



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB1730

Introduced 2/15/2013, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/412

from Ch. 73, par. 1024

Amends the Illinois Insurance Code. Provides that the Department of Insurance shall have a lien for the taxes, fees, charges, fines, penalties, interest, other charges, or any portion thereof, imposed or assessed pursuant to the Code, upon all the real and personal property of any company or person to whom the assessment or final order has been issued or whenever a tax return is filed without payment of the tax or penalty shown therein to be due, including all such property of such company or person acquired after receipt of such assessment, issuance of such order, or filing of such return. Sets forth provisions concerning final assessments, the termination of a lien, and jeopardy assessment liens. Provides that nothing in the provision concerning liens shall be construed to give the Department a preference over the rights of any bona fide purchaser, holder of a security interest, mechanics lienholder, mortgagee, or judgment lien creditor arising prior to the filing of a regular notice of lien or a notice of jeopardy assessment lien in the office of the recorder in the county in which the property subject to the lien is located. Makes other changes. Effective immediately.

LRB098 09833 RPM 39988 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 Section 412 as follows:

6 (215 ILCS 5/412) (from Ch. 73, par. 1024)

7 Sec. 412. Refunds; penalties; collection.

8 (1) (a) Whenever it appears to the satisfaction of the  
9 Director that because of some mistake of fact, error in  
10 calculation, or erroneous interpretation of a statute of  
11 this or any other state, any authorized company has paid to  
12 him, pursuant to any provision of law, taxes, fees, or  
13 other charges in excess of the amount legally chargeable  
14 against it, during the 6 year period immediately preceding  
15 the discovery of such overpayment, he shall have power to  
16 refund to such company the amount of the excess or excesses  
17 by applying the amount or amounts thereof toward the  
18 payment of taxes, fees, or other charges already due, or  
19 which may thereafter become due from that company until  
20 such excess or excesses have been fully refunded, or upon a  
21 written request from the authorized company, the Director  
22 shall provide a cash refund within 120 days after receipt  
23 of the written request if all necessary information has

1           been filed with the Department in order for it to perform  
2           an audit of the annual return for the year in which the  
3           overpayment occurred or within 120 days after the date the  
4           Department receives all the necessary information to  
5           perform such audit. The Director shall not provide a cash  
6           refund if there are insufficient funds in the Insurance  
7           Premium Tax Refund Fund to provide a cash refund, if the  
8           amount of the overpayment is less than \$100, or if the  
9           amount of the overpayment can be fully offset against the  
10          taxpayer's estimated liability for the year following the  
11          year of the cash refund request. Any cash refund shall be  
12          paid from the Insurance Premium Tax Refund Fund, a special  
13          fund hereby created in the State treasury.

14           (b) Beginning January 1, 2000 and thereafter, the  
15          Department shall deposit a percentage of the amounts  
16          collected under Sections 409, 444, and 444.1 of this Code  
17          into the Insurance Premium Tax Refund Fund. The percentage  
18          deposited into the Insurance Premium Tax Refund Fund shall  
19          be the annual percentage. The annual percentage shall be  
20          calculated as a fraction, the numerator of which shall be  
21          the amount of cash refunds approved by the Director for  
22          payment and paid during the preceding calendar year as a  
23          result of overpayment of tax liability under Sections 409,  
24          444, and 444.1 of this Code and the denominator of which  
25          shall be the amounts collected pursuant to Sections 409,  
26          444, and 444.1 of this Code during the preceding calendar

1 year. However, if there were no cash refunds paid in a  
2 preceding calendar year, the Department shall deposit 5% of  
3 the amount collected in that preceding calendar year  
4 pursuant to Sections 409, 444, and 444.1 of this Code into  
5 the Insurance Premium Tax Refund Fund instead of an amount  
6 calculated by using the annual percentage.

7 (c) Beginning July 1, 1999, moneys in the Insurance  
8 Premium Tax Refund Fund shall be expended exclusively for  
9 the purpose of paying cash refunds resulting from  
10 overpayment of tax liability under Sections 409, 444, and  
11 444.1 of this Code as determined by the Director pursuant  
12 to subsection 1(a) of this Section. Cash refunds made in  
13 accordance with this Section may be made from the Insurance  
14 Premium Tax Refund Fund only to the extent that amounts  
15 have been deposited and retained in the Insurance Premium  
16 Tax Refund Fund.

17 (d) This Section shall constitute an irrevocable and  
18 continuing appropriation from the Insurance Premium Tax  
19 Refund Fund for the purpose of paying cash refunds pursuant  
20 to the provisions of this Section.

