

1 AN ACT concerning regulation.

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

4 Section 5. The Illinois Insurance Code is amended by
5 changing 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

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

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

22 "Authorized insurer" means an insurer that holds a
23 certificate of authority issued by the Director but, for the

1 purposes of this Section, does not include a domestic surplus
2 line insurer as defined in Section 445a or any residual market
3 mechanism.

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

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

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

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

14 (I) The person possesses a net worth in excess of
15 \$20,000,000, as such amount is adjusted pursuant to
16 the provision in this definition concerning percentage
17 change.

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

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

26 (IV) The person is a not-for-profit organization

1 or public entity generating annual budgeted
2 expenditures of at least \$30,000,000, as such amount
3 is adjusted pursuant to the provision in this
4 definition concerning percentage change.

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

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

13 "Home state" means the following:

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

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

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

23 (B) If more than one insured from an affiliated group
24 are named insureds on a single surplus line insurance
25 contract, then "home state" means the home state, as
26 determined pursuant to item (A) of this definition, of the

1 member of the affiliated group that has the largest
2 percentage of premium attributed to it under such
3 insurance contract.

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

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

18 "Master policy" means a surplus line insurance contract
19 with a single set of general contractual terms that are
20 designed to apply on a group basis to multiple insureds who may
21 or may not be affiliated and who may be added to or removed
22 from the contract throughout the course of the contract
23 period. A master policy may include certain provisions that
24 vary for each insured depending on the insured's
25 characteristics and the coverage sought.

26 "Multi-State risk" means a risk with insured exposures in

1 more than one State.

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

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

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

10 "Program business" means a clearly defined group of
11 insurance contracts procured by a licensed surplus line
12 producer from an unauthorized insurer, under a single
13 agreement between the producer and insurer, for insureds with
14 the same or similar characteristics and containing the same or
15 similar contract terms.

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

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

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

24 (C) With regard to the person:

25 (I) the person has:

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

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

6 (b) the following:

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

11 (ii) alternatively has:

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

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

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

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

1 Institute; or

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

7 (II) the person has:

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

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

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

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

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

1 similar association, organization, or other entity.

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

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

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

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

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

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

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

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

26 (1.5) Procuring surplus line insurance; surplus line

1 insurer requirements.

2 (a) License required. Insurance producers may procure
3 surplus line insurance only if licensed as a surplus line
4 producer under this Section.

5 (b) Domestic and foreign insurer eligibility. Licensed
6 surplus line producers may procure surplus line insurance
7 from an unauthorized insurer domiciled in any state only
8 if the insurer:

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

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

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

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

23 (c) Alien insurer eligibility. Licensed surplus line
24 producers may procure surplus line insurance from an
25 unauthorized insurer not domiciled in any state only if
26 the insurer meets the standards for unauthorized insurers

1 domiciled in any state in paragraph (b) of this subsection
2 (1.5) or is listed on the Quarterly Listing of Alien
3 Insurers maintained by the International Insurers
4 Department of the NAIC at the time of procurement. The
5 Director shall make the Quarterly Listing of Alien
6 Insurers available to surplus line producers without
7 charge.

8 (d) Prohibited transactions. Insurance producers shall
9 not procure from an unauthorized insurer an insurance
10 policy:

11 (i) that is designed to satisfy the proof of
12 financial responsibility and insurance requirements in
13 any Illinois law where the law requires that the proof
14 of insurance is issued by an authorized insurer or
15 residual market mechanism;

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

20 (iii) that insures any Illinois personal lines
21 risk that is eligible for residual market mechanism
22 coverage, unless the insured or prospective insured
23 requests limits of liability greater than the limits
24 provided by the residual market mechanism. In the
25 course of making a diligent effort to procure
26 insurance from authorized insurers, an insurance

1 producer shall not be required to submit a risk to a
2 residual market mechanism when the risk is not
3 eligible for coverage or exceeds the limits available
4 in the residual market mechanism.

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

13 (e) Exempt commercial purchaser diligent effort.
14 Licensed surplus line producers may procure surplus line
15 insurance from an unauthorized insurer for an exempt
16 commercial purchaser without making the required diligent
17 effort to procure the insurance from authorized insurers
18 if:

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

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

1 (f) Commercial wholesale transaction diligent effort.

2 A licensed surplus line producer may procure a surplus
3 line insurance contract, other than a personal lines
4 insurance contract, from an unauthorized insurer without
5 making the required diligent effort to procure the
6 insurance from authorized insurers if the risk was
7 referred to the surplus line producer by an
8 Illinois-licensed insurance producer who is not affiliated
9 with the surplus line producer.

