

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 493 Session of 2009

INTRODUCED BY STACK, FONTANA, LOGAN AND COSTA, MARCH 2, 2009

REFERRED TO BANKING AND INSURANCE, MARCH 2, 2009

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An  
2 act relating to insurance; amending, revising, and  
3 consolidating the law providing for the incorporation of  
4 insurance companies, and the regulation, supervision, and  
5 protection of home and foreign insurance companies, Lloyds  
6 associations, reciprocal and inter-insurance exchanges, and  
7 fire insurance rating bureaus, and the regulation and  
8 supervision of insurance carried by such companies,  
9 associations, and exchanges, including insurance carried by  
10 the State Workmen's Insurance Fund; providing penalties; and  
11 repealing existing laws," further providing for definitions,  
12 for acting for or aiding nonadmitted insurers, for  
13 requirements for eligible surplus lines insurers, for other  
14 nonadmitted insurers, for surplus lines licensee's duty to  
15 notify insured, for declarations, for surplus lines advisory  
16 organizations, for evidence of insurance, for licensing of  
17 surplus lines licensee, for surplus lines licensee's  
18 acceptance of business from brokers, for records of surplus  
19 lines licensees, for monthly reports, for surplus lines tax,  
20 for tax on independently procured insurance, for suspension,  
21 revocation or nonrenewal of surplus lines licensee's license  
22 and for penalties; and providing for compliance.

23 The General Assembly of the Commonwealth of Pennsylvania  
24 hereby enacts as follows:

25 Section 1. Section 1602 of the act of May 17, 1921 (P.L.682,  
26 No.284), known as The Insurance Company Law of 1921, amended or  
27 added December 18, 1992 (P.L.1519, No.178) and July 10, 2002  
28 (P.L.749, No.110), is amended to read:

Section 1602. Definitions.--As used in this article the following words and phrases shall have the meanings given to them in this section:

"Admitted insurer." An insurer licensed to do an insurance business in this Commonwealth.

"Business entity." A corporation, a partnership, a limited liability company, a limited liability partnership, a business trust or any other entity doing business other than as a natural person.

"Capital." The term, as used in the financial requirements of section 1605, means funds paid for stock or other evidence of ownership.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Department." The Insurance Department of the Commonwealth.

"Eligible surplus lines insurer." A nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under section 1604.

"Export." To place surplus lines insurance with either a nonadmitted insurer or an eligible surplus lines insurer in accordance with this article.

"Independently procured insurance." Any insurance which a resident of this Commonwealth directly negotiates with and purchases, continues or renews from a nonadmitted insurer without securing the services of an insurance [agent, broker] producer or surplus lines licensee[, whether the agent or broker holds a resident or nonresident license issued by the department].

"Insurance producer." A person that is licensed to sell, solicit or negotiate contracts of insurance with admitted

1 insurers.

2 "Kind of insurance." One of the types of insurance required  
3 to be reported in the annual statement which must be filed with  
4 the department by admitted insurers.

5 "Nonadmitted insurer." An insurer not authorized and not  
6 licensed to do an insurance business in this Commonwealth. The  
7 term includes insurance exchanges as authorized under the laws  
8 of various states.

9 "Person." A natural person or business entity.

10 ["Producing broker." The broker dealing directly with the  
11 party seeking insurance.]

12 "Purchasing group." An entity formed to purchase liability  
13 insurance under the Risk Retention Amendments of 1986 (Public  
14 Law 99-563, 100 Stat. 3170).

15 "Risk retention group." An insurer organized to do business  
16 under the Risk Retention Amendments of 1986 (Public Law 99-563,  
17 100 Stat. 3170).

18 "Surplus." The term, as used in the financial requirements  
19 of section 1605, means funds over and above liabilities and  
20 capital of the company for the protection of its policyholders.

21 "Surplus lines insurance." Any insurance of risks resident,  
22 located or to be performed in this Commonwealth, permitted to be  
23 placed through a surplus lines licensee with a nonadmitted  
24 insurer eligible to accept such insurance, other than  
25 reinsurance, wet marine and transportation insurance,  
26 independently procured insurance, life [and health] insurance  
27 and annuities and coverage obtained from risk retention groups  
28 under the Risk Retention Amendments of 1986 (Public Law 99-563,  
29 100 Stat. 3170).

