



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3324

Introduced 2/14/2014, by Sen. William R. Haine

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
215 ILCS 5/445.4	from Ch. 73, par. 1057.4

Amends the Illinois Insurance Code. Makes changes in the Section concerning transactions involving contracts of insurance issued to one or more industrial insureds to apply to transactions involving contracts of insurance independently procured directly from an unauthorized insurer by industrial insureds. Provides that within 90 days after the effective date of each contract of insurance issued under the Section, the insured shall file a report with the Director of Insurance by submitting the report to the Surplus Line Association of Illinois and provide information as designated by the Surplus Line Association of Illinois. Provides that within 30 days after filing the report, the insured shall pay to the Director for the use and benefit of the State a sum equal to the gross premium of the contract of insurance multiplied by the surplus line tax rate and shall pay the fire marshal tax. Includes surplus line producers and industrial insureds in the provisions concerning refunds, penalties, and collection. Sets forth requirements for when more than one insured from a group that is not affiliated are named insureds on a single surplus line insurance contract. Makes changes in the provisions concerning surplus line and examinations of the Association.

LRB098 18518 RPM 53655 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 Sections 121-2.08, 412, 445, and 445.4 as follows:

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

7 Sec. 121-2.08. Transactions in this State involving
8 contracts of insurance independently procured directly from an
9 unauthorized insurer by ~~issued to one or more~~ industrial
10 insureds.

11 (a) As used in this Section:

12 "Exempt commercial purchaser" means exempt commercial
13 purchaser as the term is defined in subsection (1) of Section
14 445 of this Code.

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

17 "Industrial ~~For purposes of this Section~~ "industrial
18 insured" means ~~is~~ an insured:

19 (i) that ~~(a) which~~ procures the insurance of any risk
20 or risks of the kinds specified in Classes 2 and 3 of
21 Section 4 of this Code ~~other than life and annuity~~
22 ~~contracts~~ by use of the services of a full-time ~~full-time~~
23 employee who is a qualified risk manager ~~acting as an~~

1 ~~insurance manager or buyer~~ or the services of a regularly
2 and continuously retained ~~qualified insurance~~ consultant
3 who is a qualified risk manager;

4 (ii) that procures the insurance directly from an
5 unauthorized insurer without the services of an
6 intermediary insurance producer ~~(b) whose aggregate annual~~
7 ~~premiums for insurance on all risks, except for life and~~
8 ~~accident and health insurance, total at least \$100,000; and~~

9 (iii) that is an exempt commercial purchaser whose home
10 state is Illinois ~~(c) which either (i) has at least 25 full~~
11 ~~time employees, (ii) has gross assets in excess of~~
12 ~~\$3,000,000, or (iii) has annual gross revenues in excess of~~
13 ~~\$5,000,000.~~

14 "Insurance producer" means insurance producer as the term
15 is defined in Section 500-10 of this Code.

16 "Qualified risk manager" means qualified risk manager as
17 the term is defined in subsection (1) of Section 445 of this
18 Code.

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

21 (b) Within 90 days after the effective date of each
22 contract of insurance issued under this Section, the insured
23 shall file a report with the Director by submitting the report
24 to the Surplus Line Association of Illinois in writing or in a
25 computer readable format and provide information as designated
26 by the Surplus Line Association of Illinois. The information in

1 the report shall be substantially similar to that required for
2 surplus line submissions as described in subsection (5) of
3 Section 445 of this Code. Where applicable, the report shall
4 satisfy, with respect to the subject insurance, the reporting
5 requirement of Section 12 of the Fire Investigation Act.

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

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

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

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

2 Sec. 412. Refunds; penalties; collection.

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

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

8 (b) Beginning January 1, 2000 and thereafter, the
9 Department shall deposit a percentage of the amounts collected
10 under Sections 409, 444, and 444.1 of this Code into the
11 Insurance Premium Tax Refund Fund. The percentage deposited
12 into the Insurance Premium Tax Refund Fund shall be the annual
13 percentage. The annual percentage shall be calculated as a
14 fraction, the numerator of which shall be the amount of cash
15 refunds approved by the Director for payment and paid during
16 the preceding calendar year as a result of overpayment of tax
17 liability under Sections 121-2.08, 409, 444, ~~and~~ 444.1, and 445
18 of this Code and the denominator of which shall be the amounts
19 collected pursuant to Sections 121-2.08, 409, 444, ~~and~~ 444.1,
20 and 445 of this Code during the preceding calendar year.
21 However, if there were no cash refunds paid in a preceding
22 calendar year, the Department shall deposit 5% of the amount
23 collected in that preceding calendar year pursuant to Sections
24 121-2.08, 409, 444, ~~and~~ 444.1, and 445 of this Code into the
25 Insurance Premium Tax Refund Fund instead of an amount
26 calculated by using the annual percentage.

