

1 AMENDMENT TO HOUSE BILL 2994

2 AMENDMENT NO. _____. Amend House Bill 2994 on page 1,
3 line 4, by changing "by" to "by changing Section 445 and";
4 and

5 on page 1, by inserting immediately below line 9 the
6 following:

7 "(215 ILCS 5/445) (from Ch. 73, par. 1057)

8 Sec. 445. Surplus line.

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

20 Insurance producers may procure surplus line insurance
21 only if licensed as a surplus line producer under this
22 Section and may procure that insurance only from an

1 unauthorized insurer company or from a domestic surplus line
2 insurer as defined in Section 445a:

3 (a) that based upon information available to the
4 surplus line producer has a policyholders surplus of not
5 less than \$15,000,000 determined in accordance with
6 accounting rules that are applicable to authorized
7 insurers companies; and

8 (b) that has standards of solvency and management
9 that are adequate for the protection of policyholders;
10 and

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

17 (2) Surplus line producer; license. Any licensed
18 producer who is a resident of this State, or any nonresident
19 who qualifies under Section 500-40, may be licensed as a
20 surplus line producer upon:

21 (a) completing a prelicensing course of study
22 passing--a--written--examination,---The-examination-shall
23 reasonably-test-the-knowledge-of-the-applicant-concerning
24 the-surplus-line-law-and-the-responsibilities-assumed--by
25 a---surplus---line---producer---thereunder. The course
26 examination provided for by this Section shall be
27 conducted under rules and regulations prescribed by the
28 Director. The Director may administer the course
29 examination or may make arrangements, including
30 contracting with an outside educational testing service,
31 for administering the course and collecting the
32 non-refundable application fee provided for in this
33 subsection such--examinations. Any charges assessed by
34 the Director or the educational testing service for

1 administering the course such-examinations shall be paid
 2 directly by the individual applicants. Each applicant
 3 required to take the course an-examination shall, at the
 4 time--of--request--for--examination, enclose with the
 5 application a non-refundable \$10 application fee payable
 6 to the Director plus a separate course an--examination
 7 administration fee. If--the--Director--administers-the
 8 examination,--the---application---fee---and---examination
 9 administration--fee-shall-be-combined-and-made-payable-to
 10 the-Director,--If--the--Director--designates--an--outside
 11 testing---service--to--administer--the--examination,--the
 12 applicant---shall---make---a---separate---examination
 13 administration--fee--remittance-payable-to-the-designated
 14 testing-service-for-the-total-fees--the--testing--service
 15 charges--for-each-of-the-various-services-being-requested
 16 by-the-applicant. An applicant who fails to appear for
 17 the course examination as scheduled, or appears but fails
 18 to complete the course pass, shall not be entitled to any
 19 refund, and shall be required to submit a new request to
 20 attend the course for-examination together with all the
 21 requisite fees before being rescheduled for another
 22 course examination at a later date; and

- 23 (b) payment of an annual license fee of \$200; and
- 24 (c) procurement of the surety bond required in
- 25 subsection (4) of this Section.

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

30 The prelicensing course of study examination requirement
 31 in (a) above shall not apply to insurance producers who were
 32 licensed under the Illinois surplus line law or individuals
 33 designated--to--act--for--a--partnership,--association--or
 34 corporation--licensed-under-the-Illinois-surplus-line-law on

1 or before effective date of this amendatory Act of the 92nd
2 General Assembly February-27,-1985.

3 (3) Taxes and reports.

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

5 A Each surplus line producer shall file with the
6 Director on or before February 1 and August 1 of each
7 year a report in the form prescribed by the Director on
8 all surplus line insurance procured from unauthorized
9 insurers during the preceding 6 month period ending
10 December 31 or June 30 respectively, and on the filing of
11 such report shall pay to the Director for the use and
12 benefit of the State a sum equal to 3% of the gross
13 premiums less returned premiums upon all surplus line
14 insurance procured or cancelled during the preceding 6
15 months.

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

26 (b) Fire Marshal Tax.

