptable
12 to the Director.

13 (3)(a) When any insurance company fails to pay the full
14 amount due under the provisions of this Section, Sections
15 408.1, 409, 444, or 444.1 of this Code, or Section 12 of the
16 Fire Investigation Act, there shall be added to the amount due
17 as a penalty an amount equal to 10% of the deficiency.

18 (a-5) When any ~~industrial insured or~~ surplus line producer
19 fails to pay the full amount due under the provisions of this
20 Section, ~~Sections 121-2.08~~ or Section 445 of this Code, or
21 Section 12 of the Fire Investigation Act on the date
22 prescribed, there shall be added:

23 (i) as a late fee, if the payment is received at least
24 one day but not more than 7 days after the prescribed due
25 date, 10% of the tax due, the entire fee not to exceed
26 \$1,000;

1 (ii) as a late fee, if the payment is received at least
2 8 days but not more than 14 days after the prescribed due
3 date, 10% of the tax due, the entire fee not to exceed
4 \$1,500;

5 (iii) as a late fee, if the payment is received at
6 least 15 days but not more than 21 days after the
7 prescribed due date, 10% of the tax due, the entire fee not
8 to exceed \$2,000; or

9 (iv) as a penalty, if the return or report is received
10 more than 21 days after the prescribed due date, 10% of the
11 tax due.

12 A tax payment shall be deemed received as of the date
13 mailed as evidenced by a postmark, proof of mailing on a
14 recognized United States Postal Service form or a form
15 acceptable to the United States Postal Service or other
16 commercial mail delivery service, or other evidence acceptable
17 to the Director.

18 (b) If such failure to pay is determined by the Director to
19 be wilful, after a hearing under Sections 402 and 403, there
20 shall be added to the tax as a penalty an amount equal to the
21 greater of 50% of the deficiency or 10% of the amount due and
22 unpaid for each month or part of a month that the deficiency
23 remains unpaid commencing with the date that the amount becomes
24 due. Such amount shall be in lieu of any determined under
25 paragraph (a) or (a-5).

26 (4) Any insurance company, ~~industrial insured,~~ or surplus

1 line producer that fails to pay the full amount due under this
2 Section or Sections ~~121-2.08~~, 408.1, 409, 444, 444.1, or 445 of
3 this Code, or Section 12 of the Fire Investigation Act is
4 liable, in addition to the tax and any late fees and penalties,
5 for interest on such deficiency at the rate of 12% per annum,
6 or at such higher adjusted rates as are or may be established
7 under subsection (b) of Section 6621 of the Internal Revenue
8 Code, from the date that payment of any such tax was due,
9 determined without regard to any extensions, to the date of
10 payment of such amount.

11 (5) The Director, through the Attorney General, may
12 institute an action in the name of the People of the State of
13 Illinois, in any court of competent jurisdiction, for the
14 recovery of the amount of such taxes, fees, and penalties due,
15 and prosecute the same to final judgment, and take such steps
16 as are necessary to collect the same.

17 (6) In the event that the certificate of authority of a
18 foreign or alien company is revoked for any cause or the
19 company withdraws from this State prior to the renewal date of
20 the certificate of authority as provided in Section 114, the
21 company may recover the amount of any such tax paid in advance.
22 Except as provided in this subsection, no revocation or
23 withdrawal excuses payment of or constitutes grounds for the
24 recovery of any taxes or penalties imposed by this Code.

25 (7) When an insurance company or domestic affiliated group
26 fails to pay the full amount of any fee of \$200 or more due

1 under Section 408 of this Code, there shall be added to the
2 amount due as a penalty the greater of \$100 or an amount equal
3 to 10% of the deficiency for each month or part of a month that
4 the deficiency remains unpaid.