21 (2) When any insurance company or any surplus line producer  
22 fails to file any tax return required under Sections 408.1,  
23 409, 444, 444.1 and 445 of this Code or Section 12 of the Fire  
24 Investigation Act on the date prescribed, including any  
25 extensions, there shall be added as a penalty \$400 or 10% of  
26 the amount of such tax, whichever is greater, for each month or

1 part of a month of failure to file, the entire penalty not to  
2 exceed \$2,000 or 50% of the tax due, whichever is greater.

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

9 (b) If such failure to pay is determined by the  
10 Director to be wilful, after a hearing under Sections 402  
11 and 403, there shall be added to the tax as a penalty an  
12 amount equal to the greater of 50% of the deficiency or 10%  
13 of the amount due and unpaid for each month or part of a  
14 month that the deficiency remains unpaid commencing with  
15 the date that the amount becomes due. Such amount shall be  
16 in lieu of any determined under paragraph (a).

17 (4) Any insurance company or any surplus line producer  
18 which fails to pay the full amount due under this Section or  
19 Sections 408.1, 409, 444, 444.1 or 445 of this Code, or Section  
20 12 of the Fire Investigation Act is liable, in addition to the  
21 tax and any penalties, for interest on such deficiency at the  
22 rate of 12% per annum, or at such higher adjusted rates as are  
23 or may be established under subsection (b) of Section 6621 of  
24 the Internal Revenue Code, from the date that payment of any  
25 such tax was due, determined without regard to any extensions,  
26 to the date of payment of such amount.

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

7           (6) In the event that the certificate of authority of a  
8 foreign or alien company is revoked for any cause or the  
9 company withdraws from this State prior to the renewal date of  
10 the certificate of authority as provided in Section 114, the  
11 company may recover the amount of any such tax paid in advance.  
12 Except as provided in this subsection, no revocation or  
13 withdrawal excuses payment of or constitutes grounds for the  
14 recovery of any taxes or penalties imposed by this Code.

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

21           (8) The Department shall have a lien for the taxes, fees,  
22 charges, fines, penalties, interest, other charges, or any  
23 portion thereof, imposed or assessed pursuant to this Code,  
24 upon all the real and personal property of any company or  
25 person to whom the assessment or final order has been issued or  
26 whenever a tax return is filed without payment of the tax or

1 penalty shown therein to be due, including all such property of  
2 the company or person acquired after receipt of the assessment,  
3 issuance of the order, or filing of the return. The company or  
4 person is liable for the filing fee incurred by the Department  
5 for filing the lien and the filing fee incurred by the  
6 Department to file the release of that lien. The filing fees  
7 shall be paid to the Department in addition to payment of the  
8 tax, fee, charge, fine, penalty, interest, other charges, or  
9 any portion thereof, included in the amount of the lien.  
10 However, where the lien arises because of the issuance of a  
11 final order of the Director or tax assessment by the  
12 Department, the lien shall not attach and the notice referred  
13 to in this Section shall not be filed until all administrative  
14 proceedings or proceedings in court for review of the final  
15 order or assessment have terminated or the time for the taking  
16 thereof has expired without such proceedings being instituted.

17 Upon the granting of Department review after a lien has  
18 attached, the lien shall remain in full force except to the  
19 extent to which the final assessment may be reduced by a  
20 revised final assessment following the rehearing or review. The  
21 lien created by the issuance of a final assessment shall  
22 terminate, unless a notice of lien is filed, within 3 years  
23 after the date all proceedings in court for the review of the  
24 final assessment have terminated or the time for the taking  
25 thereof has expired without such proceedings being instituted,  
26 or (in the case of a revised final assessment issued pursuant

1 to a rehearing or review by the Department) within 3 years  
2 after the date all proceedings in court for the review of such  
3 revised final assessment have terminated or the time for the  
4 taking thereof has expired without such proceedings being  
5 instituted. Where the lien results from the filing of a tax  
6 return without payment of the tax or penalty shown therein to  
7 be due, the lien shall terminate, unless a notice of lien is  
8 filed, within 3 years after the date when the return is filed  
9 with the Department.