30 "Surplus lines licensee." [An individual, partnership or

corporation] A person licensed as a surplus lines producer under section 1615 to place surplus lines insurance with nonadmitted insurers eligible to accept such insurance.

"Wet marine and transportation insurance." Any of the following:

(1) Insurance upon vessels, crafts or hulls and of interests therein or with relation thereto.

(2) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance.

(3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition.

(4) Insurance of personal property and interest therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment or reshipment. Insurance of personal property and interests therein shall not be considered wet marine and transportation insurance if:

(i) the property has been transported solely by land;

(ii) the property has reached its final destination as specified in the bill of lading or other shipping document; or

(iii) the insured no longer has an insurable interest in the property.

(5) Any insurance associated with transportation of property listed under this definition.

"Writing producer." The insurance producer which brings about or negotiates contracts of insurance directly on behalf of

1 the consumer seeking insurance.

2 Section 2. Section 1603 of the act, added December 18, 1992  
3 (P.L.1519, No.178), is amended to read:

4 Section 1603. Acting for or Aiding Nonadmitted Insurers.--

5 (a) No person in this Commonwealth shall directly or indirectly  
6 act as [agent] a producer for, or otherwise represent or aid on  
7 behalf of another, any nonadmitted insurer in the solicitation,  
8 negotiation, procurement or effectuation of insurance, or  
9 renewals thereof, or forwarding of applications, or delivery of  
10 policies or contracts or inspection of risks, or fixing of  
11 rates, or investigation or adjustment of claims or losses, or  
12 collection or forwarding of premiums, or in any other manner  
13 represent or assist such insurer in the transaction of  
14 insurance.

15 (b) If the nonadmitted insurer is not an eligible surplus  
16 lines insurer and fails to pay a claim or loss within the  
17 provisions of the insurance contract, a person who assisted or  
18 in any manner aided, directly or indirectly, in the procurement  
19 of the insurance contract shall be liable to the insured for the  
20 full amount payable under the provisions of the insurance  
21 contract.

22 (c) This section does not apply to any of the following:

23 (1) Surplus lines insurance if it is effected and written  
24 pursuant to this article.

25 (2) Insurance effected with a nonadmitted insurer pursuant  
26 to sections 1606 and 1610.

27 (3) Transactions for which a certificate of authority to do  
28 business is not required of an insurer under the insurance laws  
29 of this Commonwealth.

30 (4) Reinsurance.

(5) Wet marine and transportation insurance.

(6) Transactions subsequent to issuance of a policy not covering domestic risks at time of issuance and lawfully solicited, written or delivered outside of this Commonwealth.

(7) Transactions involving risk retention groups chartered and licensed outside of this Commonwealth.

Section 3. Section 1605 of the act, amended July 10, 2002 (P.L.749, No.110), is amended to read:

Section 1605. Requirements for Eligible Surplus Lines Insurers.--(a) No surplus lines licensee shall place any coverage with a nonadmitted insurer unless, at the time of placement, such nonadmitted insurer:

(1) Is of good repute and financial integrity.

(2) Qualifies under any of the following subparagraphs:

(i) Has policyholder surplus equal to or greater than two times the minimum capital and surplus required to be fully licensed in this Commonwealth. Two (2) years from the effective date of this article is granted to allow those nonadmitted insurers which are eligible surplus lines insurers on the effective date of this article to achieve this capital and surplus requirement. If an alien insurer, as defined by the act of December 10, 1974 (P.L.804, No.266), referred to as the Alien Insurer Domestication Law, it shall maintain in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than that currently required by the National Association of Insurance Commissioners' International Insurers Department or its successor for the protection of all of its policyholders in the United States, and such trust fund consists of cash, securities, letters of credit or investments of substantially the same

1 character and quality as those which are eligible investments  
2 for admitted insurers authorized to write like kinds of  
3 insurance in this Commonwealth. Such trust fund will be in  
4 addition to the capital and surplus required in this  
5 subparagraph and shall have an expiration date which at no time  
6 shall be less than five (5) years.