1 (c) Beginning July 1, 1999, moneys in the Insurance Premium
2 Tax Refund Fund shall be expended exclusively for the purpose
3 of paying cash refunds resulting from overpayment of tax
4 liability under Sections 121-2.08, 409, 444, ~~and 444.1~~, and 445
5 of this Code as determined by the Director pursuant to
6 subsection 1(a) of this Section. Cash refunds made in
7 accordance with this Section may be made from the Insurance
8 Premium Tax Refund Fund only to the extent that amounts have
9 been deposited and retained in the Insurance Premium Tax Refund
10 Fund.

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

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

23 (b) When any industrial insured or surplus line producer
24 fails to file any tax return or report required under Sections
25 121-2.08 and 445 of this Code or Section 12 of the Fire
26 Investigation Act on the date prescribed, including any

1 extensions, there shall be added:

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

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

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

14 or

15 (iv) as a penalty, if the return or report is received
16 more than 21 days after the prescribed due date, \$400 or
17 10% of the tax due, whichever is greater, for each month or
18 part of a month of failure to file, the entire penalty not
19 to exceed \$2,000 or 50% of the tax due, whichever is
20 greater.

21 A tax return or report shall be deemed received as of the
22 date mailed as evidenced by a postmark, proof of mailing on a
23 recognized United States Postal Service form or a form
24 acceptable to the United States Postal Service or other
25 commercial mail delivery service, or other evidence acceptable
26 to the Director.

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

7 (a-5) When any industrial insured or surplus line producer
8 fails to pay the full amount due under the provisions of this
9 Section, Sections 121-2.08 or 445 of this Code, or Section 12
10 of the Fire Investigation Act on the date prescribed, there
11 shall be added:

12 (i) as a late fee, if the payment is received at least
13 one day but not more than 7 days after the prescribed due
14 date, 10% of the tax due, the entire fee not to exceed
15 \$1,000;

16 (ii) as a late fee, if the payment is received at least
17 8 days but not more than 14 days after the prescribed due
18 date, 10% of the tax due, the entire fee not to exceed
19 \$1,500;

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

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

1 A tax payment shall be deemed received as of the date
2 mailed as evidenced by a postmark, proof of mailing on a
3 recognized United States Postal Service form or a form
4 acceptable to the United States Postal Service or other
5 commercial mail delivery service, or other evidence acceptable
6 to the Director.

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

15 (4) Any insurance company, industrial insured, or ~~any~~
16 surplus line producer that ~~which~~ fails to pay the full amount
17 due under this Section or Sections 121-2.08, 408.1, 409, 444,
18 444.1, or 445 of this Code, or Section 12 of the Fire
19 Investigation Act is liable, in addition to the tax and any
20 late fees and penalties, for interest on such deficiency at the
21 rate of 12% per annum, or at such higher adjusted rates as are
22 or may be established under subsection (b) of Section 6621 of
23 the Internal Revenue Code, from the date that payment of any
24 such tax was due, determined without regard to any extensions,
25 to the date of payment of such amount.

26 (5) The Director, through the Attorney General, may

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (215 ILCS 5/445) (from Ch. 73, par. 1057)

22 Sec. 445. Surplus line.

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

24 "Affiliate" means, with respect to an insured, any entity
25 that controls, is controlled by, or is under common control

1 with the insured. For the purpose of this definition, an entity
2 has control over another entity if:

3 (A) the entity directly or indirectly or acting through
4 one or more other persons owns, controls, or has the power
5 to vote 25% or more of any class of voting securities of
6 the other entity; or

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

9 "Affiliated group" means any group of entities that are all
10 affiliated.

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

16 "Exempt commercial purchaser" means any person purchasing
17 commercial insurance that, at the time of placement, meets the
18 following requirements:

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

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

24 (C) The person meets at least one of the following
25 criteria:

26 (I) The person possesses a net worth in excess of

1 \$20,000,000, as such amount is adjusted pursuant to the
2 provision in this definition concerning percentage
3 change.

