



Rep. Thaddeus Jones

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10300HB3521ham001

LRB103 29647 BMS 59236 a

1 AMENDMENT TO HOUSE BILL 3521

2 AMENDMENT NO. _____. Amend House Bill 3521 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Insurance Code is amended by
5 changing Section 445 as follows:

6 (215 ILCS 5/445) (from Ch. 73, par. 1057)

7 Sec. 445. Surplus line.

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

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

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

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

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

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

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

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

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

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

21 (I) The person possesses a net worth in excess of
22 \$20,000,000, as such amount is adjusted pursuant to
23 the provision in this definition concerning percentage
24 change.

25 (II) The person generates annual revenues in
26 excess of \$50,000,000, as such amount is adjusted

1 pursuant to the provision in this definition
2 concerning percentage change.

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

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

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

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

20 "Home state" means the following:

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

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

26 (II) if 100% of the insured risk is located out of

1 the state referred to in subitem (I), the state to
2 which the greatest percentage of the insured's taxable
3 premium for that insurance contract is allocated.

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

11 If more than one insured from a group that is not
12 affiliated are named insureds on a single surplus line
13 insurance contract, then: ~~(I) if individual group members~~
14 ~~pay 100% of the premium for the insurance from their own~~
15 ~~funds, "home state" means the home state, as determined~~
16 ~~pursuant to item (A) of this definition, of each~~
17 ~~individual group member; each individual group member's~~
18 ~~coverage under the surplus line insurance contract shall~~
19 ~~be treated as a separate surplus line contract for the~~
20 ~~purposes of this Section; (II) otherwise, "home state"~~
21 means the home state, as determined pursuant to item (A)
22 of this definition, of the group.

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

25 "Master policy" means a surplus line insurance contract
26 with a single set of general contractual terms that are

1 designed to apply on a group basis to multiple insureds who may
2 or may not be affiliated and who may be added to or removed
3 from the contract throughout the course of the contract
4 period. A master policy may include certain provisions that
5 vary for each insured depending on the insured's
6 characteristics and the coverage sought.

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

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

11 "Personal lines insurance" means insurance as defined in
12 subsection (a), (b), or (c) of Section 143.13 of this Code.

13 "Premium" means any amount designated as premium on the
14 declarations page or elsewhere in a policy and on any
15 endorsement, but does not include taxes, the Surplus Line
16 Association of Illinois recording fee, or any other fee.

17 "Program business" means a clearly defined group of
18 insurance contracts procured by a licensed surplus line
19 producer from an unauthorized insurer, under a single
20 agreement between the producer and insurer, for insureds with
21 the same or similar characteristics and containing the same or
22 similar contract terms.

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

26 (A) The person is an employee of, or third-party

1 consultant retained by, the commercial policyholder.

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

5 (C) With regard to the person:

6 (I) the person has:

7 (a) a bachelor's degree or higher from an
8 accredited college or university in risk
9 management, business administration, finance,
10 economics, or any other field determined by the
11 Director or his designee to demonstrate minimum
12 competence in risk management; and

13 (b) the following:

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

18 (ii) alternatively has:

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

24 (BB) a designation as an Associate in
25 Risk Management (ARM) issued by the
26 American Institute for CPCU/Insurance

1 Institute of America;

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

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

9 (EE) any other designation,
10 certification, or license determined by
11 the Director or his designee to
12 demonstrate minimum competency in risk
13 management;

14 (II) the person has:

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

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

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

25 (IV) the person has a graduate degree from an
26 accredited college or university in risk management,

1 business administration, finance, economics, or any
2 other field determined by the Director or his or her
3 designee to demonstrate minimum competence in risk
4 management.

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

9 "State" means any state of the United States, the District
10 of Columbia, the Commonwealth of Puerto Rico, Guam, the
11 Northern Mariana Islands, the Virgin Islands, and American
12 Samoa.

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

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

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

21 (C) where Illinois is the home state of the insured,
22 for policies effective, renewed or extended on July 21,
23 2011 or later and for multiyear policies upon the policy
24 anniversary that falls on or after July 21, 2011; and

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

1 "Taxable premium" means a premium for any risk that is
2 located in or attributed to any state.

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

7 (1.5) Procuring surplus line insurance; surplus line
8 insurer requirements.

9 (a) License required. Insurance producers may procure
10 surplus line insurance only if licensed as a surplus line
11 producer under this Section.

12 (b) Domestic and foreign insurer eligibility. Licensed
13 surplus line producers may procure surplus line insurance
14 from an unauthorized insurer domiciled in any state only
15 if the insurer:

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

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

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

24 Where an unauthorized insurer does not meet the
25 standards set forth in (ii) and (iii) above, a surplus
26 line producer may, if necessary, procure insurance from

1 that insurer only if prior written warning of such fact or
2 condition is given to the insured by the insurance
3 producer or surplus line producer.

4 (c) Alien insurer eligibility. Licensed surplus line
5 producers may procure surplus line insurance from an
6 unauthorized insurer not domiciled in any state only if
7 the insurer meets the standards for unauthorized insurers
8 domiciled in any state in paragraph (b) of this subsection
9 (1.5) or is listed on the Quarterly Listing of Alien
10 Insurers maintained by the International Insurers
11 Department of the NAIC at the time of procurement. The
12 Director shall make the Quarterly Listing of Alien
13 Insurers available to surplus line producers without
14 charge.