7 (ii) Is any Lloyd's or other similar group of insurers which  
8 includes unincorporated individual insurers that maintains a  
9 trust fund of not less than fifty million (\$50,000,000) dollars  
10 as security to the full amount thereof for all policyholders and  
11 creditors in the United States of each member of the group. Such  
12 trust funds shall likewise comply with the terms and conditions  
13 established in subparagraph (i) for alien insurers.

14 (iii) Is an insurance exchange created by the laws of  
15 individual states that maintains capital and surplus or the  
16 substantial equivalent thereof of not less than fifteen million  
17 (\$15,000,000) dollars in the aggregate. For insurance exchanges  
18 which maintain funds for the protection of all insurance  
19 exchange policyholders, each individual syndicate shall maintain  
20 minimum capital and surplus or the substantial equivalent  
21 thereof of not less than one million five hundred thousand  
22 (\$1,500,000) dollars. In the event the insurance exchange does  
23 not maintain funds for the protection of all insurance exchange  
24 policyholders, each individual syndicate shall meet the minimum  
25 capital and surplus requirements of subparagraph (i).

26 (3) Has provided to the department a copy of its current  
27 annual financial statement certified by such insurer, such  
28 statement to be provided no more than thirty (30) days after the  
29 date required for filing an annual financial statement in its  
30 domiciliary jurisdiction and which is either:

1 (i) certified by the regulatory authority in the domicile of  
2 the insurer; or  
3 (ii) certified by an accounting or auditing firm licensed in  
4 the jurisdiction of the insurer's domicile.

5 In the case of an insurance exchange, the statement may be an  
6 aggregate statement of all underwriting syndicates operating  
7 during the period reported.

8 (b) In addition to meeting the requirements in subsection  
9 (a), a nonadmitted insurer shall be an eligible surplus lines  
10 insurer if it appears on the most recent list of eligible  
11 surplus lines insurers published by the department from time to  
12 time but at least [semiannually] annually. Nothing in this  
13 section shall require the department to place or maintain the  
14 name of any nonadmitted insurer on the list of eligible surplus  
15 lines insurers.

16 Section 4. Section 1606 of the act, added December 18, 1992  
17 (P.L.1519, No.178), is amended to read:

18 Section 1606. Other Nonadmitted Insurers.--Only that  
19 portion, not to exceed twenty-five per centum (25%), of any risk  
20 eligible for export for which the full amount of coverage is not  
21 procurable from either admitted insurers or eligible surplus  
22 lines insurers may be placed with any other nonadmitted insurer  
23 which does not appear on the list of eligible surplus lines  
24 insurers published by the department pursuant to section 1605(b)  
25 but nonetheless meets the requirements set forth in section  
26 1605(a) and any regulations of the department. The surplus lines  
27 licensee [seeking to provide] providing coverage through a  
28 nonadmitted insurer which is not an eligible surplus lines  
29 insurer shall make a filing specifying the amount and percentage  
30 of each risk along with a full explanation of why the risk could

1 not be placed with admitted or eligible surplus lines insurers  
2 and naming the nonadmitted insurer with which placement [is  
3 intended] was made. At the time of presenting a quotation to the  
4 insured, the surplus lines licensee shall present to the insured  
5 or to the [producing broker] writing producer written notice  
6 that a portion of the insurance will be placed with such  
7 nonadmitted insurer.

8 Section 5. Sections 1608 and 1609 of the act, amended July  
9 10, 2002 (P.L.749, No.110), are amended to read:

10 Section 1608. Surplus Lines Licensee's Duty to Notify  
11 Insured.--At the time of presenting a quotation to the insured,  
12 the surplus lines licensee shall present to the insured or to  
13 the [producing broker] writing producer written notice that the  
14 insurance or a portion thereof involves placement with  
15 nonadmitted insurers. The surplus lines licensee shall, either  
16 directly or through the [producing broker] writing producer,  
17 give notice to the insured that:

18 (1) the insurer with which the licensee places the insurance  
19 is not licensed by the Pennsylvania Insurance Department and is  
20 subject to its limited regulation; and

21 (2) in the event of the insolvency of an eligible surplus  
22 lines insurer, losses will not be paid by the Pennsylvania  
23 Property and Casualty Insurance Guaranty Association.