5 (8) The Department shall have a lien for the taxes, fees,
6 charges, fines, penalties, interest, other charges, or any
7 portion thereof, imposed or assessed pursuant to this Code,
8 upon all the real and personal property of any company or
9 person to whom the assessment or final order has been issued or
10 whenever a tax return is filed without payment of the tax or
11 penalty shown therein to be due, including all such property of
12 the company or person acquired after receipt of the assessment,
13 issuance of the order, or filing of the return. The company or
14 person is liable for the filing fee incurred by the Department
15 for filing the lien and the filing fee incurred by the
16 Department to file the release of that lien. The filing fees
17 shall be paid to the Department in addition to payment of the
18 tax, fee, charge, fine, penalty, interest, other charges, or
19 any portion thereof, included in the amount of the lien.
20 However, where the lien arises because of the issuance of a
21 final order of the Director or tax assessment by the
22 Department, the lien shall not attach and the notice referred
23 to in this Section shall not be filed until all administrative
24 proceedings or proceedings in court for review of the final
25 order or assessment have terminated or the time for the taking
26 thereof has expired without such proceedings being instituted.

1 Upon the granting of Department review after a lien has
2 attached, the lien shall remain in full force except to the
3 extent to which the final assessment may be reduced by a
4 revised final assessment following the rehearing or review. The
5 lien created by the issuance of a final assessment shall
6 terminate, unless a notice of lien is filed, within 3 years
7 after the date all proceedings in court for the review of the
8 final assessment have terminated or the time for the taking
9 thereof has expired without such proceedings being instituted,
10 or (in the case of a revised final assessment issued pursuant
11 to a rehearing or review by the Department) within 3 years
12 after the date all proceedings in court for the review of such
13 revised final assessment have terminated or the time for the
14 taking thereof has expired without such proceedings being
15 instituted. Where the lien results from the filing of a tax
16 return without payment of the tax or penalty shown therein to
17 be due, the lien shall terminate, unless a notice of lien is
18 filed, within 3 years after the date when the return is filed
19 with the Department.

20 The time limitation period on the Department's right to
21 file a notice of lien shall not run during any period of time
22 in which the order of any court has the effect of enjoining or
23 restraining the Department from filing such notice of lien. If
24 the Department finds that a company or person is about to
25 depart from the State, to conceal himself or his property, or
26 to do any other act tending to prejudice or to render wholly or

1 partly ineffectual proceedings to collect the amount due and
2 owing to the Department unless such proceedings are brought
3 without delay, or if the Department finds that the collection
4 of the amount due from any company or person will be
5 jeopardized by delay, the Department shall give the company or
6 person notice of such findings and shall make demand for
7 immediate return and payment of the amount, whereupon the
8 amount shall become immediately due and payable. If the company
9 or person, within 5 days after the notice (or within such
10 extension of time as the Department may grant), does not comply
11 with the notice or show to the Department that the findings in
12 the notice are erroneous, the Department may file a notice of
13 jeopardy assessment lien in the office of the recorder of the
14 county in which any property of the company or person may be
15 located and shall notify the company or person of the filing.
16 The jeopardy assessment lien shall have the same scope and
17 effect as the statutory lien provided for in this Section. If
18 the company or person believes that the company or person does
19 not owe some or all of the tax for which the jeopardy
20 assessment lien against the company or person has been filed,
21 or that no jeopardy to the revenue in fact exists, the company
22 or person may protest within 20 days after being notified by
23 the Department of the filing of the jeopardy assessment lien
24 and request a hearing, whereupon the Department shall hold a
25 hearing in conformity with the provisions of this Code and,
26 pursuant thereto, shall notify the company or person of its

1 findings as to whether or not the jeopardy assessment lien will
2 be released. If not, and if the company or person is aggrieved
3 by this decision, the company or person may file an action for
4 judicial review of the final determination of the Department in
5 accordance with the Administrative Review Law. If, pursuant to
6 such hearing (or after an independent determination of the
7 facts by the Department without a hearing), the Department
8 determines that some or all of the amount due covered by the
9 jeopardy assessment lien is not owed by the company or person,
10 or that no jeopardy to the revenue exists, or if on judicial
11 review the final judgment of the court is that the company or
12 person does not owe some or all of the amount due covered by
13 the jeopardy assessment lien against them, or that no jeopardy
14 to the revenue exists, the Department shall release its
15 jeopardy assessment lien to the extent of such finding of
16 nonliability for the amount, or to the extent of such finding
17 of no jeopardy to the revenue. The Department shall also
18 release its jeopardy assessment lien against the company or
19 person whenever the amount due and owing covered by the lien,
20 plus any interest which may be due, are paid and the company or
21 person has paid the Department in cash or by guaranteed
22 remittance an amount representing the filing fee for the lien
23 and the filing fee for the release of that lien. The Department
24 shall file that release of lien with the recorder of the county
25 where that lien was filed.