10 The time limitation period on the Department's right to  
11 file a notice of lien shall not run during any period of time  
12 in which the order of any court has the effect of enjoining or  
13 restraining the Department from filing such notice of lien. If  
14 the Department finds that a company or person is about to  
15 depart from the State, to conceal himself or his property, or  
16 to do any other act tending to prejudice or to render wholly or  
17 partly ineffectual proceedings to collect the amount due and  
18 owing to the Department unless such proceedings are brought  
19 without delay, or if the Department finds that the collection  
20 of the amount due from any company or person will be  
21 jeopardized by delay, the Department shall give the company or  
22 person notice of such findings and shall make demand for  
23 immediate return and payment of the amount, whereupon the  
24 amount shall become immediately due and payable. If the company  
25 or person, within 5 days after the notice (or within such  
26 extension of time as the Department may grant), does not comply



1 with the notice or show to the Department that the findings in  
2 the notice are erroneous, the Department may file a notice of  
3 jeopardy assessment lien in the office of the recorder of the  
4 county in which any property of the company or person may be  
5 located and shall notify the company or person of the filing.  
6 The jeopardy assessment lien shall have the same scope and  
7 effect as the statutory lien provided for in this Section. If  
8 the company or person believes that the company or person does  
9 not owe some or all of the tax for which the jeopardy  
10 assessment lien against the company or person has been filed,  
11 or that no jeopardy to the revenue in fact exists, the company  
12 or person may protest within 20 days after being notified by  
13 the Department of the filing of the jeopardy assessment lien  
14 and request a hearing, whereupon the Department shall hold a  
15 hearing in conformity with the provisions of this Code and,  
16 pursuant thereto, shall notify the company or person of its  
17 findings as to whether or not the jeopardy assessment lien will  
18 be released. If not, and if the company or person is aggrieved  
19 by this decision, the company or person may file an action for  
20 judicial review of the final determination of the Department in  
21 accordance with the Administrative Review Law. If, pursuant to  
22 such hearing (or after an independent determination of the  
23 facts by the Department without a hearing), the Department  
24 determines that some or all of the amount due covered by the  
25 jeopardy assessment lien is not owed by the company or person,  
26 or that no jeopardy to the revenue exists, or if on judicial

1 review the final judgment of the court is that the company or  
2 person does not owe some or all of the amount due covered by  
3 the jeopardy assessment lien against them, or that no jeopardy  
4 to the revenue exists, the Department shall release its  
5 jeopardy assessment lien to the extent of such finding of  
6 nonliability for the amount, or to the extent of such finding  
7 of no jeopardy to the revenue. The Department shall also  
8 release its jeopardy assessment lien against the company or  
9 person whenever the amount due and owing covered by the lien,  
10 plus any interest which may be due, are paid and the company or  
11 person has paid the Department in cash or by guaranteed  
12 remittance an amount representing the filing fee for the lien  
13 and the filing fee for the release of that lien. The Department  
14 shall file that release of lien with the recorder of the county  
15 where that lien was filed.

16 Nothing in this Section shall be construed to give the  
17 Department a preference over the rights of any bona fide  
18 purchaser, holder of a security interest, mechanics  
19 lienholder, mortgagee, or judgment lien creditor arising prior  
20 to the filing of a regular notice of lien or a notice of  
21 jeopardy assessment lien in the office of the recorder in the  
22 county in which the property subject to the lien is located.  
23 For purposes of this Section, "bona fide" shall not include any  
24 mortgage of real or personal property or any other credit  
25 transaction that results in the mortgagee or the holder of the  
26 security acting as trustee for unsecured creditors of the

1 company or person mentioned in the notice of lien who executed  
2 such chattel or real property mortgage or the document  
3 evidencing such credit transaction. The lien shall be inferior  
4 to the lien of general taxes, special assessments, and special  
5 taxes levied by any political subdivision of this State. In  
6 case title to land to be affected by the notice of lien or  
7 notice of jeopardy assessment lien is registered under the  
8 provisions of the Registered Titles (Torrens) Act, such notice  
9 shall be filed in the office of the Registrar of Titles of the  
10 county within which the property subject to the lien is  
11 situated and shall be entered upon the register of titles as a  
12 memorial or charge upon each folium of the register of titles  
13 affected by such notice, and the Department shall not have a  
14 preference over the rights of any bona fide purchaser,  
15 mortgagee, judgment creditor, or other lien holder arising  
16 prior to the registration of such notice. The regular lien or  
17 jeopardy assessment lien shall not be effective against any  
18 purchaser with respect to any item in a retailer's stock in  
19 trade purchased from the retailer in the usual course of the  
20 retailer's business.

21 (Source: P.A. 93-32, eff. 7-1-03.)

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law.