



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1573

Introduced 2/20/2015, 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

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. Effective immediately.

LRB099 05215 MLM 25249 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, and 445 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 issued to one or more independently
9 ~~procured directly from an unauthorized insurer by industrial~~
10 insureds. For the purposes of this Section, "industrial
11 insured" is 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 ~~(a) As used in this Section:~~

1 ~~"Exempt commercial purchaser" means exempt commercial~~
2 ~~purchaser as the term is defined in subsection (1) of Section~~
3 ~~445 of this Code.~~

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

6 ~~"Industrial insured" means an insured:~~

7 ~~(i) that procures the insurance of any risk or risks of~~
8 ~~the kinds specified in Classes 2 and 3 of Section 4 of this~~
9 ~~Code by use of the services of a full time employee who is~~
10 ~~a qualified risk manager or the services of a regularly and~~
11 ~~continuously retained consultant who is a qualified risk~~
12 ~~manager;~~

13 ~~(ii) that procures the insurance directly from an~~
14 ~~unauthorized insurer without the services of an~~
15 ~~intermediary insurance producer; and~~

16 ~~(iii) that is an exempt commercial purchaser whose home~~
17 ~~state is Illinois.~~

18 ~~"Insurance producer" means insurance producer as the term~~
19 ~~is defined in Section 500 10 of this Code.~~

20 ~~"Qualified risk manager" means qualified risk manager as~~
21 ~~the term is defined in subsection (1) of Section 445 of this~~
22 ~~Code.~~

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

25 ~~(b) For contracts of insurance effective January 1, 2015 or~~
26 ~~later, within 90 days after the effective date of each contract~~

1 ~~of insurance issued under this Section, the insured shall file~~
2 ~~a report with the Director by submitting the report to the~~
3 ~~Surplus Line Association of Illinois in writing or in a~~
4 ~~computer readable format and provide information as designated~~
5 ~~by the Surplus Line Association of Illinois. The information in~~
6 ~~the report shall be substantially similar to that required for~~
7 ~~surplus line submissions as described in subsection (5) of~~
8 ~~Section 445 of this Code. Where applicable, the report shall~~
9 ~~satisfy, with respect to the subject insurance, the reporting~~
10 ~~requirement of Section 12 of the Fire Investigation Act.~~

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

25 ~~(d) For contracts of insurance effective January 1, 2015 or~~
26 ~~later, the insured shall withhold the amount of the taxes and~~

1 ~~countersignature fee from the amount of premium charged by and~~
2 ~~otherwise payable to the insurer for the insurance. If the~~
3 ~~insured fails to withhold the tax and countersignature fee from~~
4 ~~the premium, then the insured shall be liable for the amounts~~
5 ~~thereof and shall pay the amounts as prescribed in subsection~~
6 ~~(c) of this Section.~~

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

8 (215 ILCS 5/412) (from Ch. 73, par. 1024)

9 Sec. 412. Refunds; penalties; collection.

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

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

16 (b) Beginning January 1, 2000 and thereafter, the
17 Department shall deposit a percentage of the amounts collected
18 under Sections 409, 444, and 444.1 of this Code into the
19 Insurance Premium Tax Refund Fund. The percentage deposited
20 into the Insurance Premium Tax Refund Fund shall be the annual
21 percentage. The annual percentage shall be calculated as a
22 fraction, the numerator of which shall be the amount of cash
23 refunds approved by the Director for payment and paid during
24 the preceding calendar year as a result of overpayment of tax
25 liability under Sections ~~121-2.08~~, 409, 444, 444.1, and 445 of
26 this Code and the denominator of which shall be the amounts

1 collected pursuant to Sections ~~121-2.08~~, 409, 444, 444.1, and
2 445 of this Code during the preceding calendar year. However,
3 if there were no cash refunds paid in a preceding calendar
4 year, the Department shall deposit 5% of the amount collected
5 in that preceding calendar year pursuant to Sections ~~121-2.08~~,
6 409, 444, 444.1, and 445 of this Code into the Insurance
7 Premium Tax Refund Fund instead of an amount calculated by
8 using the annual percentage.

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

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

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

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

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

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

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

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

22 (iv) as a penalty, if the return or report is received
23 more than 21 days after the prescribed due date, \$400 or
24 10% of the tax due, whichever is greater, for each month or
25 part of a month of failure to file, the entire penalty not
26 to exceed \$2,000 or 50% of the tax due, whichever is

1 greater.

