

AN ACT concerning regulation.

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

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

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

Sec. 445. Surplus line.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Home state" means the following:

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

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

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

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

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

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

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

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

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

more than one State.

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

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

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

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

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

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

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

(C) With regard to the person:

(I) the person has:

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

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

(b) the following:

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

(ii) alternatively has:

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

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

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

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

Institute; or

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

(II) the person has:

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

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

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

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

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

similar association, organization, or other entity.

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

"Surplus line insurance" means insurance on a risk:

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

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

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

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

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

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

(1.5) Procuring surplus line insurance; surplus line

insurer requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Taxes and reports.

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

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

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

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

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

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

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

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

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

(4) (Blank).

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

- (a) the name of the insured;
- (b) the description and location of the insured property or risk;
- (c) (blank);
- (d) the gross premiums charged or returned;
- (e) the name of the unauthorized insurer from whom coverage has been procured;
- (f) the kind or kinds of insurance procured; and
- (g) amount of premium subject to tax required by Section 12 of the Fire Investigation Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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