26 Nothing in this Section shall be construed to give the

1 Department a preference over the rights of any bona fide
2 purchaser, holder of a security interest, mechanics
3 lienholder, mortgagee, or judgment lien creditor arising prior
4 to the filing of a regular notice of lien or a notice of
5 jeopardy assessment lien in the office of the recorder in the
6 county in which the property subject to the lien is located.
7 For purposes of this Section, "bona fide" shall not include any
8 mortgage of real or personal property or any other credit
9 transaction that results in the mortgagee or the holder of the
10 security acting as trustee for unsecured creditors of the
11 company or person mentioned in the notice of lien who executed
12 such chattel or real property mortgage or the document
13 evidencing such credit transaction. The lien shall be inferior
14 to the lien of general taxes, special assessments, and special
15 taxes levied by any political subdivision of this State. In
16 case title to land to be affected by the notice of lien or
17 notice of jeopardy assessment lien is registered under the
18 provisions of the Registered Titles (Torrens) Act, such notice
19 shall be filed in the office of the Registrar of Titles of the
20 county within which the property subject to the lien is
21 situated and shall be entered upon the register of titles as a
22 memorial or charge upon each folium of the register of titles
23 affected by such notice, and the Department shall not have a
24 preference over the rights of any bona fide purchaser,
25 mortgagee, judgment creditor, or other lienholder arising
26 prior to the registration of such notice. The regular lien or

1 jeopardy assessment lien shall not be effective against any
2 purchaser with respect to any item in a retailer's stock in
3 trade purchased from the retailer in the usual course of the
4 retailer's business.

5 (Source: P.A. 98-158, eff. 8-2-13; 98-978, eff. 1-1-15.)

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

7 (Text of Section before amendment by P.A. 98-978)

8 Sec. 445. Surplus line.

9 (1) Definitions. For the purposes of this Section:

10 "Affiliate" means, with respect to an insured, any entity
11 that controls, is controlled by, or is under common control
12 with the insured. For the purpose of this definition, an entity
13 has control over another entity if:

14 (A) the entity directly or indirectly or acting through
15 one or more other persons owns, controls, or has the power
16 to vote 25% or more of any class of voting securities of
17 the other entity; or

18 (B) the entity controls in any manner the election of a
19 majority of the directors or trustees of the other entity.

20 "Affiliated group" means any group of entities that are all
21 affiliated.

22 "Authorized insurer" means an insurer that holds a
23 certificate of authority issued by the Director but, for the
24 purposes of this Section, does not include a domestic surplus
25 line insurer as defined in Section 445a or any residual market

1 mechanism.

2 "Exempt commercial purchaser" means any person purchasing
3 commercial insurance that, at the time of placement, meets the
4 following requirements:

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

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

10 (C) The person meets at least one of the following
11 criteria:

12 (I) The person possesses a net worth in excess of
13 \$20,000,000, as such amount is adjusted pursuant to the
14 provision in this definition concerning percentage
15 change.

16 (II) The person generates annual revenues in
17 excess of \$50,000,000, as such amount is adjusted
18 pursuant to the provision in this definition
19 concerning percentage change.

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

24 (IV) The person is a not-for-profit organization
25 or public entity generating annual budgeted
26 expenditures of at least \$30,000,000, as such amount is

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

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

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

11 "Home state" means the following:

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

14 (I) the state in which an insured maintains its
15 principal place of business or, in the case of an
16 individual, the individual's principal residence; or

17 (II) if 100% of the insured risk is located out of
18 the state referred to in subitem (I), the state to
19 which the greatest percentage of the insured's taxable
20 premium for that insurance contract is allocated.