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

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

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

18 (i) as a late fee, if the payment is received at least
19 one day but not more than 7 days after the prescribed due
20 date, 10% of the tax due, the entire fee not to exceed
21 \$1,000;

22 (ii) as a late fee, if the payment is received at least
23 8 days but not more than 14 days after the prescribed due
24 date, 10% of the tax due, the entire fee not to exceed
25 \$1,500;

26 (iii) as a late fee, if the payment is received at

1 least 15 days but not more than 21 days after the
2 prescribed due date, 10% of the tax due, the entire fee not
3 to exceed \$2,000; or

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

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

21 (4) Any insurance company, ~~industrial insured,~~ or surplus
22 line producer that fails to pay the full amount due under this
23 Section or Sections ~~121-2.08,~~ 408.1, 409, 444, 444.1, or 445 of
24 this Code, or Section 12 of the Fire Investigation Act is
25 liable, in addition to the tax and any late fees and penalties,
26 for interest on such deficiency at the rate of 12% per annum,

1 or at such higher adjusted rates as are or may be established
2 under subsection (b) of Section 6621 of the Internal Revenue
3 Code, from the date that payment of any such tax was due,
4 determined without regard to any extensions, to the date of
5 payment of such amount.

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

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

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

26 (8) The Department shall have a lien for the taxes, fees,

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

22 Upon the granting of Department review after a lien has
23 attached, the lien shall remain in full force except to the
24 extent to which the final assessment may be reduced by a
25 revised final assessment following the rehearing or review. The
26 lien created by the issuance of a final assessment shall

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

15 The time limitation period on the Department's right to
16 file a notice of lien shall not run during any period of time
17 in which the order of any court has the effect of enjoining or
18 restraining the Department from filing such notice of lien. If
19 the Department finds that a company or person is about to
20 depart from the State, to conceal himself or his property, or
21 to do any other act tending to prejudice or to render wholly or
22 partly ineffectual proceedings to collect the amount due and
23 owing to the Department unless such proceedings are brought
24 without delay, or if the Department finds that the collection
25 of the amount due from any company or person will be
26 jeopardized by delay, the Department shall give the company or

1 person notice of such findings and shall make demand for
2 immediate return and payment of the amount, whereupon the
3 amount shall become immediately due and payable. If the company
4 or person, within 5 days after the notice (or within such
5 extension of time as the Department may grant), does not comply
6 with the notice or show to the Department that the findings in
7 the notice are erroneous, the Department may file a notice of
8 jeopardy assessment lien in the office of the recorder of the
9 county in which any property of the company or person may be
10 located and shall notify the company or person of the filing.
11 The jeopardy assessment lien shall have the same scope and
12 effect as the statutory lien provided for in this Section. If
13 the company or person believes that the company or person does
14 not owe some or all of the tax for which the jeopardy
15 assessment lien against the company or person has been filed,
16 or that no jeopardy to the revenue in fact exists, the company
17 or person may protest within 20 days after being notified by
18 the Department of the filing of the jeopardy assessment lien
19 and request a hearing, whereupon the Department shall hold a
20 hearing in conformity with the provisions of this Code and,
21 pursuant thereto, shall notify the company or person of its
22 findings as to whether or not the jeopardy assessment lien will
23 be released. If not, and if the company or person is aggrieved
24 by this decision, the company or person may file an action for
25 judicial review of the final determination of the Department in
26 accordance with the Administrative Review Law. If, pursuant to

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

21 Nothing in this Section shall be construed to give the
22 Department a preference over the rights of any bona fide
23 purchaser, holder of a security interest, mechanics
24 lienholder, mortgagee, or judgment lien creditor arising prior
25 to the filing of a regular notice of lien or a notice of
26 jeopardy assessment lien in the office of the recorder in the

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

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

1 (215 ILCS 5/445) (from Ch. 73, par. 1057)

2 Sec. 445. Surplus line.

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

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

8 (A) the entity directly or indirectly or acting through
9 one or more other persons owns, controls, or has the power
10 to vote 25% or more of any class of voting securities of
11 the other entity; or

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

14 "Affiliated group" means any group of entities that are all
15 affiliated.

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

21 "Exempt commercial purchaser" means any person purchasing
22 commercial insurance that, at the time of placement, meets the
23 following requirements:

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

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

4 (C) The person meets at least one of the following
5 criteria:

6 (I) The person possesses a net worth in excess of
7 \$20,000,000, as such amount is adjusted pursuant to the
8 provision in this definition concerning percentage
9 change.

