

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

Sec. 445. Surplus line.

(1) Surplus line defined; surplus line insurer requirements. "Surplus line insurance" means insurance on an Illinois risk of the kinds specified in Classes 2 and 3 of Section 4 of this Code procured from an unauthorized insurer after the insurance producer representing the insured or the surplus line producer is unable, after diligent effort, to procure said insurance from authorized insurers.

"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.

"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.

"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.

Insurance producers may procure surplus line insurance only if licensed as a surplus line producer under this Section and may procure that insurance only from an unauthorized insurer:

(a) that based upon information available to the

surplus line producer has a policyholders surplus of not less than \$15,000,000 determined in accordance with accounting rules that are applicable to authorized insurers; and

(b) that has standards of solvency and management

that are adequate for the protection of policyholders; and

(c) where an unauthorized insurer does not meet the

standards set forth in (a) and (b) 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.

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, as defined in subsection (a), (b), or (c) of Section 143.13 of this Code, 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.

(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:

(a) completing a prelicensing course of study. The course provided for by this Section shall be conducted under rules and regulations prescribed by the Director. The Director may administer the course or may make arrangements, including contracting with an outside educational service, for administering the course and collecting the non-refundable application fee provided for in this subsection. Any charges assessed by the Director or the educational service for administering the course shall be paid directly by the individual applicants. Each applicant required to take the course shall enclose with the application a non-refundable \$20 application fee payable to the Director plus a separate course administration fee. An applicant who fails to appear for the course

as scheduled, or appears but fails to complete the course, shall not be entitled to any refund, and shall be required to submit a new request to attend the course together with all the requisite fees before being rescheduled for another course at a later date; and

(b) payment of an annual license fee of \$400; and

(c) procurement of the surety bond required in

subsection (4) of this Section.

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

The prelicensing course of study requirement in (a) above shall not apply to insurance producers who were licensed under the Illinois surplus line law on or before January 1, 2002.

(3) Taxes and reports.

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

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 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 3.5% of the gross premiums less returned premiums upon all surplus line insurance procured or cancelled 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 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 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 March 31 of each year a report in the form prescribed by the Director

on all fire insurance procured from unauthorized insurers 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 countersigning fees charged by the Surplus Line Association of Illinois may be charged to and collected from surplus line insureds.

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

(5) Submission of documents to Surplus Line Association of Illinois. A surplus line producer shall submit every insurance contract issued under his or her license to the Surplus Line Association of Illinois for recording and countersignature. The submission and countersignature 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) the amount insured;

(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 filing and countersignature.

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 the required insurance could

not be procured from authorized insurers and that such procurement was otherwise in accordance with the surplus line law.

(6) Countersignature required. It shall be unlawful for an insurance producer to deliver any unauthorized insurer contract unless such insurance contract is countersigned 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, 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.

(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 countersign 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) 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) 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) 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, 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. 92-386, eff. 1-1-02; 93-29, eff. 6-20-03; 93-32, eff. 7-1-03; 93-876, eff. 8-6-04.)

Section 2801.10 Policies or Contracts of Insurance

Policies or contracts of insurance may not be placed with companies not authorized to do business in Illinois other than through surplus line producers licensed pursuant to Section 445 of the Illinois Insurance Code (the Code) (Ill. Rev. Stat. 1987, ch. 73, par. 1057).

(Source: Amended at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.20 License Expiration

A surplus line producer license issued pursuant to Section 445 of the Illinois Insurance Code shall expire twelve (12) calendar months after its issuance unless the license is renewed as permitted by Section 2801.100 of this Part.

(Source: Amended at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.30 Unauthorized Companies

- a) A surplus line producer may procure insurance from an unauthorized company:
 - 1) Which based upon information available to the surplus line producer has a policyholders' surplus of not less than \$15,000,000 determined in accordance with accounting rules as set forth in the Illinois Insurance Code which are applicable to authorized companies (Section 445 of the Code); and
 - 2) which has standards of solvency and management which are adequate for the protection of policyholders (Section 445 of the Code).
- b) Information available to the surplus line producer at the time of procurement includes financial information published by the unauthorized company, the financial information and quarterly listing of alien insurers published by the National Association of Insurance Commissioners' Non-Admitted Insurers Office and information published by Best's Insurance Reports or other independent market reporting agencies.
- c) In determining whether the standards of solvency and management of an unauthorized company at the time of procurement are such that meet requirements necessary for the protection of policyholders, the surplus line producer shall consider the financial condition of the company, the ready acceptance of the company in responsible commercial markets, the

general reputation of the company, and the company's past and current performance of its obligations.