24 Section 1609. Declarations.--(a) In the case of each  
25 placement of insurance in accordance with this article:

26 (1) Within thirty (30) days after the surplus lines licensee  
27 has placed insurance with an eligible surplus lines insurer, the  
28 [producing broker] writing producer must execute and forward to  
29 the surplus lines licensee a written statement, in a form  
30 prescribed by the department, declaring that:

1 (i) A diligent effort to procure the desired coverage from  
2 admitted insurers was made.

3 (ii) The insured was expressly advised in writing prior to  
4 placement of the insurance that:

5 (A) the insurer with whom the insurance is to be placed is  
6 not admitted to transact business in this Commonwealth and is  
7 subject to limited regulation by the department; and

8 (B) in the event of the insolvency of the insurer, losses  
9 will not be paid by the Pennsylvania Property and Casualty  
10 Insurance Guaranty Association.

11 This written declaration shall be open to public inspection.

12 (2) Within forty-five (45) days after insurance has been  
13 placed in an eligible surplus lines insurer, the surplus lines  
14 licensee shall file with the department a written declaration of  
15 his lack of knowledge of how the coverage could have been  
16 procured from admitted insurers. The surplus lines licensee  
17 shall simultaneously file the written declaration of the  
18 [producing broker] writing producer, as set forth in paragraph  
19 (1).

20 (3) In a particular transaction where the [producing broker]  
21 writing producer and surplus lines licensee are one in the same  
22 entity, [he] the writing producer or surplus lines licensee  
23 shall execute both declarations.

24 (b) Subsection (a) shall not apply to any insurance which  
25 has been placed continuously with an eligible surplus lines  
26 insurer for a period of at least three (3) consecutive years  
27 immediately preceding the current placement. However, within  
28 forty-five (45) days after insurance has been placed with an  
29 eligible surplus lines insurer, the surplus lines licensee shall  
30 file with the department his written declaration on a form

1 prescribed by the department.

2 Section 6. Sections 1611, 1612 and 1614 of the act, added  
3 December 18, 1992 (P.L.1519, No.178), are amended to read:

4 Section 1611. Surplus Lines Advisory Organizations.--(a) A  
5 surplus lines advisory organization of surplus lines licensees  
6 may be formed to:

7 (1) Facilitate and encourage compliance by [its members]  
8 surplus lines licensees with the laws of this Commonwealth and  
9 the rules and regulations of the department relative to surplus  
10 lines insurance.

11 (2) Provide means for the examination, which shall remain  
12 confidential, of all surplus lines coverages written by [its  
13 members] surplus lines licensees to determine whether such  
14 coverages comply with such laws and regulations.

15 (3) Communicate with organizations of admitted insurers with  
16 respect to the proper use of the surplus lines market.

17 (4) Receive and disseminate to [its members] surplus lines  
18 licensees information relative to surplus lines insurance.

19 (b) The functions of the organization shall in no way  
20 supplant or delegate current regulatory authority of the  
21 department to administer the provisions of this article.

22 (c) [Each such] An advisory organization shall file with the  
23 department for approval:

24 (1) A copy of its constitution, its articles of agreement or  
25 association or its certificate of incorporation.

26 (2) A copy of its bylaws, rules and regulations governing  
27 its activities.

28 [(3) A current list of its members.]

29 (4) The name and address of a resident of this Commonwealth  
30 upon whom notices or orders of the department or processes

1 issued at its direction may be served.

2 (5) An agreement that the department may examine such  
3 advisory organization in accordance with the provisions of this  
4 section.

5 (d) The department [shall, at least once every four (4)  
6 years] may, as necessary, make or cause to be made an  
7 examination of each such advisory organization. The reasonable  
8 cost of any such examination shall be paid by the advisory  
9 organization upon presentation to it by the department of a  
10 detailed account of each cost. The officers, directors,  
11 managers, agents and employes of such advisory organization may  
12 be examined at any time, under oath, and shall exhibit all  
13 books, records, accounts, documents or agreements governing its  
14 method of operation. The department shall furnish two copies of  
15 the examination report to the advisory organization examined and  
16 shall notify such organization that it may, within twenty (20)  
17 days thereof, request a hearing on the report or on any facts or  
18 recommendations therein. If the department finds such advisory  
19 organization or any member thereof to be in violation of this  
20 article, it may issue a cease and desist order requiring the  
21 discontinuance of such violation and may impose any other  
22 penalties as set forth in this article.