10 (II) The person generates annual revenues in
11 excess of \$50,000,000, as such amount is adjusted
12 pursuant to the provision in this definition
13 concerning percentage change.

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

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

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

25 Effective on January 1, 2015 and each fifth January 1
26 occurring thereafter, the amounts in subitems (I), (II), and

1 (IV) of item (C) of this definition shall be adjusted to
2 reflect the percentage change for such 5-year period in the
3 Consumer Price Index for All Urban Consumers published by the
4 Bureau of Labor Statistics of the Department of Labor.

5 "Home state" means the following:

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

8 (I) the state in which an insured maintains its
9 principal place of business or, in the case of an
10 individual, the individual's principal residence; or

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

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

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

25 ~~(I) if individual group members pay 100% of the~~
26 ~~premium for the insurance from their own funds, "home~~

1 ~~state" means the home state, as determined pursuant to~~
2 ~~item (A) of this definition, of each individual group~~
3 ~~member; each individual group member's coverage under~~
4 ~~the surplus line insurance contract shall be treated as~~
5 ~~a separate surplus line contract for the purposes of~~
6 ~~this Section;~~

7 ~~(II) otherwise, "home state" means the home state,~~
8 ~~as determined pursuant to item (A) of this definition,~~
9 ~~of the group.~~

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

12 "Multi-State risk" means a risk with insured exposures in
13 more than one State.

14 "NAIC" means the National Association of Insurance
15 Commissioners or any successor entity.

16 "Qualified risk manager" means, with respect to a
17 policyholder of commercial insurance, a person who meets all of
18 the following requirements:

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

21 (B) The person provides skilled services in loss
22 prevention, loss reduction, or risk and insurance coverage
23 analysis, and purchase of insurance.

24 (C) With regard to the person:

25 (I) the person has:

26 (a) a bachelor's degree or higher from an

1 accredited college or university in risk
2 management, business administration, finance,
3 economics, or any other field determined by the
4 Director or his designee to demonstrate minimum
5 competence in risk management; and

6 (b) the following:

7 (i) three years of experience in risk
8 financing, claims administration, loss
9 prevention, risk and insurance analysis, or
10 purchasing commercial lines of insurance; or

11 (ii) alternatively has:

12 (AA) a designation as a Chartered
13 Property and Casualty Underwriter (in this
14 subparagraph (ii) referred to as "CPCU")
15 issued by the American Institute for
16 CPCU/Insurance Institute of America;

17 (BB) a designation as an Associate in
18 Risk Management (ARM) issued by the
19 American Institute for CPCU/Insurance
20 Institute of America;

21 (CC) a designation as Certified Risk
22 Manager (CRM) issued by the National
23 Alliance for Insurance Education &
24 Research;

25 (DD) a designation as a RIMS Fellow
26 (RF) issued by the Global Risk Management

1 Institute; or
2 (EE) any other designation,
3 certification, or license determined by
4 the Director or his designee to
5 demonstrate minimum competency in risk
6 management;

7 (II) the person has:

8 (a) at least 7 years of experience in risk
9 financing, claims administration, loss prevention,
10 risk and insurance coverage analysis, or
11 purchasing commercial lines of insurance; and

12 (b) has any one of the designations specified
13 in subparagraph (ii) of paragraph (b);

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

18 (IV) the person has a graduate degree from an
19 accredited college or university in risk management,
20 business administration, finance, economics, or any
21 other field determined by the Director or his or her
22 designee to demonstrate minimum competence in risk
23 management.

24 "Residual market mechanism" means an association,
25 organization, or other entity described in Article XXXIII of
26 this Code or Section 7-501 of the Illinois Vehicle Code or any

1 similar association, organization, or other entity.

2 "State" means any state of the United States, the District
3 of Columbia, the Commonwealth of Puerto Rico, Guam, the
4 Northern Mariana Islands, the Virgin Islands, and American
5 Samoa.

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

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

9 (B) that is procured from an unauthorized insurer after
10 the insurance producer representing the insured or the
11 surplus line producer is unable, after diligent effort, to
12 procure the insurance from authorized insurers; and

13 (C) where Illinois is the home state of the insured,
14 for policies effective, renewed or extended on July 21,
15 2011 or later and for multiyear policies upon the policy
16 anniversary that falls on or after July 21, 2011; and

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

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

23 (1.5) Procuring surplus line insurance; surplus line
24 insurer requirements.

25 (a) Insurance producers may procure surplus line
26 insurance only if licensed as a surplus line producer under

1 this Section.