15 (d) Prohibited transactions. Insurance producers shall
16 not procure from an unauthorized insurer an insurance
17 policy:

18 (i) that is designed to satisfy the proof of
19 financial responsibility and insurance requirements in
20 any Illinois law where the law requires that the proof
21 of insurance is issued by an authorized insurer or
22 residual market mechanism;

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

1 (iii) that insures any Illinois personal lines
2 risk that is eligible for residual market mechanism
3 coverage, unless the insured or prospective insured
4 requests limits of liability greater than the limits
5 provided by the residual market mechanism. In the
6 course of making a diligent effort to procure
7 insurance from authorized insurers, an insurance
8 producer shall not be required to submit a risk to a
9 residual market mechanism when the risk is not
10 eligible for coverage or exceeds the limits available
11 in the residual market mechanism.

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

20 (e) Exempt commercial purchaser diligent effort.
21 Licensed surplus line producers may procure surplus line
22 insurance from an unauthorized insurer for an exempt
23 commercial purchaser without making the required diligent
24 effort to procure the insurance from authorized insurers
25 if:

26 (i) the producer has disclosed to the exempt

1 commercial purchaser that such insurance may or may
2 not be available from authorized insurers that may
3 provide greater protection with more regulatory
4 oversight; and

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

8 (f) Commercial wholesale transaction diligent effort.
9 A licensed surplus line producer may procure a surplus
10 line insurance contract, other than a personal lines
11 insurance contract, from an unauthorized insurer without
12 making the required diligent effort to procure the
13 insurance from authorized insurers if the risk was
14 referred to the surplus line producer by an
15 Illinois-licensed insurance producer who is not affiliated
16 with the surplus line producer.

17 (g) Master policy diligent effort. For a master policy
18 insurance contract, a licensed surplus line producer may
19 make the required diligent effort to procure the insurance
20 from authorized insurers annually for the master policy
21 rather than individually for each insured that is added
22 during the policy period. The diligent effort shall
23 include all variable provisions of the master policy.

24 (h) Program business diligent effort. For program
25 business, a licensed surplus line producer may make the
26 required diligent effort to procure the insurance from

1 authorized insurers annually for the program rather than
2 individually for each contract. The diligent effort shall
3 include all variable provisions of the program ~~master~~
4 ~~policy~~.

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

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

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

18 (3) Taxes and reports.

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

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

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

26 A surplus line producer shall file with the Director

1 on or before February 1 and August 1 of each year a report
2 in the form prescribed by the Director on all surplus line
3 insurance procured from unauthorized insurers and
4 submitted to the Surplus Line Association of Illinois
5 during the preceding 6 month period ending December 31 or
6 June 30 respectively, and on the filing of such report
7 shall pay to the Director for the use and benefit of the
8 State a sum equal to the surplus line tax rate multiplied
9 by the gross taxable premiums less returned taxable
10 premiums upon all surplus line insurance submitted to the
11 Surplus Line Association of Illinois during the preceding
12 6 months.

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

24 (b) Fire Marshal Tax. Each surplus line producer shall
25 file with the Director on or before February 1 of each year
26 a report in the form prescribed by the Director on all fire

1 insurance procured from unauthorized insurers and
2 submitted to the Surplus Line Association of Illinois
3 during the previous year that is subject to tax under
4 Section 12 of the Fire Investigation Act and shall pay to
5 the Director the fire marshal tax required thereunder.

6 (c) Taxes and fees charged to insured. The taxes
7 imposed under this subsection and the recording fees
8 charged by the Surplus Line Association of Illinois may be
9 charged to and collected from surplusline insureds.

10 (4) (Blank).

11 (5) Submission of documents to Surplus Line Association of
12 Illinois. A surplus line producer shall submit every insurance
13 contract and premium-bearing endorsement issued under his or
14 her license to the Surplus Line Association of Illinois for
15 recording. The submission and recording may be effected
16 through electronic means. The submission shall set forth:

17 (a) the name of the insured;

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

20 (c) (blank);

21 (d) the gross premiums charged or returned;

22 (e) the name of the unauthorized insurer from whom
23 coverage has been procured;

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

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

1 Proposals, endorsements, and other documents which are
2 incidental to the insurance but which do not affect the
3 premium charged are exempted from the submission and recording
4 requirements.

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

13 (6) Evidence of recording required. It shall be unlawful
14 for an insurance producer to deliver any unauthorized insurer
15 contract or premium-bearing endorsement unless it contains
16 evidence of recording by the Surplus Line Association of
17 Illinois.

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

25 (8) Violations and penalties. The Director may suspend or
26 revoke or refuse to renew a surplus line producer license for

1 any violation of this Code. In addition to or in lieu of
2 suspension or revocation, the Director may subject a surplus
3 line producer to a civil penalty of up to \$2,000 for each cause
4 for suspension or revocation. Such penalty is enforceable
5 under subsection (5) of Section 403A of this Code.

6 Whenever it appears to the satisfaction of the Director
7 that a surplus line producer has made a documented good faith
8 determination of the home state for a surplus line insurance
9 contract and has paid the surplus line taxes to a state other
10 than Illinois, and the Director determines that the producer's
11 good faith determination was incorrect and the home state is
12 Illinois, the surplus line producer may, at the discretion of
13 the Director, be required to submit the contract to the
14 Surplus Line Association of Illinois and pay applicable taxes
15 and recording fees, but there shall be no penalty, interest,
16 or late fee assessed.

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

24 (10) Service of process upon Director. Insurance contracts
25 delivered under this Section from unauthorized insurers, other
26 than domestic surplus line insurers as defined in Section

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

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

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

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

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

20 (Source: P.A. 102-224, eff. 1-1-22.)".