- d) When an unauthorized company does not meet the standards set forth in subsection (a)(1) or (a)(2) of this Section or a surplus line producer is unable to verify such facts, the surplus line producer may procure insurance from that company only if prior written warning of such fact or condition is given to the insured by the insurance producer or surplus line producer. Evidence of the warning and its delivery shall be maintained by the insurance producer and surplus line producer, together with the evidence of coverage. Such written warning shall be in a form substantially similar to the sample warning set forth in Illustration A of this Part.
- e) If the Director at any time determines that the further assumption of risks might be hazardous to the policyholders of an unauthorized company, the Director shall order the Surplus Line Association of Illinois not to countersign insurance contracts evidencing insurance in such company. Said determination will be made by examining the criteria contained in the Illinois Insurance Code for authorized companies. In such event the Director shall also direct all surplus line producers to cease procuring insurance from such company.

(Source: Amended at 20 Ill. Reg. 5846, effective April 9, 1996)

Section 2801.40 Maintenance of Funds in Illinois

Nothing contained in this Part shall be construed to prohibit an unauthorized company from maintaining funds in Illinois to service its business.

(Source: Section repealed, new Section adopted at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.50 Procurement of Policies or Contracts

- a) The Surplus Line producer must exert diligent effort to procure the policies or contracts required by the insureds from companies which are authorized to transact business in Illinois (Section 445 of The Code). Diligent effort by the Surplus Line producer shall be deemed to have been exercised if the Surplus Line producer or the referring insurance producer shall submit a risk to three or more authorized companies, which are engaged in writing in Illinois the type of coverage sought, or if there are no companies actually engaged in writing such coverage, the risk shall be submitted to companies which, in the Surplus Line producer's or the

insurance producer's professional judgment, are the most likely to accept the risk.

- b) 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 the required insurance could not be procured from companies which are authorized to transact business in this State and that such procurement was otherwise in accordance with the surplus line law.

(Source: Amended at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.60 Record of Efforts to Procure Policies or Contracts

The surplus line producer must maintain with the copy of the insurance that was placed a record of such diligent effort which must state the name of the authorized companies and the individuals contacted at each company who declined the risk. If the diligent effort was made by the insurance producer, the surplus line producer must maintain a written record signed by the insurance producer that the insurance producer made such diligent effort, and the insurance producer must maintain a record that states the name of the authorized companies and the individuals contacted at each company who declined the risk.

(Source: Section repealed, new Section adopted at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.70 Declinations of Artificial Coverage not Acceptable

- a) Declinations by authorized companies for the following reasons do not qualify insurance to be placed under the surplus line law:
 - 1) Artificial division of one coverage into two or more proposed contracts;
 - 2) Differential in premium or rate quoted between an authorized company and an unauthorized company.
- b) Declinations by authorized companies for the following reasons do qualify insurance to be placed under the surplus line law:
 - 1) Underwriting reason pertaining to the risk or the class;
 - 2) Size of the risk;

- 3) Coverage is not available except in combination with other coverage not required by the insured;
- 4) Required coverage is not acceptable in part to the authorized company although part of the coverage is acceptable and the unauthorized company will accept only the entire risk and not solely the rejected portion; and
- 5) Authorized companies will accept less than the amount of coverage required and the entire amount and not just part thereof will be accepted by unauthorized companies.

(Source: Section repealed, new Section adopted at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.80 Surplus Line Association of Illinois

- a) All surplus line insurance placed on Illinois risks must be submitted to the Surplus Line Association which will process and countersign the insurance policies or contracts, keep records of the business written and report to the surplus line producers and to the Director pursuant to Sections 445 and 445.1 of the Code. The Surplus Line Association shall report to the surplus line producers and the Director by July 15 each year the business processed by each surplus line producer during the six month period ending June 30, and by January 15 each year the business processed by each surplus line producer during the six month period ending December 31 of the previous year.
- b) The Surplus Line Association is authorized to charge a fee to cover its cost of operations. The fee is payable by the surplus line producer based on the same gross premiums which are subject to the surplus line tax. The fee schedule is subject to the Director's approval. The Director's approval of the fee schedule shall be determined from the annual audited financial report submitted to the Director by the Surplus Line Association.