2 (b) Licensed surplus line producers may procure
3 surplus line insurance from an unauthorized insurer
4 domiciled in the United States only if the insurer:

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

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

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

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

19 (c) Licensed surplus line producers may procure
20 surplus line insurance from an unauthorized insurer
21 domiciled outside of the United States only if the insurer
22 meets the standards for unauthorized insurers domiciled in
23 the United States in paragraph (b) of this subsection (1.5)
24 or is listed on the Quarterly Listing of Alien Insurers
25 maintained by the International Insurers Department of the
26 NAIC. The Director shall make the Quarterly Listing of

1 Alien Insurers available to surplus line producers without
2 charge.

3 (d) Insurance producers shall not procure from an
4 unauthorized insurer an insurance policy:

5 (i) that is designed to satisfy the proof of
6 financial responsibility and insurance requirements in
7 any Illinois law where the law requires that the proof
8 of insurance is issued by an authorized insurer or
9 residual market mechanism;

10 (ii) that covers the risk of accidental injury to
11 employees arising out of and in the course of
12 employment according to the provisions of the Workers'
13 Compensation Act; or

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

26 Where there is an insurance policy issued by an

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

8 (e) Licensed surplus line producers may procure
9 surplus line insurance from an unauthorized insurer for an
10 exempt commercial purchaser without making the required
11 diligent effort to procure the insurance from authorized
12 insurers if:

13 (i) the producer has disclosed to the exempt
14 commercial purchaser that such insurance may or may not
15 be available from authorized insurers that may provide
16 greater protection with more regulatory oversight; and

17 (ii) the exempt commercial purchaser has
18 subsequently in writing requested the producer to
19 procure such insurance from an unauthorized insurer.

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

24 A surplus line producer so licensed shall keep a separate
25 account of the business transacted thereunder for 7 years from
26 the policy effective date which shall be open at all times to

1 the inspection of the Director or his representative.

2 No later than July 21, 2012, the State of Illinois shall
3 participate in the national insurance producer database of the
4 NAIC, or any other equivalent uniform national database, for
5 the licensure of surplus line producers and the renewal of such
6 licenses.

7 (3) Taxes and reports.

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

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

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

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

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

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

20 (c) Taxes and fees charged to insured. The taxes
21 imposed under this subsection and the countersigning fees
22 charged by the Surplus Line Association of Illinois may be
23 charged to and collected from surplus line insureds.

24 (4) (Blank).

25 (5) Submission of documents to Surplus Line Association of
26 Illinois. A surplus line producer shall submit every insurance

1 contract issued under his or her license to the Surplus Line
2 Association of Illinois for recording and countersignature.
3 The submission and countersignature may be effected through
4 electronic means. The submission shall set forth:

5 (a) the name of the insured;

6 (b) the description and location of the insured
7 property or risk;

8 (c) the amount insured;

9 (d) the gross premiums charged or returned;

10 (e) the name of the unauthorized insurer from whom
11 coverage has been procured;

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

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

15 Proposals, endorsements, and other documents which are
16 incidental to the insurance but which do not affect the premium
17 charged are exempted from filing and countersignature.

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

26 (6) Countersignature required. It shall be unlawful for an

1 insurance producer to deliver any unauthorized insurer
2 contract unless such insurance contract is countersigned by the
3 Surplus Line Association of Illinois.

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

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

18 (9) Director may declare insurer ineligible. If the
19 Director determines that the further assumption of risks might
20 be hazardous to the policyholders of an unauthorized insurer,
21 the Director may order the Surplus Line Association of Illinois
22 not to countersign insurance contracts evidencing insurance in
23 such insurer and order surplus line producers to cease
24 procuring insurance from such insurer.

25 (10) Service of process upon Director. Insurance contracts
26 delivered under this Section from unauthorized insurers, other

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

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

1 This contract is issued by a domestic surplus line insurer, as
2 defined in Section 445a of the Illinois Insurance Code,
3 pursuant to Section 445, and as such is not covered by the
4 Illinois Insurance Guaranty Fund."

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

12 (12) Surplus line insurance procured under this Section,
13 including insurance procured from a domestic surplus line
14 insurer, is not subject to the provisions of the Illinois
15 Insurance Code other than Sections 123, 123.1, 401, 401.1, 402,
16 403, 403A, 408, 412, 445, 445.1, 445.2, 445.3, 445.4, and all
17 of the provisions of Article XXXI to the extent that the
18 provisions of Article XXXI are not inconsistent with the terms
19 of this Act.

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

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