21 (B) If more than one insured from an affiliated group
22 are named insureds on a single surplus line insurance
23 contract, then "home state" means the home state, as
24 determined pursuant to item (A) of this definition, of the
25 member of the affiliated group that has the largest
26 percentage of premium attributed to it under such insurance

1 contract.

2 "Multi-State risk" means a risk with insured exposures in
3 more than one State.

4 "NAIC" means the National Association of Insurance
5 Commissioners or any successor entity.

6 "Qualified risk manager" means, with respect to a
7 policyholder of commercial insurance, a person who meets all of
8 the following requirements:

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

11 (B) The person provides skilled services in loss
12 prevention, loss reduction, or risk and insurance coverage
13 analysis, and purchase of insurance.

14 (C) With regard to the person:

15 (I) the person has:

16 (a) a bachelor's degree or higher from an
17 accredited college or university in risk
18 management, business administration, finance,
19 economics, or any other field determined by the
20 Director or his designee to demonstrate minimum
21 competence in risk management; and

22 (b) the following:

23 (i) three years of experience in risk
24 financing, claims administration, loss
25 prevention, risk and insurance analysis, or
26 purchasing commercial lines of insurance; or

1 (ii) alternatively has:

2 (AA) a designation as a Chartered
3 Property and Casualty Underwriter (in this
4 subparagraph (ii) referred to as "CPCU")
5 issued by the American Institute for
6 CPCU/Insurance Institute of America;

7 (BB) a designation as an Associate in
8 Risk Management (ARM) issued by the
9 American Institute for CPCU/Insurance
10 Institute of America;

11 (CC) a designation as Certified Risk
12 Manager (CRM) issued by the National
13 Alliance for Insurance Education &
14 Research;

15 (DD) a designation as a RIMS Fellow
16 (RF) issued by the Global Risk Management
17 Institute; or

18 (EE) any other designation,
19 certification, or license determined by
20 the Director or his designee to
21 demonstrate minimum competency in risk
22 management;

23 (II) the person has:

24 (a) at least 7 years of experience in risk
25 financing, claims administration, loss prevention,
26 risk and insurance coverage analysis, or

1 purchasing commercial lines of insurance; and

2 (b) has any one of the designations specified
3 in subparagraph (ii) of paragraph (b);

4 (III) the person has at least 10 years of
5 experience in risk financing, claims administration,
6 loss prevention, risk and insurance coverage analysis,
7 or purchasing commercial lines of insurance; or

8 (IV) the person has a graduate degree from an
9 accredited college or university in risk management,
10 business administration, finance, economics, or any
11 other field determined by the Director or his or her
12 designee to demonstrate minimum competence in risk
13 management.

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

18 "State" means any state of the United States, the District
19 of Columbia, the Commonwealth of Puerto Rico, Guam, the
20 Northern Mariana Islands, the Virgin Islands, and American
21 Samoa.

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

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

25 (B) that is procured from an unauthorized insurer after
26 the insurance producer representing the insured or the

1 surplus line producer is unable, after diligent effort, to
2 procure the insurance from authorized insurers; and

3 (C) where Illinois is the home state of the insured,
4 for policies effective, renewed or extended on July 21,
5 2011 or later and for multiyear policies upon the policy
6 anniversary that falls on or after July 21, 2011; and

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

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

13 (1.5) Procuring surplus line insurance; surplus line
14 insurer requirements.

15 (a) Insurance producers may procure surplus line
16 insurance only if licensed as a surplus line producer under
17 this Section.

18 (b) Licensed surplus line producers may procure
19 surplus line insurance from an unauthorized insurer
20 domiciled in the United States only if the insurer:

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

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

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

3 Where an unauthorized insurer does not meet the
4 standards set forth in (ii) and (iii) above, a surplus line
5 producer may, if necessary, procure insurance from that
6 insurer only if prior written warning of such fact or
7 condition is given to the insured by the insurance producer
8 or surplus line producer.

