

AN ACT concerning health.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Illinois Insurance Code is amended by changing Sections 35A-15, 445, and 445a as follows:

(215 ILCS 5/35A-15)

Sec. 35A-15. Company action level event.

(a) A company action level event means any of the following events:

(1) The filing of an RBC Report by an insurer that indicates that:

(A) the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC, but less than its company action level RBC; ~~or~~

(B) ~~the~~ the insurer, if a life, health, or life and health insurer, has total adjusted capital that is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and 2.5 and has a negative trend; or ~~-~~

(C) the insurer, if a property and casualty insurer, has total adjusted capital that is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC

and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty RBC Instructions.

(2) The notification by the Director to the insurer of an Adjusted RBC Report that indicates an event described in paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under Section 35A-35.

(3) The notification by the Director to the insurer that the Director has, after a hearing, rejected the insurer's challenge under Section 35A-35 to an Adjusted RBC Report that indicates the event described in paragraph (1).

(b) In the event of a company action level event, the insurer shall prepare and submit to the Director an RBC Plan that does all of the following:

(1) Identifies the conditions that contribute to the company action level event.

(2) Contains proposed corrective actions that the insurer intends to take and that are expected to result in the elimination of the company action level event. A health organization is not prohibited from proposing recognition of a parental guarantee or a letter of credit to eliminate the company action level event; however the Director shall, at his discretion, determine whether or the extent to which the proposed parental guarantee or letter of credit is an acceptable part of a satisfactory RBC Plan or Revised RBC Plan.

(3) Provides projections of the insurer's financial results in the current year and at least the 4 succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(4) Identifies the key assumptions affecting the insurer's projections and the sensitivity of the projections to the assumptions.

(5) Identifies the quality of, and problems associated with, the insurer's business including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(c) The insurer shall submit the RBC Plan to the Director within 45 days after the company action level event occurs or within 45 days after the Director notifies the insurer that the Director has, after a hearing, rejected its challenge under Section 35A-35 to an Adjusted RBC Report.

(d) Within 60 days after an insurer submits an RBC Plan to the Director, the Director shall notify the insurer whether the RBC Plan shall be implemented or is, in the judgment of the Director, unsatisfactory. If the Director determines the RBC

Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination and may set forth proposed revisions that will render the RBC Plan satisfactory in the judgment of the Director. Upon notification from the Director, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the Director. The insurer shall submit the Revised RBC Plan to the Director within 45 days after the Director notifies the insurer that the RBC Plan is unsatisfactory or within 45 days after the Director notifies the insurer that the Director has, after a hearing, rejected its challenge under Section 35A-35 to the determination that the RBC Plan is unsatisfactory.

(e) In the event the Director notifies an insurer that its RBC Plan or Revised RBC Plan is unsatisfactory, the Director may, at the Director's discretion and subject to the insurer's right to a hearing under Section 35A-35, specify in the notification that the notification constitutes a regulatory action level event.

(f) Every domestic insurer that files an RBC Plan or Revised RBC Plan with the Director shall file a copy of the RBC Plan or Revised RBC Plan with the chief insurance regulatory official in any state in which the insurer is authorized to do business if that state has a law substantially similar to the confidentiality provisions in subsection (a) of Section 35A-50 and if that official requests in writing a copy of the plan. The insurer shall file a copy of the RBC Plan or Revised RBC

Plan in that state no later than the later of 15 days after receiving the written request for the copy or the date on which the RBC Plan or Revised RBC Plan is filed under subsection (c) or (d) of this Section.

(Source: P.A. 91-549, eff. 8-14-99.)

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

Sec. 445. Surplus line.

(1) Definitions. For the purposes of this Section: ~~Surplus line defined; surplus line insurer requirements. "Surplus line insurance" means insurance on an Illinois risk of the kinds specified in Classes 2 and 3 of Section 4 of this Code procured from an unauthorized insurer after the insurance producer representing the insured or the surplus line producer is unable, after diligent effort, to procure said insurance from authorized insurers.~~

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

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

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

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

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

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

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

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

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

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

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

(III) The person employs more than 500 full-time or

full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

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

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

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

"Home state" means the following:

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

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

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

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

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

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

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

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

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

(C) With regard to the person:

(I) the person has:

(a) a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the Director or his designee to demonstrate minimum



competence in risk management; and

(b) the following:

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

(ii) alternatively has:

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

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

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

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

(EE) any other designation, certification, or license determined by the Director or his designee to

demonstrate minimum competency in risk management;

(II) the person has:

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

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

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

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

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

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American

Samoa.