(Source: Section repealed, new Section adopted at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.90 Separate Records and Accounts

Each Surplus Line producer must keep separate accounts and records of the business transacted under his Surplus Line license, and these separate accounts and records

shall be open at all times to the inspection of the Illinois Director of Insurance or the members of his staff.

(Source: Amended at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.100 License Rejection or Renewal Refusal

Application for a surplus line producer license shall be rejected, or renewal thereof refused, for failure:

- a) To pay the tax required by Section 445 of the Illinois Insurance Code and by Section 12 of the Fire Investigation Act [425 ILCS 25/12]; or
- b) to pay the annual license fee to the Director of Insurance pursuant to Section 445(2)(b) of the Code; or
- c) to maintain the surety bond required by Section 445; or
- d) to pay the fee due the Surplus Line Association; or
- e) to exert diligent effort to secure the business required by an insured in duly authorized companies; or
- f) to procure surplus line policies or contracts or coverage from companies that have at least \$15,000,000 in policyholders surplus and have the standards of solvency or management necessary for the protection of policyholders; or
- g) to process all surplus line business on Illinois risks through the Surplus Line Association; or
- h) to maintain records and accounts pursuant to Section 445 of the Code; or
- i) to maintain membership in the Surplus Line Association of Illinois; or
- j) to comply with the requirements of the Illinois Insurance Code or 50 Ill. Adm. Code.

(Source: Amended at 20 Ill. Reg. 5846, effective April 9, 1996)

Section 2801.110 Service of Process

- a) Service of process relating to any surplus line insurance which the Surplus Line Association receives from the Director shall be delivered to

the surplus line producer for delivery to the unauthorized company. The surplus line producer shall promptly forward any such process by the fastest, most reliable means to the unauthorized company or its designated representative for service of process.

- b) Any unauthorized company which elects to do so may file a written request with the Surplus Line Association that service of process be forwarded directly to the company in which case the Surplus Line Association shall forward a copy of such process directly to the company and a copy to the surplus line producer.

(Source: Amended at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.120 Required Surplus Line Policy Notice

Each policy or contract for insurance issued in conformity with Section 445 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 Guarantee Fund."

(Source: Amended at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.130 Taxes

- a) The surplus line producer shall pay to the Director as a surplus line tax a sum equal to 3 1/2% of the gross premiums less returned premiums upon all surplus line insurance. The payment is due on or before February 1 of each year for the business processed through the Surplus Line Association during the six month period ending December 31 of the previous year and on August 1 of each year for the six month period ending June 30. The Surplus Line Association will report to each surplus line producer and to the Director the business processed during each six month period.
- b) The surplus line producer shall pay to the Director as a Fire Marshal Tax a sum equal to 1% of the gross premiums less returned premiums on all surplus line insurance subject to the tax required by Chapter 127 1/2, par. 16 of the Illinois Revised Statutes. The payment is due in the month of March for the business processed through the Surplus Line Association for the preceding calendar year. The Surplus Line Association prior to

March 1 will report to each surplus line producer and to the Director the business subject to this Fire Marshal Tax processed during each calendar year.

- c) The surplus line tax and the Fire Marshal tax, where applicable, shall be due and payable on all surplus line business processed by the surplus line producer through the Surplus Line Association.

(Source: Added at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801.140 Classes not Subject to Surplus Line Law

Sections 445 and 445.5 inclusive of the Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, pars. 1057-1057.5) do 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 builders risks, marine protection and indemnity, or other risks including strikes and war risks insured under ocean or wet marine forms of policies. Surplus line producers should not submit the above types of insurance to the Surplus Line Association for processing.

(Source: Added at 12 Ill. Reg. 11754, effective July 1, 1988)

Section 2801. ILLUSTRATION A Written Warning to Insureds

TO: _____

RE: (Name of Unauthorized Company)

(Type of Coverage)

In accordance with Section 445 of the Illinois Insurance Code, I hereby provide you with a written WARNING that the above-captioned unauthorized company with which I propose to place the captioned coverage does not, or I am unable to verify that it does (checked as applicable):

_____ Have a policyholder surplus of \$15,000,000 or more;

————— Meet minimal standards of solvency and management which are adequate for your protection.

Sincerely,

—————

(Source: Amended at 20 Ill. Reg. 5846, effective April 9, 1996)