23 (e) The department may contract with a surplus lines  
24 advisory organization to render advice and assistance in  
25 carrying out the purposes of this article. The services  
26 performed by the advisory organization pursuant to such contract  
27 may be funded by a stamping fee assessed on each surplus lines  
28 policyholder whose policy is submitted to the advisory  
29 organization. The stamping fee shall be established by the board  
30 of governors of the advisory organization, from time to time,

1 and shall be subject to approval by the department.

2 (f) The advisory organization may submit reports and make  
3 recommendations to the department regarding the financial  
4 condition of any eligible surplus lines insurer. These reports  
5 and recommendations shall not be considered to be public  
6 information or subject to any Federal or State freedom of  
7 information law. There shall be no liability on the part of nor  
8 shall any cause of action of any nature be sustained against  
9 eligible surplus lines insurers, the advisory organization or  
10 its members, agents, employees, officers or directors or the  
11 department or authorized representatives of the department for  
12 statements and any reports or recommendations made by them in  
13 good faith under this section.

14 (g) By order of the department, a surplus lines licensee may  
15 be compelled to join the membership division of an advisory  
16 organization and attend educational seminars as a condition of  
17 continued licensure under this article.

18 Section 1612. Evidence of Insurance.--(a) Upon placing  
19 surplus lines insurance, the surplus lines licensee shall  
20 deliver to the insured or the [producing broker] writing  
21 producer the contract of insurance. If the contract of insurance  
22 is not immediately available, a cover note, binder or other  
23 evidence of insurance shall be delivered by the surplus lines  
24 licensee to the insured or the [producing broker] writing  
25 producer and shall, at a minimum, show the description and  
26 location of the subject of insurance, coverages, including any  
27 material limitations other than those in standard forms, the  
28 premium and rate charged and taxes to be collected from the  
29 insured, the name and address of the insured and the eligible  
30 surplus lines insurer and other nonadmitted insurer involved

1 under section 1606 and proportion of the risk assumed by each,  
2 and the name of the surplus lines licensee.

3 (b) No surplus lines licensee shall bind or provide evidence  
4 of insurance unless he has authority from the eligible surplus  
5 lines insurer or other nonadmitted insurer to bind the risk or  
6 has received information from the insurer in the regular course  
7 of business that it has assumed the risk.

8 (c) If, after delivery of any such evidence of insurance,  
9 there is any change in the identity of the eligible surplus  
10 lines insurer, or the proportion of the risk assumed by any  
11 nonadmitted insurer, or any other material change in coverage as  
12 stated in the surplus lines licensee's original evidence of  
13 insurance, or any other material change as to the insurance  
14 coverage so evidenced, the surplus lines licensee shall promptly  
15 issue and deliver to the insured or to the original [producing  
16 broker] writing producer an appropriate substitute for or  
17 endorsement of the original document accurately showing the  
18 current status of the coverage and the insurer responsible  
19 thereunder.

20 (d) Every evidence of insurance negotiated, placed or  
21 procured under the provisions of this article issued by the  
22 surplus lines licensee shall bear the name of the licensee and  
23 the following legend in 10-point type: "The insurer which has  
24 issued this insurance is not licensed by the Pennsylvania  
25 Insurance Department and is subject to limited regulation. This  
26 insurance is NOT covered by the Pennsylvania Property and  
27 Casualty Insurance Guaranty Association."

28 Section 1614. Effect of Payment to Surplus Lines Licensee.--  
29 A payment of premium to the [producing broker] writing producer  
30 or to a surplus lines licensee acting for a person other than

1 himself in negotiating, continuing or reviewing any contract of  
2 insurance under this article shall be deemed to be payment to  
3 the insurer, whatever conditions or stipulations may be inserted  
4 in the contract notwithstanding.

5 Section 7. Section 1615 of the act, amended July 10, 2002  
6 (P.L.749, No.110), is amended to read:

7 Section 1615. Licensing of Surplus Lines Licensee.--(a) No  
8 [agent or broker] insurance producer licensed by the department  
9 shall transact surplus lines insurance with any nonadmitted  
10 insurer unless [such agent or broker] the insurance producer  
11 possesses a valid surplus lines [agent's] producer's license  
12 issued by the department.