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

33 (c) Taxes and fees charged to insured. The taxes
34 imposed under this subsection and the countersigning fees

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

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

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

- 18 (a) the name of the insured;
- 19 (b) the description and location of the insured
20 property or risk;
- 21 (c) the amount insured;
- 22 (d) the gross premiums charged or returned;
- 23 (e) the name of the unauthorized insurer or
24 domestic surplus line insurer as defined in Section 445a
25 from whom coverage has been procured;
- 26 (f) the kind or kinds of insurance procured; and
- 27 (g) amount of premium subject to tax required by
28 Section 12 of the Fire Investigation Act.

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

33 The submission of insuring contracts to the Surplus
34 Line Association of Illinois constitutes a certification

1 by the surplus line producer or by the insurance producer
2 who presented the risk to the surplus line producer for
3 placement as a surplus line risk that after diligent
4 effort the required insurance could not be procured from
5 insurers ~~companies~~ which are authorized to transact
6 business in this State other than domestic surplus line
7 insurers as defined in Section 445a and that such
8 procurement was otherwise in accordance with the surplus
9 line law.

10 (6) Countersignature required. It shall be unlawful for
11 an insurance producer to deliver any unauthorized ~~company~~
12 insurer ~~insurance~~ contract or domestic surplus line insurer
13 contract unless such insurance contract is countersigned by
14 the Surplus Line Association of Illinois.

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

22 (8) Violations and penalties. The Director may suspend
23 or revoke or refuse to renew a surplus line producer license
24 for any violation of this Code. In addition to or in lieu of
25 suspension or revocation, the Director may subject a surplus
26 line producer to a civil penalty of up to \$1,000 for each
27 cause for suspension or revocation. Such penalty is
28 enforceable under subsection (5) of Section 403A of this
29 Code.

30 (9) Director may declare insurer ineligible. If the
31 Director determines that the further assumption of risks
32 might be hazardous to the policyholders of an unauthorized
33 insurer, the Director may order the Surplus Line Association
34 of Illinois not to countersign insurance contracts evidencing

1 insurance in such insurer and order surplus line producers to
2 cease procuring insurance from such insurer.

3 (10) Service of process upon Director. All Insurance
4 contracts delivered under this Section from unauthorized
5 insurers shall contain a provision designating the Director
6 and his successors in office the true and lawful attorney of
7 the insurer upon whom may be served all lawful process in any
8 action, suit or proceeding arising out of such insurance and
9 ~~further designate the surplus line producer or other resident~~
10 ~~of this State an agent of the unauthorized insurer to which a~~
11 ~~copy of such process shall be forwarded by the Director for~~
12 ~~delivery to the insurer.~~ Service of process made upon the
13 Director to be valid hereunder must state the name of the
14 insured, the name of the unauthorized insurer and identify
15 the contract of insurance. The Director at his option is
16 authorized to forward a copy of the process to the Surplus
17 Line Association of Illinois for delivery to the unauthorized
18 insurer ~~surplus line producer or other designated resident of~~
19 ~~this State~~ or the Director may deliver the process to the
20 unauthorized insurer by other means which he considers to be
21 reasonably prompt and certain.

22 (11) The Illinois Surplus Line law does not apply to
23 insurance of property and operations of railroads or aircraft
24 engaged in interstate or foreign commerce, insurance of
25 vessels, crafts or hulls, cargoes, marine builder's risks,
26 marine protection and indemnity, or other risks including
27 strikes and war risks insured under ocean or wet marine forms
28 of policies.

29 (12) Surplus line insurance procured under this Section,
30 including insurance procured from a domestic surplus line
31 insurer, is not subject to the provisions of the Illinois
32 Insurance Code other than Sections 123, 123.1, 401, 401.1,
33 402, 403, 403A, 408, 412, 445, 445.1, 445.2, 445.3, 445.4,
34 and all of the provisions of Article XXXI to the extent that

1 the provisions of Article XXXI are not inconsistent with the
2 terms of this Act.
3 (Source: P.A. 90-794, eff. 8-14-98.)".