9 (c) Licensed surplus line producers may procure
10 surplus line insurance from an unauthorized insurer
11 domiciled outside of the United States only if the insurer
12 is listed on the Quarterly Listing of Alien Insurers
13 maintained by the International Insurers Department of the
14 NAIC. The Director shall make the Quarterly Listing of
15 Alien Insurers available to surplus line producers without
16 charge.

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

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

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

1 Compensation Act; or

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

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

22 (e) Licensed surplus line producers may procure
23 surplus line insurance from an unauthorized insurer for an
24 exempt commercial purchaser without making the required
25 diligent effort to procure the insurance from authorized
26 insurers if:

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

5 (ii) the exempt commercial purchaser has
6 subsequently in writing requested the producer to
7 procure such insurance from an unauthorized insurer.

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

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

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

21 (3) Taxes and reports.

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

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

1 (ii) 3.5% for policies or contracts with an
2 effective date of July 1, 2003 or later.

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

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

24 (b) Fire Marshal Tax. Each surplus line producer shall
25 file with the Director on or before March 31 of each year a
26 report in the form prescribed by the Director on all fire

1 insurance procured from unauthorized insurers and
2 submitted to the Surplus Line Association of Illinois
3 subject to tax under Section 12 of the Fire Investigation
4 Act and shall pay to the Director the fire marshal tax
5 required thereunder.

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

10 (4) (Blank).

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

17 (a) the name of the insured;

18 (b) the description and location of the insured
19 property or risk;

20 (c) the amount insured;

21 (d) the gross premiums charged or returned;

22 (e) the name of the unauthorized insurer from whom
23 coverage has been procured;

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

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

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

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

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

1 for suspension or revocation. Such penalty is enforceable under
2 subsection (5) of Section 403A of this Code.

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

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

25 (10.5) Insurance contracts delivered under this Section
26 from unauthorized insurers, other than domestic surplus line

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

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

23 (12) Surplus line insurance procured under this Section,
24 including insurance procured from a domestic surplus line
25 insurer, is not subject to the provisions of the Illinois
26 Insurance Code other than Sections 123, 123.1, 401, 401.1, 402,

1 403, 403A, 408, 412, 445, 445.1, 445.2, 445.3, 445.4, and all
2 of the provisions of Article XXXI to the extent that the
3 provisions of Article XXXI are not inconsistent with the terms
4 of this Act.

5 (Source: P.A. 97-955, eff. 8-14-12.)

6 (Text of Section after amendment by P.A. 98-978)

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 entity
12 has control over another entity if:

13 (A) the entity directly or indirectly or acting through
14 one or more other persons owns, controls, or has the power
15 to vote 25% or more of any class of voting securities of
16 the other entity; or

17 (B) the entity controls in any manner the election of a
18 majority of the directors or trustees of the other entity.

19 "Affiliated group" means any group of entities that are all
20 affiliated.

21 "Authorized insurer" means an insurer that holds a
22 certificate of authority issued by the Director but, for the
23 purposes of this Section, does not include a domestic surplus
24 line insurer as defined in Section 445a or any residual market
25 mechanism.

1 "Exempt commercial purchaser" means any person purchasing
2 commercial insurance that, at the time of placement, meets the
3 following requirements:

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

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

9 (C) The person meets at least one of the following
10 criteria:

11 (I) The person possesses a net worth in excess of
12 \$20,000,000, as such amount is adjusted pursuant to the
13 provision in this definition concerning percentage
14 change.

15 (II) The person generates annual revenues in
16 excess of \$50,000,000, as such amount is adjusted
17 pursuant to the provision in this definition
18 concerning percentage change.

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

23 (IV) The person is a not-for-profit organization
24 or public entity generating annual budgeted
25 expenditures of at least \$30,000,000, as such amount is
26 adjusted pursuant to the provision in this definition

1 concerning percentage change.

