

1 AN ACT concerning surplus line insurance.

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

4 Section 5. The Illinois Insurance Code is amended by  
5 changing Sections 445, 445.1, 445.2, and 445.3 as follows:

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

7 Sec. 445. Surplus line.

8 (1) Surplus line defined; surplus line insurer  
9 requirements. Surplus line insurance is insurance on an  
10 Illinois risk of the kinds specified in Classes 2 and 3 of  
11 Section 4 of this Code procured from an unauthorized insurer  
12 ~~company~~ or a domestic surplus line insurer as defined in  
13 Section 445a after the insurance producer representing the  
14 insured or the surplus line producer is unable, after  
15 diligent effort, to procure said insurance from insurers  
16 ~~companies~~ which are authorized to transact business in this  
17 State other than domestic surplus line insurers as defined in  
18 Section 445a.

19 Insurance producers may procure surplus line insurance  
20 only if licensed as a surplus line producer under this  
21 Section and may procure that insurance only from an  
22 unauthorized insurer ~~company~~ or from a domestic surplus line  
23 insurer as defined in Section 445a:

24 (a) that based upon information available to the  
25 surplus line producer has a policyholders surplus of not  
26 less than \$15,000,000 determined in accordance with  
27 accounting rules that are applicable to authorized  
28 insurers ~~companies~~; and

29 (b) that has standards of solvency and management  
30 that are adequate for the protection of policyholders;  
31 and

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

7 (2) Surplus line producer; license. Any licensed  
 8 producer who is a resident of this State, or any nonresident  
 9 who qualifies under Section 497.1, may be licensed as a  
 10 surplus line producer upon:

11 (a) completing a prelicensing course of study  
 12 passing--a--written--examination,---The-examination-shall  
 13 reasonably-test-the-knowledge-of-the-applicant-concerning  
 14 the-surplus-line-law-and-the-responsibilities-assumed--by  
 15 a---surplus---line---producer---thereunder. The course  
 16 examination provided for by this Section shall be  
 17 conducted under rules and regulations prescribed by the  
 18 Director. The Director may administer the course  
 19 examination or may make arrangements, including  
 20 contracting with an outside educational testing service,  
 21 for administering the course and collecting the  
 22 non-refundable application fee provided for in this  
 23 subsection such--examinations. Any charges assessed by  
 24 the Director or the educational testing service for  
 25 administering the course such-examinations shall be paid  
 26 directly by the individual applicants. Each applicant  
 27 required to take the course an-examination shall, at-the  
 28 time--of--request--for--examination, enclose with the  
 29 application a non-refundable \$10 application fee payable  
 30 to the Director plus a separate course an--examination  
 31 administration fee. If--the--Director--administers-the  
 32 examination,--the---application---fee---and---examination  
 33 administration--fee-shall-be-combined-and-made-payable-to  
 34 the-Director,--If--the--Director--designates--an--outside

1 testing---service--to--administer--the--examination,--the  
 2 applicant---shall---make---a---separate---examination  
 3 administration--fee--remittance-payable-to-the-designated  
 4 testing-service-for-the-total-fees--the--testing--service  
 5 charges--for-each-of-the-various-services-being-requested  
 6 by-the-applicant. An applicant who fails to appear for  
 7 the course examination as scheduled, or appears but fails  
 8 to complete the course pass, shall not be entitled to any  
 9 refund, and shall be required to submit a new request to  
 10 attend the course for-examination together with all the  
 11 requisite fees before being rescheduled for another  
 12 course examination at a later date; and

13 (b) payment of an annual license fee of \$200; and

14 (c) procurement of the surety bond required in  
 15 subsection (4) of this Section.

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

20 The prelicensing course of study examination requirement  
 21 in (a) above shall not apply to insurance producers who were  
 22 licensed under the Illinois surplus line law or-individuals  
 23 designated--to--act--for--a--partnership,--association--or  
 24 corporation--licensed-under-the-Illinois-surplus-line-law on  
 25 or before effective date of this amendatory Act of the 92nd  
 26 General Assembly February-27,-1985.

27 (3) Taxes and reports.

