

AN ACT concerning regulation.

**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 121-2.08, 412, 445, 445.1, and 445.4 as follows:

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

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

(a) As used in this Section:

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

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

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

(i) that ~~(a) which~~ procures the insurance of any risk or risks of the kinds specified in Classes 2 and 3 of Section 4 of this Code ~~other than life and annuity contracts~~ by use of the services of a full-time ~~full-time~~

employee who is a qualified risk manager acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant who is a qualified risk manager;

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

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

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

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

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

(b) For contracts of insurance effective January 1, 2015 or later, within 90 days after the effective date of each contract of insurance issued under this Section, the insured shall file a report with the Director by submitting the report to the Surplus Line Association of Illinois in writing or in a

computer readable format and provide information as designated by the Surplus Line Association of Illinois. The information in the report shall be substantially similar to that required for surplus line submissions as described in subsection (5) of Section 445 of this Code. Where applicable, the report shall satisfy, with respect to the subject insurance, the reporting requirement of Section 12 of the Fire Investigation Act.

(c) For contracts of insurance effective January 1, 2015 or later, 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, as described in paragraph (3) of subsection (a) of Section 445 of this Code, and shall pay the fire marshal tax that would otherwise be due annually in March for insurance subject to tax under Section 12 of the Fire Investigation Act. For contracts of insurance effective January 1, 2015 or later, within 30 days after filing the report, the insured shall pay to the Surplus Line Association of Illinois a countersigning fee that shall be assessed at the same rate charged to members pursuant to subsection (4) of Section 445.1 of this Code.

(d) For contracts of insurance effective January 1, 2015 or later, the insured shall withhold the amount of the taxes and countersignature fee from the amount of premium charged by and otherwise payable to the insurer for the insurance. If the insured fails to withhold the tax and countersignature fee from

the premium, then the insured shall be liable for the amounts thereof and shall pay the amounts as prescribed in subsection (c) of this Section.

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

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

Sec. 412. Refunds; penalties; collection.

(1)(a) Whenever it appears to the satisfaction of the Director that because of some mistake of fact, error in calculation, or erroneous interpretation of a statute of this or any other state, any authorized company, surplus line producer, or industrial insured has paid to him, pursuant to any provision of law, taxes, fees, or other charges in excess of the amount legally chargeable against it, during the 6 year period immediately preceding the discovery of such overpayment, he shall have power to refund to such company, surplus line producer, or industrial insured the amount of the excess or excesses by applying the amount or amounts thereof toward the payment of taxes, fees, or other charges already due, or which may thereafter become due from that company until such excess or excesses have been fully refunded, or upon a written request from the authorized company, surplus line producer, or industrial insured, the Director shall provide a cash refund within 120 days after receipt of the written request if all necessary information has been filed with the Department in order for it to perform an audit of the tax

report for the transaction or period or annual return for the year in which the overpayment occurred or within 120 days after the date the Department receives all the necessary information to perform such audit. The Director shall not provide a cash refund if there are insufficient funds in the Insurance Premium Tax Refund Fund to provide a cash refund, if the amount of the overpayment is less than \$100, or if the amount of the overpayment can be fully offset against the taxpayer's estimated liability for the year following the year of the cash refund request. Any cash refund shall be paid from the Insurance Premium Tax Refund Fund, a special fund hereby created in the State treasury.

(b) Beginning January 1, 2000 and thereafter, the Department shall deposit a percentage of the amounts collected under Sections 409, 444, and 444.1 of this Code into the Insurance Premium Tax Refund Fund. The percentage deposited into the Insurance Premium Tax Refund Fund shall be the annual percentage. The annual percentage shall be calculated as a fraction, the numerator of which shall be the amount of cash refunds approved by the Director for payment and paid during the preceding calendar year as a result of overpayment of tax liability under Sections 121-2.08, 409, 444, ~~and~~ 444.1, and 445 of this Code and the denominator of which shall be the amounts collected pursuant to Sections 121-2.08, 409, 444, ~~and~~ 444.1, and 445 of this Code during the preceding calendar year. However, if there were no cash refunds paid in a preceding

calendar year, the Department shall deposit 5% of the amount collected in that preceding calendar year pursuant to Sections 121-2.08, 409, 444, ~~and 444.1~~, and 445 of this Code into the Insurance Premium Tax Refund Fund instead of an amount calculated by using the annual percentage.

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

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

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

to exceed \$2,000 or 50% of the tax due, whichever is greater.

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

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

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

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

or

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

A tax return or report shall be deemed received as of the

date mailed as evidenced by a postmark, proof of mailing on a recognized United States Postal Service form or a form acceptable to the United States Postal Service or other commercial mail delivery service, or other evidence acceptable to the Director.