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

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

10 "Home state" means the following:

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

13 (I) the state in which an insured maintains its
14 principal place of business or, in the case of an
15 individual, the individual's principal residence; or

16 (II) if 100% of the insured risk is located out of
17 the state referred to in subitem (I), the state to
18 which the greatest percentage of the insured's taxable
19 premium for that insurance contract is allocated.

20 (B) If more than one insured from an affiliated group
21 are named insureds on a single surplus line insurance
22 contract, then "home state" means the home state, as
23 determined pursuant to item (A) of this definition, of the
24 member of the affiliated group that has the largest
25 percentage of premium attributed to it under such insurance
26 contract.

1 ~~If more than one insured from a group that is not~~
2 ~~affiliated are named insureds on a single surplus line~~
3 ~~insurance contract, then:~~

4 ~~(I) if individual group members pay 100% of the~~
5 ~~premium for the insurance from their own funds, "home~~
6 ~~state" means the home state, as determined pursuant to~~
7 ~~item (A) of this definition, of each individual group~~
8 ~~member; each individual group member's coverage under~~
9 ~~the surplus line insurance contract shall be treated as~~
10 ~~a separate surplus line contract for the purposes of~~
11 ~~this Section;~~

12 ~~(II) otherwise, "home state" means the home state,~~
13 ~~as determined pursuant to item (A) of this definition,~~
14 ~~of the group.~~

15 ~~Nothing in this definition shall be construed to alter the~~
16 ~~terms of the surplus line insurance contract.~~

17 "Multi-State risk" means a risk with insured exposures in
18 more than one State.

19 "NAIC" means the National Association of Insurance
20 Commissioners or any successor entity.

21 "Qualified risk manager" means, with respect to a
22 policyholder of commercial insurance, a person who meets all of
23 the following requirements:

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

26 (B) The person provides skilled services in loss

1 prevention, loss reduction, or risk and insurance coverage
2 analysis, and purchase of insurance.

3 (C) With regard to the person:

4 (I) the person has:

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

11 (b) the following:

12 (i) three years of experience in risk
13 financing, claims administration, loss
14 prevention, risk and insurance analysis, or
15 purchasing commercial lines of insurance; or

16 (ii) alternatively has:

17 (AA) a designation as a Chartered
18 Property and Casualty Underwriter (in this
19 subparagraph (ii) referred to as "CPCU")
20 issued by the American Institute for
21 CPCU/Insurance Institute of America;

22 (BB) a designation as an Associate in
23 Risk Management (ARM) issued by the
24 American Institute for CPCU/Insurance
25 Institute of America;

26 (CC) a designation as Certified Risk

1 Manager (CRM) issued by the National
2 Alliance for Insurance Education &
3 Research;

4 (DD) a designation as a RIMS Fellow
5 (RF) issued by the Global Risk Management
6 Institute; or

7 (EE) any other designation,
8 certification, or license determined by
9 the Director or his designee to
10 demonstrate minimum competency in risk
11 management;

12 (II) the person has:

13 (a) at least 7 years of experience in risk
14 financing, claims administration, loss prevention,
15 risk and insurance coverage analysis, or
16 purchasing commercial lines of insurance; and

17 (b) has any one of the designations specified
18 in subparagraph (ii) of paragraph (b);

19 (III) the person has at least 10 years of
20 experience in risk financing, claims administration,
21 loss prevention, risk and insurance coverage analysis,
22 or purchasing commercial lines of insurance; or

23 (IV) the person has a graduate degree from an
24 accredited college or university in risk management,
25 business administration, finance, economics, or any
26 other field determined by the Director or his or her

1 designee to demonstrate minimum competence in risk
2 management.

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

7 "State" means any state of the United States, the District
8 of Columbia, the Commonwealth of Puerto Rico, Guam, the
9 Northern Mariana Islands, the Virgin Islands, and American
10 Samoa.

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

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

14 (B) that is procured from an unauthorized insurer after
15 the insurance producer representing the insured or the
16 surplus line producer is unable, after diligent effort, to
17 procure the insurance from authorized insurers; and

18 (C) where Illinois is the home state of the insured,
19 for policies effective, renewed or extended on July 21,
20 2011 or later and for multiyear policies upon the policy
21 anniversary that falls on or after July 21, 2011; and

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

24 "Unauthorized insurer" means an insurer that does not hold
25 a valid certificate of authority issued by the Director but,
26 for the purposes of this Section, shall also include a domestic

1 surplus line insurer as defined in Section 445a.

