

1 AN ACT concerning 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 Section 412 as follows:

6 (215 ILCS 5/412) (from Ch. 73, par. 1024)

7 Sec. 412. Refunds; penalties; collection.

8 (1) (a) Whenever it appears to the satisfaction of the
9 Director that because of some mistake of fact, error in
10 calculation, or erroneous interpretation of a statute of this
11 or any other state, any authorized company has paid to him,
12 pursuant to any provision of law, taxes, fees, or other
13 charges in excess of the amount legally chargeable against
14 it, during the 6 year period immediately preceding the
15 discovery of such overpayment, he shall have power to refund
16 to such company the amount of the excess or excesses by
17 applying the amount or amounts thereof toward the payment of
18 taxes, fees, or other charges already due, or which may
19 thereafter become due from that company until such excess or
20 excesses have been fully refunded, or upon a written request
21 from the authorized company, the Director shall provide a
22 cash refund within 120 days after receipt of the written
23 request if all necessary information has been filed with the
24 Department in order for it to perform an audit of the annual
25 return for the year in which the overpayment occurred or
26 within 120 days after the date the Department receives all
27 the necessary information to perform such audit. The
28 Director shall not provide a cash refund if there are
29 insufficient funds in the Insurance Premium Tax Refund Fund
30 to provide a cash refund, if the amount of the overpayment is
31 less than \$100, or if the amount of the overpayment can be

1 fully offset against the taxpayer's estimated liability for
2 the year following the year of the cash refund request. Any
3 cash refund shall be paid from the Insurance Premium Tax
4 Refund Fund, a special fund hereby created in the State
5 treasury.

6 (b) Beginning January 1, 2000 and thereafter, the
7 Department shall deposit a percentage of the amounts
8 collected under Sections 409, 444, and 444.1 of this Code
9 into the Insurance Premium Tax Refund Fund. The percentage
10 deposited into the Insurance Premium Tax Refund Fund shall be
11 the annual percentage. The annual percentage shall be
12 calculated as a fraction, the numerator of which shall be the
13 amount of cash refunds approved by the Director for payment
14 and paid during the preceding calendar year as a result of
15 overpayment of tax liability under Sections 409, 444, and
16 444.1 of this Code and the denominator of which shall be the
17 amounts collected pursuant to Sections 409, 444, and 444.1 of
18 this Code during the preceding calendar year. However, if
19 there were no cash refunds paid in a preceding calendar year,
20 the Department shall deposit 5% of the amount collected in
21 that preceding calendar year pursuant to Sections 409, 444,
22 and 444.1 of this Code into the Insurance Premium Tax Refund
23 Fund instead of an amount calculated by using the annual
24 percentage.

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

34 (d) This Section shall constitute an irrevocable and

1 continuing appropriation from the Insurance Premium Tax
2 Refund Fund for the purpose of paying cash refunds pursuant
3 to the provisions of this Section.

4 (2) When any insurance company or any surplus line
5 producer fails to file any tax return required under Sections
6 408.1, 409, 444, 444.1 and 445 of this Code or Section 12 of
7 the Fire Investigation Act on the date prescribed, including
8 any extensions, there shall be added as a penalty \$200 or 5%
9 of the amount of such tax, whichever is greater, for each
10 month or part of a month of failure to file, the entire
11 penalty not to exceed \$1,000 or 25% of the tax due, whichever
12 is greater.

13 (3) (a) When any insurance company or any surplus line
14 producer fails to pay the full amount due under the
15 provisions of this Section, Sections 408.1, 409, 444, 444.1
16 or 445 of this Code, or Section 12 of the Fire Investigation
17 Act, there shall be added to the amount due as a penalty an
18 amount equal to 5% of the deficiency.

19 (b) If such failure to pay is determined by the Director
20 to be wilful, after a hearing under Sections 402 and 403,
21 there shall be added to the tax as a penalty an amount equal
22 to the greater of 25% of the deficiency or 5% of the amount
23 due and unpaid for each month or part of a month that the
24 deficiency remains unpaid commencing with the date that the
25 amount becomes due. Such amount shall be in lieu of any
26 determined under paragraph (a).

27 (4) Any insurance company or any surplus line producer
28 which fails to pay the full amount due under this Section or
29 Sections 408.1, 409, 444, 444.1 or 445 of this Code, or
30 Section 12 of the Fire Investigation Act is liable, in
31 addition to the tax and any penalties, for interest on such
32 deficiency at the rate of 12% per annum, or at such higher
33 adjusted rates as are or may be established under subsection
34 (b) of Section 6621 of the Internal Revenue Code, from the

1 date that payment of any such tax was due, determined without
2 regard to any extensions, to the date of payment of such
3 amount.

4 (5) The Director, through the Attorney General, may
5 institute an action in the name of the People of the State of
6 Illinois, in any court of competent jurisdiction, for the
7 recovery of the amount of such taxes, fees, and penalties
8 due, and prosecute the same to final judgment, and take such
9 steps as are necessary to collect the same.

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

18 (7) When an insurance company or domestic affiliated
19 group fails to pay the full amount of any fee of \$250 ~~\$100~~ or
20 more due under Section 408 of this Code, there shall be added
21 to the amount due as a penalty the greater of \$50 or an
22 amount equal to 5% of the deficiency for each month or part
23 of a month that the deficiency remains unpaid.

24 (Source: P.A. 91-643, eff. 8-20-99.)