4 (II) The person generates annual revenues in
5 excess of \$50,000,000, as such amount is adjusted
6 pursuant to the provision in this definition
7 concerning percentage change.

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

12 (IV) The person is a not-for-profit organization
13 or public entity generating annual budgeted
14 expenditures of at least \$30,000,000, as such amount is
15 adjusted pursuant to the provision in this definition
16 concerning percentage change.

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

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

25 "Home state" means the following:

26 (A) With respect to an insured, except as provided in

1 item (B) of this definition:

2 (I) the state in which an insured maintains its
3 principal place of business or, in the case of an
4 individual, the individual's principal residence; or

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

9 (B) If more than one insured from an affiliated group
10 are named insureds on a single surplus line insurance
11 contract, then "home state" means the home state, as
12 determined pursuant to item (A) of this definition, of the
13 member of the affiliated group that has the largest
14 percentage of premium attributed to it under such insurance
15 contract.

16 If more than one insured from a group that is not
17 affiliated are named insureds on a single surplus line
18 insurance contract, then:

19 (I) if individual group members pay 100% of the
20 premium for the insurance from their own funds, "home
21 state" means the home state, as determined pursuant to
22 item (A) of this definition, of each individual group
23 member; each individual group member's coverage under
24 the surplus line insurance contract shall be treated as
25 a separate surplus line contract for the purposes of
26 this Section;

1 (II) otherwise, "home state" means the home state,
2 as determined pursuant to item (A) of this definition,
3 of the group.

4 Nothing in this definition shall be construed to alter the
5 terms of the surplus line insurance contract.

6 "Multi-State risk" means a risk with insured exposures in
7 more than one State.

8 "NAIC" means the National Association of Insurance
9 Commissioners or any successor entity.

10 "Qualified risk manager" means, with respect to a
11 policyholder of commercial insurance, a person who meets all of
12 the following requirements:

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

15 (B) The person provides skilled services in loss
16 prevention, loss reduction, or risk and insurance coverage
17 analysis, and purchase of insurance.

18 (C) With regard to the person:

19 (I) the person has:

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

26 (b) the following:

1 (i) three years of experience in risk
2 financing, claims administration, loss
3 prevention, risk and insurance analysis, or
4 purchasing commercial lines of insurance; or

5 (ii) alternatively has:

6 (AA) a designation as a Chartered
7 Property and Casualty Underwriter (in this
8 subparagraph (ii) referred to as "CPCU")
9 issued by the American Institute for
10 CPCU/Insurance Institute of America;

11 (BB) a designation as an Associate in
12 Risk Management (ARM) issued by the
13 American Institute for CPCU/Insurance
14 Institute of America;

15 (CC) a designation as Certified Risk
16 Manager (CRM) issued by the National
17 Alliance for Insurance Education &
18 Research;

19 (DD) a designation as a RIMS Fellow
20 (RF) issued by the Global Risk Management
21 Institute; or

22 (EE) any other designation,
23 certification, or license determined by
24 the Director or his designee to
25 demonstrate minimum competency in risk
26 management;

1 (II) the person has:

2 (a) at least 7 years of experience in risk
3 financing, claims administration, loss prevention,
4 risk and insurance coverage analysis, or
5 purchasing commercial lines of insurance; and

6 (b) has any one of the designations specified
7 in subparagraph (ii) of paragraph (b);

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

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

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

22 "State" means any state of the United States, the District
23 of Columbia, the Commonwealth of Puerto Rico, Guam, the
24 Northern Mariana Islands, the Virgin Islands, and American
25 Samoa.

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

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

3 (B) that is procured from an unauthorized insurer after
4 the insurance producer representing the insured or the
5 surplus line producer is unable, after diligent effort, to
6 procure the insurance from authorized insurers; and

7 (C) where Illinois is the home state of the insured,
8 for policies effective, renewed or extended on July 21,
9 2011 or later and for multiyear policies upon the policy
10 anniversary that falls on or after July 21, 2011; and

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

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

17 (1.5) Procuring surplus line insurance; surplus line
18 insurer requirements.

19 (a) Insurance producers may procure surplus line
20 insurance only if licensed as a surplus line producer under
21 this Section.