2 (1.5) Procuring surplus line insurance; surplus line
3 insurer requirements.

4 (a) Insurance producers may procure surplus line
5 insurance only if licensed as a surplus line producer under
6 this Section.

7 (b) Licensed surplus line producers may procure
8 surplus line insurance from an unauthorized insurer
9 domiciled in the United States only if the insurer:

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

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

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

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

24 (c) Licensed surplus line producers may procure
25 surplus line insurance from an unauthorized insurer
26 domiciled outside of the United States only if the insurer

1 meets the standards for unauthorized insurers domiciled in
2 the United States in paragraph (b) of this subsection (1.5)
3 or is listed on the Quarterly Listing of Alien Insurers
4 maintained by the International Insurers Department of the
5 NAIC. The Director shall make the Quarterly Listing of
6 Alien Insurers available to surplus line producers without
7 charge.

8 (d) Insurance producers shall not procure from an
9 unauthorized insurer an insurance policy:

10 (i) that is designed to satisfy the proof of
11 financial responsibility and insurance requirements in
12 any Illinois law where the law requires that the proof
13 of insurance is issued by an authorized insurer or
14 residual market mechanism;

15 (ii) that covers the risk of accidental injury to
16 employees arising out of and in the course of
17 employment according to the provisions of the Workers'
18 Compensation Act; or

19 (iii) that insures any Illinois personal lines
20 risk, as defined in subsection (a), (b), or (c) of
21 Section 143.13 of this Code, that is eligible for
22 residual market mechanism coverage, unless the insured
23 or prospective insured requests limits of liability
24 greater than the limits provided by the residual market
25 mechanism. In the course of making a diligent effort to
26 procure insurance from authorized insurers, an

1 insurance producer shall not be required to submit a
2 risk to a residual market mechanism when the risk is
3 not eligible for coverage or exceeds the limits
4 available in the residual market mechanism.

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

13 (e) Licensed surplus line producers may procure
14 surplus line insurance from an unauthorized insurer for an
15 exempt commercial purchaser without making the required
16 diligent effort to procure the insurance from authorized
17 insurers if:

18 (i) the producer has disclosed to the exempt
19 commercial purchaser that such insurance may or may not
20 be available from authorized insurers that may provide
21 greater protection with more regulatory oversight; and

22 (ii) the exempt commercial purchaser has
23 subsequently in writing requested the producer to
24 procure such insurance from an unauthorized insurer.

25 (2) Surplus line producer; license. Any licensed producer
26 who is a resident of this State, or any nonresident who

1 qualifies under Section 500-40, may be licensed as a surplus
2 line producer upon payment of an annual license fee of \$400.

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

7 No later than July 21, 2012, the State of Illinois shall
8 participate in the national insurance producer database of the
9 NAIC, or any other equivalent uniform national database, for
10 the licensure of surplus line producers and the renewal of such
11 licenses.

12 (3) Taxes and reports.

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

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

18 (ii) 3.5% for policies or contracts with an
19 effective date of July 1, 2003 or later.

20 A surplus line producer shall file with the Director on
21 or before February 1 and August 1 of each year a report in
22 the form prescribed by the Director on all surplus line
23 insurance procured from unauthorized insurers and
24 submitted to the Surplus Line Association of Illinois
25 during the preceding 6 month period ending December 31 or
26 June 30 respectively, and on the filing of such report

1 shall pay to the Director for the use and benefit of the
2 State a sum equal to the surplus line tax rate multiplied
3 by the gross premiums less returned premiums upon all
4 surplus line insurance submitted to the Surplus Line
5 Association of Illinois during the preceding 6 months.