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

29 A Each surplus line producer shall file with the  
 30 Director on or before February 1 and August 1 of each  
 31 year a report in the form prescribed by the Director on  
 32 all surplus line insurance procured from unauthorized  
 33 insurers during the preceding 6 month period ending  
 34 December 31 or June 30 respectively, and on the filing of

1 such report shall pay to the Director for the use and  
2 benefit of the State a sum equal to 3% of the gross  
3 premiums less returned premiums upon all surplus line  
4 insurance procured or cancelled during the preceding 6  
5 months.

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

16 (b) Fire Marshal Tax.

17 Each surplus line producer shall file with the  
18 Director on or before March 31 of each year a report in  
19 the form prescribed by the Director on all fire insurance  
20 procured from unauthorized insurers subject to tax under  
21 Section 12 of the Fire Investigation Act and shall pay to  
22 the Director the fire marshal tax required thereunder.

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

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

1           (5) Submission of documents to Surplus Line Association  
 2 of Illinois. A Each surplus line producer shall submit every  
 3 insurance contract or information on every insurance contract  
 4 issued under his or her license to the Surplus Line  
 5 Association of Illinois for recording and countersignature.  
 6 The submission and countersignature may be effected through  
 7 electronic means. The submission insurance---contracts  
 8 submitted shall set forth:

9           (a) the name of the insured;

10           (b) (blank) the--description--and--location-of-the  
 11 ~~insured-property-or-risk;~~

12           (c) the amount insured;

13           (d) the gross premiums charged or returned;

14           (e) the name of the unauthorized insurer or  
 15 domestic surplus line insurer as defined in Section 445a  
 16 from whom 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  
 21 are incidental to the insurance but which do does not  
 22 affect the premium charged are exempted from filing and  
 23 countersignature.

24           The submission of insuring contracts or information  
 25 on insuring contracts to the Surplus Line Association of  
 26 Illinois constitutes a certification by the surplus line  
 27 producer or by the insurance producer who presented the  
 28 risk to the surplus line producer for placement as a  
 29 surplus line risk that after diligent effort the required  
 30 insurance could not be procured from insurers companies  
 31 which are authorized to transact business in this State  
 32 other than domestic surplus line insurers as defined in  
 33 Section 445a and that such procurement was otherwise in  
 34 accordance with the surplus line law.

1 (6) Countersignature required. It shall be unlawful for  
2 an insurance producer to deliver any unauthorized ~~company~~  
3 insurer insurance contract or domestic surplus line insurer  
4 contract unless such insurance contract is countersigned by  
5 the Surplus Line Association of Illinois.

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

13 (8) Violations and penalties. The Director may suspend  
14 or revoke or refuse to renew a surplus line producer license  
15 for any violation of this Code. In addition to or in lieu of  
16 suspension or revocation, the Director may subject a surplus  
17 line producer to a civil penalty of up to \$1,000 for each  
18 cause for suspension or revocation. Such penalty is  
19 enforceable under subsection (5) of Section 403A of this  
20 Code.

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

28 (10) Service of process upon Director. ~~All~~ Insurance  
29 contracts delivered under this Section from unauthorized  
30 insurers shall contain a provision designating the Director  
31 and his successors in office the true and lawful attorney of  
32 the insurer upon whom may be served all lawful process in any  
33 action, suit or proceeding arising out of such insurance and  
34 ~~further-designate-the-surplus-line-producer-or-other-resident~~

1 of this State an agent of the unauthorized insurer to which a  
2 copy of such process shall be forwarded by the Director for  
3 delivery to the insurer. Service of process made upon the  
4 Director to be valid hereunder must state the name of the  
5 insured, the name of the unauthorized insurer and identify  
6 the contract of insurance. The Director at his option is  
7 authorized to forward a copy of the process to the Surplus  
8 Line Association of Illinois for delivery to the unauthorized  
9 insurer surplus line producer or other designated resident of  
10 this State or the Director may deliver the process to the  
11 unauthorized insurer by other means which he considers to be  
12 reasonably prompt and certain.

13 (11) The Illinois Surplus Line law does not apply to  
14 insurance of property and operations of railroads or aircraft  
15 engaged in interstate or foreign commerce, insurance of  
16 vessels, crafts or hulls, cargoes, marine builder's risks,  
17 marine protection and indemnity, or other risks including  
18 strikes and war risks insured under ocean or wet marine forms  
19 of policies.

