

TITLE 50: INSURANCE
CHAPTER I: DEPARTMENT OF INSURANCE
SUBCHAPTER gg: FINAL PROVISIONS

PART 2801 SURPLUS LINE BUSINESS REQUIREMENTS

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AUTHORITY: Implementing Section 445 and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/445 and 401].

SOURCE: Filed July 11, 1958; codified at 7 Ill. Reg. 897; amended at 12 Ill. Reg. 11754, effective July 1, 1988; amended at 20 Ill. Reg. 5846, effective April 9, 1996; amended at 40 Ill. Reg. 216, effective December 21, 2015.

Section 2801.10 Policies or Contracts of Insurance

Policies or contracts of insurance may not be placed with insurers 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) [215 ILCS 5/445].

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

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 Insurers

- a) Procurement of Insurance by a Surplus Line Producer
 - 1) A surplus line producer may procure insurance from an unauthorized insurer domiciled in the United States:
 - 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 set forth in the Illinois Insurance Code 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) that is permitted in its domiciliary jurisdiction to write the type of insurance involved. (Section 445(1.5)(b) of the Code)
 - 2) A surplus line producer may procure insurance from an unauthorized insurer domiciled outside of the United States only if the insurer meets the standards for unauthorized insurers domiciled in the United States as set forth in subsection (a)(1), or if the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners.
- b) Information available to the surplus line producer at the time of procurement includes financial information published by the unauthorized insurer, the financial information and quarterly listing of alien insurers published by the International Insurers Department of the National Association of Insurance Commissioners 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 insurer at the time of procurement meet requirements necessary for the protection of policyholders, the surplus line producer shall consider the financial condition of the insurer, the ready acceptance of

the insurer in responsible commercial markets, the general reputation of the insurer, and the insurer's past and current performance of its obligations.

- d) When an unauthorized insurer does not meet the standards set forth in subsection (a)(1) or a surplus line producer is unable to verify those facts, the surplus line producer may procure insurance from that insurer only if prior written warning of the 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. The written warning shall be in a form substantially similar to the sample warning set forth in Illustration A.
- e) If the Director at any time determines that the further assumption of risks might be hazardous to the policyholders of an unauthorized insurer, the Director shall order the Surplus Line Association of Illinois not to countersign insurance contracts evidencing insurance in that insurer. The Director's determination will be made by examining the criteria contained in the Illinois Insurance Code for authorized insurers. The Director shall also direct all surplus line producers to cease procuring insurance from that insurer.

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

Section 2801.40 Maintenance of Funds in Illinois

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

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

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 insurers that 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 submits a risk to three or more authorized insurers that are engaged in writing in Illinois the type of coverage sought, or if there are no insurers actually engaged in writing that coverage, the risk shall be submitted to insurers that, 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 insurers that are authorized to transact business in this State and that the procurement was otherwise in accordance with the surplus line law.
- c) Licensed surplus line producers may procure surplus line insurance from an unauthorized insurer for an exempt commercial purchaser, as that term is defined in Section 445, without making the required diligent effort to procure the insurance from authorized insurers if:

- 1) the producer has disclosed to the exempt commercial purchaser that the insurance may or may not be available from authorized insurers that may provide greater protection with more regulatory oversight; and
- 2) the exempt commercial purchaser has subsequently, in writing, requested the producer to procure that insurance from an unauthorized insurer. (Section 445(1.5)(e) of the Code)

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

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 the diligent effort, which must state the name of the authorized insurers and the individuals contacted at each insurer 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 the diligent effort, and the insurance producer must maintain a record that states the name of the authorized insurers and the individuals contacted at each insurer who declined the risk.

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

Section 2801.70 Declinations of Artificial Coverage not Acceptable

- a) Declinations by authorized insurers 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 insurer and an unauthorized insurer.
- b) Declinations by authorized insurers 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 insurer although part of the coverage is acceptable, and the unauthorized insurer will accept only the entire risk and not solely the rejected portion; and
 - 5) Authorized insurers will accept less than the amount of coverage required and the entire amount and not just part of that amount will be accepted by unauthorized insurers.

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

Section 2801.80 Surplus Line Association of Illinois

- a) All surplus line insurance must be submitted to the Surplus Line Association if Illinois is the insured's home state, as that term is defined in Section 445. The Surplus Line Association 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 Director and, at the discretion of the Director, to the surplus line producers:
- 1) by July 15 each year, the business processed by each surplus line producer during the six month period ending June 30; and
 - 2) 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 that 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.
- c) The Surplus Line Association shall maintain records of surplus line insurance submitted by surplus line producers for a period of 10 years.
- d) The Association shall annually provide for an independent financial audit of the books and records of the Association by a certified public accountant and shall provide a copy of the audit report to the Director. (Section 445.4 of the Code)

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

Section 2801.90 Separate Records and Accounts

Each surplus line producer must keep separate accounts and records of the business transacted under its surplus line license for 7 years from the policy effective date, and these separate accounts and records shall be open at all times to inspection by the Illinois Director of Insurance or his or her designee.

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

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) of the Code;
or

- c) to pay the fee due the Surplus Line Association; or
- d) to exert diligent effort to secure the business required by an insured from duly authorized insurers; or
- e) to procure surplus line policies or contracts or coverage from insurers 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
- f) to process all surplus line business on Illinois risks through the Surplus Line Association; or
- g) to maintain records and accounts pursuant to Section 445 of the Code; or
- h) to maintain membership in the Surplus Line Association of Illinois; or
- i) to comply with the requirements of the Illinois Insurance Code or 50 Ill. Adm. Code.

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

Section 2801.110 Service of Process

- a) Service of process relating to any surplus line insurance that the Surplus Line Association receives from the Director shall be delivered to the surplus line producer for delivery to the unauthorized insurer. The surplus line producer shall promptly forward any such process by the fastest, most reliable means to the unauthorized insurer or its designated representative for service of process.
- b) Any unauthorized insurer that elects to do so may file a written request with the Surplus Line Association that service of process be forwarded directly to the insurer. The Surplus Line Association shall forward a copy of the process directly to the insurer and to the surplus line producer.

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

Section 2801.120 Required Surplus Line Policy Notice

- a) Each policy or contract for insurance procured from an unauthorized insurer, other than a domestic surplus line insurer, in conformity with Section 445 of the Code shall have stamped or imprinted on the first page, 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."

- b) Each policy or contract for insurance procured from a domestic surplus line insurer in conformity with Section 445 of the Code shall have stamped or imprinted on the first page, 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 of the Code and, as such, is not covered by the Illinois Insurance Guaranty Fund."

(Section 445(10.5) of the Code)

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

Section 2801.130 Taxes

- a) The surplus line producer shall pay to the Director as a surplus line tax a sum equal to the gross premiums less returned premiums multiplied by the surplus line tax rate set forth in Section 445 of the Code 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 Section 12 of the Fire Investigation Act [425 ILCS 25]. 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, when applicable, shall be due and payable on all surplus line business processed by the surplus line producer through the Surplus Line Association.

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

Section 2801.140 Classes not Subject to Surplus Line Law

Sections 445 and 445.5 inclusive of the Illinois Insurance Code 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: Amended at 40 Ill. Reg. 216, effective December 21, 2015)

Section 2801. ILLUSTRATION A Written Warning to Insureds

TO: _____

RE: (Name of Unauthorized Insurer)
(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 insurer 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 that are adequate for your protection.

Sincerely,

(Source: Amended at 40 Ill. Reg. 216, effective December 21, 2015)