6 Any surplus line producer who fails to pay the full
7 amount due under this subsection is liable, in addition to
8 the amount due, for such late fee, penalty, and interest
9 charges as are provided for under Section 412 of this Code.
10 The Director, through the Attorney General, may institute
11 an action in the name of the People of the State of
12 Illinois, in any court of competent jurisdiction, for the
13 recovery of the amount of such taxes, late fees, interest,
14 and penalties due, and prosecute the same to final
15 judgment, and take such steps as are necessary to collect
16 the same.

17 (b) Fire Marshal Tax. Each surplus line producer shall
18 file with the Director on or before March 31 of each year a
19 report in the form prescribed by the Director on all fire
20 insurance procured from unauthorized insurers and
21 submitted to the Surplus Line Association of Illinois
22 subject to tax under Section 12 of the Fire Investigation
23 Act and shall pay to the Director the fire marshal tax
24 required thereunder.

25 (c) Taxes and fees charged to insured. The taxes
26 imposed under this subsection and the countersigning fees

1 charged by the Surplus Line Association of Illinois may be
2 charged to and collected from surplus line insureds.

3 (4) (Blank).

4 (5) Submission of documents to Surplus Line Association of
5 Illinois. A surplus line producer shall submit every insurance
6 contract issued under his or her license to the Surplus Line
7 Association of Illinois for recording and countersignature.
8 The submission and countersignature may be effected through
9 electronic means. The submission shall set forth:

10 (a) the name of the insured;

11 (b) the description and location of the insured
12 property or risk;

13 (c) the amount insured;

14 (d) the gross premiums charged or returned;

15 (e) the name of the unauthorized insurer from whom
16 coverage has been procured;

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

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

20 Proposals, endorsements, and other documents which are
21 incidental to the insurance but which do not affect the premium
22 charged are exempted from filing and countersignature.

23 The submission of insuring contracts to the Surplus Line
24 Association of Illinois constitutes a certification by the
25 surplus line producer or by the insurance producer who
26 presented the risk to the surplus line producer for placement

1 as a surplus line risk that after diligent effort the required
2 insurance could not be procured from authorized insurers and
3 that such procurement was otherwise in accordance with the
4 surplus line law.

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

9 (7) Inspection of records. A surplus line producer shall
10 maintain separate records of the business transacted under his
11 or her license for 7 years from the policy effective date,
12 including complete copies of surplus line insurance contracts
13 maintained on paper or by electronic means, which records shall
14 be open at all times for inspection by the Director and by the
15 Surplus Line Association of Illinois.

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

23 (9) Director may declare insurer ineligible. If the
24 Director determines that the further assumption of risks might
25 be hazardous to the policyholders of an unauthorized insurer,
26 the Director may order the Surplus Line Association of Illinois

1 not to countersign insurance contracts evidencing insurance in
2 such insurer and order surplus line producers to cease
3 procuring insurance from such 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 445a,
7 shall contain a provision designating the Director and his
8 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 hereunder
12 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) Insurance contracts delivered under this Section
20 from unauthorized insurers, other than domestic surplus line
21 insurers as defined in Section 445a, shall have stamped or
22 imprinted on the first page thereof in not less than 12-pt.
23 bold face type the following legend: "Notice to Policyholder:
24 This contract is issued, pursuant to Section 445 of the
25 Illinois Insurance Code, by a company not authorized and
26 licensed to transact business in Illinois and as such is not

1 covered by the Illinois Insurance Guaranty Fund." Insurance
2 contracts delivered under this Section from domestic surplus
3 line 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 by a domestic surplus line insurer, as
7 defined in Section 445a of the Illinois Insurance Code,
8 pursuant to Section 445, and as such is not covered by the
9 Illinois Insurance Guaranty Fund."

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

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

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

1 Section 95. No acceleration or delay. Where this Act makes
2 changes in a statute that is represented in this Act by text
3 that is not yet or no longer in effect (for example, a Section
4 represented by multiple versions), the use of that text does
5 not accelerate or delay the taking effect of (i) the changes
6 made by this Act or (ii) provisions derived from any other
7 Public Act.

8 Section 99. Effective date. This Act takes effect January
9 1, 2015.