"Surplus line insurance" means insurance on a risk:

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

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

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

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

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

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

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

(b) Licensed surplus line producers ~~and~~ may procure surplus line ~~that~~ insurance ~~only~~ from an unauthorized insurer domiciled in the United States only if the insurer:

(i) is permitted in its domiciliary jurisdiction to

write the type of insurance involved; and

(ii) has, ~~(a) that~~ based upon information available to the surplus line producer, ~~has~~ a policyholders surplus of not less than \$15,000,000 determined in accordance with the laws of its domiciliary jurisdiction ~~accounting rules that are applicable to authorized insurers;~~ and

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

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

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

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

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

issued by an authorized insurer or residual market mechanism;

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

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

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

(e) Licensed surplus line producers may procure surplus

line insurance from an unauthorized insurer for an exempt commercial purchaser without making the required diligent effort to procure the insurance from authorized insurers if:

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

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

(2) Surplus line producer; license. Any licensed producer who is a resident of this State, or any nonresident who qualifies under Section 500-40, may be licensed as a surplus line producer upon: ~~(a) completing a prelicensing course of study. The course provided for by this Section shall be conducted under rules and regulations prescribed by the Director. The Director may administer the course or may make arrangements, including contracting with an outside educational service, for administering the course and collecting the non-refundable application fee provided for in this subsection. Any charges assessed by the Director or the educational service for administering the course shall be paid directly by the individual applicants. Each applicant required to take the course shall enclose with the application a non-refundable \$20 application fee payable to the Director plus a separate course administration fee. An applicant who fails to~~

~~appear for the course as scheduled, or appears but fails to complete the course, shall not be entitled to any refund, and shall be required to submit a new request to attend the course together with all the requisite fees before being rescheduled for another course at a later date; and (b) payment of an annual license fee of \$400; and (c) procurement of the surety bond required in subsection (4) of this Section.~~

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

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

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

(3) Taxes and reports.

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

The surplus line tax rate for a surplus line insurance policy or contract is determined as follows:

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

(ii) 3.5% for policies or contracts with an

effective date of July 1, 2003 or later.

A surplus line producer shall file with the Director on or before February 1 and August 1 of each year a report in the form prescribed by the Director on all surplus line insurance procured from unauthorized insurers during the preceding 6 month period ending December 31 or June 30 respectively, and on the filing of such report shall pay to the Director for the use and benefit of the State a sum equal to the surplus line tax rate multiplied by ~~3.5%~~ of the gross premiums less returned premiums upon all surplus line insurance submitted to the Surplus Line Association of Illinois ~~procured or cancelled~~ during the preceding 6 months.

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

(b) Fire Marshal Tax.

Each surplus line producer shall file with the Director on or before March 31 of each year a report in the form



prescribed by the Director on all fire insurance procured from unauthorized insurers and submitted to the Surplus Line Association of Illinois subject to tax under Section 12 of the Fire Investigation Act and shall pay to the Director the fire marshal tax required thereunder.

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

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

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

(a) the name of the insured;

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

- (c) the amount insured;
- (d) the gross premiums charged or returned;
- (e) the name of the unauthorized insurer from whom coverage has been procured;
- (f) the kind or kinds of insurance procured; and
- (g) amount of premium subject to tax required by Section 12 of the Fire Investigation Act.

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

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

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

(7) Inspection of records. A surplus line producer shall maintain separate records of the business transacted under his or her license, including complete copies of surplus line insurance contracts maintained on paper or by electronic means,

which records shall be open at all times for inspection by the Director and by the Surplus Line Association of Illinois.

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

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

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

The Director at his option is authorized to forward a copy of the process to the Surplus Line Association of Illinois for delivery to the unauthorized insurer or the Director may deliver the process to the unauthorized insurer by other means which he considers to be reasonably prompt and certain.

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

(11) The Illinois Surplus Line law does not apply to insurance of property and operations of railroads or aircraft engaged in interstate or foreign commerce, insurance of vessels, crafts or hulls, cargoes, marine builder's risks,

marine protection and indemnity, or other risks including strikes and war risks insured under ocean or wet marine forms of policies.

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

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

(215 ILCS 5/445a)

Sec. 445a. Domestic surplus line insurer.

(a) A domestic insurer possessing policyholder surplus of at least \$15,000,000 may pursuant to a resolution by its board of directors, and with the written approval of the Director, be designated as a "domestic surplus line insurer".

(b) A domestic surplus line insurer may ~~only~~ insure in this State an Illinois risk only if procured from a surplus line producer pursuant to Section 445 of this Code.

(c) A domestic surplus line insurer must agree not to issue a policy designed to satisfy the financial responsibility requirements of the Illinois Vehicle Code, the Workers'

Compensation Act, or the Workers' Occupational Diseases Act. A domestic surplus line insurer is not subject to the provisions of Articles XXXIII, XXXIII 1/2, XXXIV, XXXVIII A, Section 468, or Section 478.1 of this Code.

(d) For the purposes of the federal Nonadmitted and Reinsurance Reform Act of 2010 (15 USC 8201 et seq.), a domestic surplus line insurer shall be considered a nonadmitted insurer, as the term is defined in the Act, with respect to risks insured in this State.

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

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

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