20 (12) Surplus line insurance procured under this Section,  
21 including insurance procured from a domestic surplus line  
22 insurer, is not subject to the provisions of the Illinois  
23 Insurance Code other than Sections 123, 123.1, 401, 401.1,  
24 402, 403, 403A, 408, 412, 445, 445.1, 445.2, 445.3, 445.4,  
25 and all of the provisions of Article XXXI to the extent that  
26 the provisions of Article XXXI are not inconsistent with the  
27 terms of this Act.

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

29 (215 ILCS 5/445.1) (from Ch. 73, par. 1057.1)

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

1 Association as a condition of their holding a license as a  
2 surplus line producer in this State. The Association must  
3 perform its functions under the plan of operation established  
4 and approved under Section 445.3 and must exercise its powers  
5 through a board of directors established under Section 445.2  
6 of this Code. The Association shall be supervised by the  
7 Director and is subject to the applicable provisions of the  
8 Illinois Insurance Code. The Association shall be authorized  
9 and have the duty to:

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

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

18 (3) prepare and deliver to each licensee and to the  
19 Director the reports of surplus line business prescribed in  
20 subsection (3) of Section 445;

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

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

26 (6) borrow money as necessary to effect the purposes of  
27 the Association;

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

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

33 (9) provide such other services to its members as are  
34 incidental or related to the purposes of the Association.



1 Nothing in this Act shall be construed as giving the  
 2 Association any discretionary authority to enforce this Act  
 3 or to withhold countersignature of insurance contracts which  
 4 meet the requirements of subsection (5) of Section 445.

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

6 (215 ILCS 5/445.2) (from Ch. 73, par. 1057.2)

7 Sec. 445.2. Board of Directors. The Association shall  
 8 function through a Board of Directors elected by the  
 9 Association members, and officers who shall be elected by the  
 10 Board of Directors.

11 The Board of Directors of the Association shall consist  
 12 of not less than 5 nor more than 9 persons serving terms as  
 13 established in the plan of operation. The plan of operation  
 14 shall provide for the election of a Board of Directors by the  
 15 members of the Association from its membership. The plan of  
 16 operation shall fix the manner of voting and may weigh each  
 17 member's vote to reflect the annual surplus line insurance  
 18 premium written by the member. Members employed by the same  
 19 or affiliated employers may consolidate their premiums  
 20 written and delegate an individual officer or partner to  
 21 represent the member in the exercise of Association affairs,  
 22 including service on the Association Board of Directors. The  
 23 ~~Director--shall-appoint-an-interim-Board-of-Directors-for-the~~  
 24 ~~sole-purpose-of-conducting-an-election-of-Directors;---If--no~~  
 25 ~~Board--of--Directors--is--elected--within--90--days--after--the~~  
 26 ~~effective-date-of-this-amendatory-Act-of-1984,--the--Director~~  
 27 ~~shall-appoint-the-initial-members-of-the-Board-of-Directors.~~

28 The Board of Directors shall elect such officers as may  
 29 be provided in the plan of operation.

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

31 (215 ILCS 5/445.3) (from Ch. 73, par. 1057.3)

32 Sec. 445.3. Plan of operation.

1           (1) The Association shall submit to the Director a plan  
 2 of operation and any amendments thereto to provide operating  
 3 procedures for the administration of the Association. The  
 4 plan of operation and any amendments thereto shall become  
 5 effective upon approval in writing by the Director.

6           (2) (Blank) If--the--Assoeiation--fails--to--submit---a  
 7 suitable--plan--of--operation--within--180-days-following-the  
 8 effective-date-of-this-amendatory-Act-of-1984,-or-if--at--any  
 9 time--thereafter--the--Assoeiation--fails--to-submit-required  
 10 amendments-to-the-plan--of--operation,-the--Director--shall,  
 11 after--notice--and--hearing-pursuant-to-Sections-401,-402-and  
 12 403-of-this-Code,-adopt-and--promulgate--such--rules--as--are  
 13 necessary--or--advisable-to-effectuate-the-provisions-of-this  
 14 Act.-Such-rules-shall-continue-in-force--until--modified--by  
 15 the--Director--or-superseded-by-a-plan-of-operation-submitted  
 16 by-the-Assoeiation-and-approved-by-the-Director.

17           (3) All Association members must comply with the plan of  
 18 operation.

19           (Source: P.A. 83-1300.)

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