10 (g) Master policy diligent effort. For a master policy
11 insurance contract, a licensed surplus line producer may
12 make the required diligent effort to procure the insurance
13 from authorized insurers annually for the master policy
14 rather than individually for each insured that is added
15 during the policy period. The diligent effort shall
16 include all variable provisions of the master policy.

17 (h) Program business diligent effort. For program
18 business, a licensed surplus line producer may make the
19 required diligent effort to procure the insurance from
20 authorized insurers annually for the program rather than
21 individually for each contract. The diligent effort shall
22 include all variable provisions of the program ~~master~~
23 ~~policy~~.

24 (2) Surplus line producer; license. Any licensed producer
25 who is a resident of this State, or any nonresident who
26 qualifies under Section 500-40, may be licensed as a surplus

1 line producer upon payment of an annual license fee of \$400.

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

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

11 (3) Taxes and reports.

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

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

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

19 A surplus line producer shall file with the Director
20 on or before February 1 and August 1 of each year a report
21 in the form prescribed by the Director on all surplus line
22 insurance procured from unauthorized insurers and
23 submitted to the Surplus Line Association of Illinois
24 during the preceding 6 month period ending December 31 or
25 June 30 respectively, and on the filing of such report
26 shall pay to the Director for the use and benefit of the

1 State a sum equal to the surplus line tax rate multiplied
2 by the gross taxable premiums less returned taxable
3 premiums upon all surplus line insurance submitted to the
4 Surplus Line Association of Illinois during the preceding
5 6 months.

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

17 (b) Fire Marshal Tax. Each surplus line producer shall
18 file with the Director on or before February 1 of each year
19 a report in the form prescribed by the Director on all fire
20 insurance procured from unauthorized insurers and
21 submitted to the Surplus Line Association of Illinois
22 during the previous year that is subject to tax under
23 Section 12 of the Fire Investigation Act and shall pay to
24 the Director the fire marshal tax required thereunder.

25 (c) Taxes and fees charged to insured. The taxes
26 imposed under this subsection and the recording fees

1 charged by the Surplus Line Association of Illinois may be
2 charged to and collected from surplus line insureds.

3 (4) (Blank).

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

10 (a) the name of the insured;

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

13 (c) (blank);

14 (d) the gross premiums charged or returned;

15 (e) the name of the unauthorized insurer from whom
16 coverage has been procured;

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

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

20 Proposals, endorsements, and other documents which are
21 incidental to the insurance but which do not affect the
22 premium charged are exempted from the submission and recording
23 requirements.

24 The submission of insuring contracts to the Surplus Line
25 Association of Illinois constitutes a certification by the
26 surplus line producer or by the insurance producer who

1 presented the risk to the surplus line producer for placement
2 as a surplus line risk that after diligent effort, where
3 required, the required insurance could not be procured from
4 authorized insurers and that such procurement was otherwise in
5 accordance with the surplus line law.

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

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

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

25 Whenever it appears to the satisfaction of the Director
26 that a surplus line producer has made a documented good faith

1 determination of the home state for a surplus line insurance
2 contract and has paid the surplus line taxes to a state other
3 than Illinois, and the Director determines that the producer's
4 good faith determination was incorrect and the home state is
5 Illinois, the surplus line producer may, at the discretion of
6 the Director, be required to submit the contract to the
7 Surplus Line Association of Illinois and pay applicable taxes
8 and recording fees, but there shall be no penalty, interest,
9 or late fee assessed.

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

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

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

6 (10.5) Required notice to policyholder. Insurance
7 contracts delivered under this Section from unauthorized
8 insurers, other than domestic surplus line insurers as defined
9 in Section 445a, shall have stamped or imprinted on the first
10 page thereof in not less than 12-pt. bold face type the
11 following legend: "Notice to Policyholder: This contract is
12 issued, pursuant to Section 445 of the Illinois Insurance
13 Code, by a company not authorized and licensed to transact
14 business in Illinois and as such is not covered by the Illinois
15 Insurance Guaranty Fund." Insurance contracts delivered under
16 this Section from domestic surplus line insurers as defined in
17 Section 445a shall have stamped or imprinted on the first page
18 thereof in not less than 12-pt. bold face type the following
19 legend: "Notice to Policyholder: This contract is issued by a
20 domestic surplus line insurer, as defined in Section 445a of
21 the Illinois Insurance Code, pursuant to Section 445, and as
22 such is not covered by the Illinois Insurance Guaranty Fund."

23 (11) Marine, aviation, and transportation. The Illinois
24 Surplus Line law does not apply to insurance of property and
25 operations of railroads or aircraft engaged in interstate or
26 foreign commerce, insurance of vessels, crafts or hulls,

1 cargoes, marine builder's risks, marine protection and
2 indemnity, or other risks including strikes and war risks
3 insured under ocean or wet marine forms of policies.

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

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