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

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

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

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

(iii) as a late fee, if the payment is received at least 15 days but not more than 21 days after the

prescribed due date, 10% of the tax due, the entire fee not to exceed \$2,000; or

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

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

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

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

or may be established under subsection (b) of Section 6621 of the Internal Revenue Code, from the date that payment of any such tax was due, determined without regard to any extensions, to the date of payment of such amount.

(5) 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, fees, and penalties due, and prosecute the same to final judgment, and take such steps as are necessary to collect the same.

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

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

(8) The Department shall have a lien for the taxes, fees, charges, fines, penalties, interest, other charges, or any

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

Upon the granting of Department review after a lien has attached, the lien shall remain in full force except to the extent to which the final assessment may be reduced by a revised final assessment following the rehearing or review. The lien created by the issuance of a final assessment shall terminate, unless a notice of lien is filed, within 3 years

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

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

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

facts by the Department without a hearing), the Department determines that some or all of the amount due covered by the jeopardy assessment lien is not owed by the company or person, or that no jeopardy to the revenue exists, or if on judicial review the final judgment of the court is that the company or person does not owe some or all of the amount due covered by the jeopardy assessment lien against them, or that no jeopardy to the revenue exists, the Department shall release its jeopardy assessment lien to the extent of such finding of nonliability for the amount, or to the extent of such finding of no jeopardy to the revenue. The Department shall also release its jeopardy assessment lien against the company or person whenever the amount due and owing covered by the lien, plus any interest which may be due, are paid and the company or person has paid the Department in cash or by guaranteed remittance an amount representing the filing fee for the lien and the filing fee for the release of that lien. The Department shall file that release of lien with the recorder of the county where that lien was filed.

Nothing in this Section shall be construed to give the Department a preference over the rights of any bona fide purchaser, holder of a security interest, mechanics lienholder, mortgagee, or judgment lien creditor arising prior to the filing of a regular notice of lien or a notice of jeopardy assessment lien in the office of the recorder in the county in which the property subject to the lien is located.

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

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

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

Sec. 445. Surplus line.

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

"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.

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

(I) if individual group members pay 100% of the premium for the insurance from their own funds, "home state" means the home state, as determined pursuant to

item (A) of this definition, of each individual group member; each individual group member's coverage under the surplus line insurance contract shall be treated as a separate surplus line contract for the purposes of this Section;

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

Nothing in this definition shall be construed to alter the terms of the surplus line 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 may procure surplus line insurance 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, based upon information available to the surplus line producer, a policyholders surplus of not less than \$15,000,000 determined in accordance with the laws of its domiciliary jurisdiction; and

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

Where an unauthorized insurer does not meet the standards set forth in (ii) and (iii) 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 meets the standards for unauthorized insurers domiciled in the United States in paragraph (b) of this subsection (1.5) or 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 payment of an annual license fee of \$400.

A surplus line producer so licensed shall keep a separate account of the business transacted thereunder for 7 years from the policy effective date 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.

(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 and submitted to the Surplus Line Association of Illinois 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 the gross premiums less returned premiums upon all surplus line insurance submitted to the Surplus Line Association of Illinois 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 late fee, 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, late fees, interest, 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).

(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 for 7 years from the policy effective date, 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. 97-955, eff. 8-14-12.)

(215 ILCS 5/445.1) (from Ch. 73, par. 1057.1)

Sec. 445.1. Surplus Line Association of Illinois. There is hereby created a non-profit association to be known as the Surplus Line Association of Illinois. All surplus line producers shall be and must remain individual members of the Association as a condition of their holding a license as a

surplus line producer in this State. The Association must perform its functions under the plan of operation established and approved under Section 445.3 and must exercise its powers through a board of directors established under Section 445.2 of this Code. The Association shall be supervised by the Director and is subject to the applicable provisions of the Illinois Insurance Code. The Association shall be authorized and have the duty to:

(1) receive, record and countersign all surplus line insurance contracts which surplus line producers are required to file with the Association under subsection (5) of Section 445;

(2) prepare monthly reports for the Director on surplus line insurance procured by its members during the preceding month in such form and providing such information as the Director may prescribe;

(3) prepare and deliver to the Director and, at the discretion of the Director, to each licensee ~~and to the Director~~ the reports of surplus line business prescribed in subsection (3) of Section 445;

(4) assess its members for costs of operations in accordance with a schedule adopted by the Board of Directors of the Association and approved by the Director;

(5) employ and retain such persons as are necessary to carry out the duties of the Association;

(6) borrow money as necessary to effect the purposes of the

Association;

(7) enter contracts as necessary to effect the purposes of the Association;

(8) perform such other acts as will facilitate and encourage compliance by its members with the surplus line law of this State and rules promulgated thereunder; and

(9) provide such other services to its members as are incidental or related to the purposes of the Association. Nothing in this Act shall be construed as giving the Association any discretionary authority to enforce this Act or to withhold countersignature of insurance contracts which meet the requirements of subsection (5) of Section 445.

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

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

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

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

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