22 (b) Licensed surplus line producers may procure
23 surplus line insurance from an unauthorized insurer
24 domiciled in the United States only if the insurer:

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

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

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

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

13 (c) Licensed surplus line producers may procure
14 surplus line insurance from an unauthorized insurer
15 domiciled outside of the United States only if the insurer
16 meets the standards for unauthorized insurers domiciled in
17 the United States in paragraph (b) of this subsection (1.5)
18 or is listed on the Quarterly Listing of Alien Insurers
19 maintained by the International Insurers Department of the
20 NAIC. The Director shall make the Quarterly Listing of
21 Alien Insurers available to surplus line producers without
22 charge.

23 (d) Insurance producers shall not procure from an
24 unauthorized insurer an insurance policy:

25 (i) that is designed to satisfy the proof of
26 financial responsibility and insurance requirements in

1 any Illinois law where the law requires that the proof
2 of insurance is issued by an authorized insurer or
3 residual market mechanism;

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

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

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

1 more underlying policies.

2 (e) Licensed surplus line producers may procure
3 surplus line insurance from an unauthorized insurer for an
4 exempt commercial purchaser without making the required
5 diligent effort to procure the insurance from authorized
6 insurers if:

7 (i) the producer has disclosed to the exempt
8 commercial purchaser that such insurance may or may not
9 be available from authorized insurers that may provide
10 greater protection with more regulatory oversight; and

11 (ii) the exempt commercial purchaser has
12 subsequently in writing requested the producer to
13 procure such insurance from an unauthorized insurer.

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

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

22 No later than July 21, 2012, the State of Illinois shall
23 participate in the national insurance producer database of the
24 NAIC, or any other equivalent uniform national database, for
25 the licensure of surplus line producers and the renewal of such
26 licenses.

1 (3) Taxes and reports.

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

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

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

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

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

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

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

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

18 (4) (Blank).

19 (5) Submission of documents to Surplus Line Association of
20 Illinois. A surplus line producer shall submit every insurance
21 contract issued under his or her license to the Surplus Line
22 Association of Illinois for recording and countersignature.
23 The submission and countersignature may be effected through
24 electronic means. The submission shall set forth:

25 (a) the name of the insured;

26 (b) the description and location of the insured

1 property or risk;

2 (c) the amount insured;

3 (d) the gross premiums charged or returned;

4 (e) the name of the unauthorized insurer from whom
5 coverage has been procured;

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

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

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

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

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

24 (7) Inspection of records. A surplus line producer shall
25 maintain separate records of the business transacted under his
26 or her license for 7 years from the policy effective date,

1 including complete copies of surplus line insurance contracts
2 maintained on paper or by electronic means, which records shall
3 be open at all times for inspection by the Director and by the
4 Surplus Line Association of Illinois.

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

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

19 (10) Service of process upon Director. Insurance contracts
20 delivered under this Section from unauthorized insurers, other
21 than domestic surplus line insurers as defined in Section 445a,
22 shall contain a provision designating the Director and his
23 successors in office the true and lawful attorney of the
24 insurer upon whom may be served all lawful process in any
25 action, suit or proceeding arising out of such insurance.
26 Service of process made upon the Director to be valid hereunder

1 must state the name of the insured, the name of the
2 unauthorized insurer and identify the contract of insurance.
3 The Director at his option is authorized to forward a copy of
4 the process to the Surplus Line Association of Illinois for
5 delivery to the unauthorized insurer or the Director may
6 deliver the process to the unauthorized insurer by other means
7 which he considers to be reasonably prompt and certain.

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

25 (11) The Illinois Surplus Line law does not apply to
26 insurance of property and operations of railroads or aircraft

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

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

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

15 (215 ILCS 5/445.4) (from Ch. 73, par. 1057.4)

16 Sec. 445.4. Examination. The Director shall, at such times
17 as he deems necessary, make or cause to be made an examination
18 of the Association. The reasonable cost of any such examination
19 shall be paid by the Association upon presentation to it by the
20 Director of a detailed account of such cost. During the course
21 of such examination, the directors, officers, members, agents
22 and employees of the Association may be examined under oath
23 regarding the operation of the Association and shall make
24 available all books, records, accounts, documents and
25 agreements pertaining thereto. The Director shall furnish a

1 copy of the examination report to the Association. Within 20
2 days after receipt of the report, the Association may request a
3 hearing on the report or any facts or recommendations therein.
4 If the Director finds the Association or any of its members to
5 be in violation of this Act, he may issue an order requiring
6 discontinuance of such violation. The Association shall
7 annually provide for an independent financial audit of the
8 books and records of the Association by a certified public
9 accountant and shall provide a copy of the audit report to the
10 Director.

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