13 (b) The department shall issue a surplus lines [agent's]  
14 producer's license to any resident [or nonresident] of this  
15 Commonwealth or to a nonresident who is a qualified holder of a  
16 current Pennsylvania property and casualty [broker's] insurance  
17 producer's license, but only when the [broker] insurance  
18 producer has complied with the following:

19 (1) Remitted the surplus lines producer license fee to the  
20 department.

21 (2) Submitted a properly completed surplus lines producer  
22 license application on a form supplied by the department.

23 (3) Passed a qualifying examination approved by the  
24 department, except that all holders of a license prior to the  
25 effective date of this article shall be deemed to have passed  
26 such an examination.

27 (c) [Corporations and partnerships shall be eligible to be  
28 resident or nonresident surplus lines licensees, upon the  
29 following conditions:

30 (1) The corporation or partnership licensee shall list all

1 employees, including at least one active officer or partner, who  
2 have satisfied the requirements of this article to become  
3 surplus lines licensees.

4 (2) Only those employees holding a certificate of eligibility  
5 may transact surplus lines insurance.] Business entities that  
6 are licensed as Pennsylvania insurance producers shall be  
7 eligible to be surplus lines licensees, if the business entities  
8 do all of the following:

9 (1) Designate one or more officers or partners licensed  
10 under this article to be responsible for compliance with all  
11 reporting and recordkeeping required by this article.

12 (2) Provide to the department a list of all surplus lines  
13 licensees associated with and placing surplus lines business  
14 through the business entity. The business entity shall provide  
15 to the department an updated list of licensees within five (5)  
16 business days of a change in association of any licensee. The  
17 list shall be available at all times for inspection by the  
18 department.

19 (c.1) A nonresident person whose home state issues surplus  
20 lines licenses to residents of Pennsylvania on the same basis  
21 and who is licensed in Pennsylvania as a property and casualty  
22 producer may be licensed as a surplus lines producer if the  
23 person does all of the following:

24 (1) Is currently licensed as a surplus lines producer and is  
25 in good standing in its home state.

26 (2) Has submitted a complete application for a surplus lines  
27 license and has paid the required fees.

28 (3) Has submitted or transmitted to the department the  
29 application for a surplus lines license submitted in its home  
30 state or a completed uniform application that complies with

section 610-A of the act of May 17, 1921 (P.L.789, No.285),  
known as "The Insurance Department Act of 1921."

(4) Has complied with all of the provisions of Article VI-A  
of "The Insurance Department Act of 1921."

(d) Each surplus lines license shall [expire on the last day  
of February of each year and shall be renewed before March 1 of  
each year upon payment of the annual fee, in compliance with  
other provisions of this section. Any surplus lines licensee who  
fails to apply for renewal of a license before expiration of the  
current license shall pay a penalty of two times the license fee  
and be subject to other penalties as provided by law before his  
license will be renewed.] be:

(1) Issued as follows:

(i) Only in the name of the individual applicant or business  
entity. A licensee doing business under a fictitious name other  
than the name appearing on the license shall be required to  
notify the department in writing prior to use of the fictitious  
name for the department's consent to use of the name.

(ii) In paper or electronic form.

(iii) For a period not to exceed two (2) years. The  
following shall apply:

(A) The surplus lines license of a natural person shall  
expire on the last day of the birth month of the licensee. The  
initial license cycle may vary to coincide with the expiration  
cycle of the birth month.

(B) The surplus lines license of a business entity shall  
expire on the last day of the month in which the license was  
originally issued.

(2) Nontransferable.

(e) A nonrefundable two hundred dollar (\$200) fee shall

accompany an application or renewal for a surplus lines license,  
unless modified by the department by regulation.

(f) The following shall apply:

(1) A surplus lines licensee that allows the licensee's  
license to lapse by failing to timely renew the license or by  
failing to pay the fee required by this act may, within one year  
of the license renewal date, request the department to reinstate  
the license. Persons requesting reinstatement shall pay a fee of  
two times the fee required by this act and may be subject to  
other penalties as provided by law before the license will be  
renewed.

(2) Persons requesting reinstatement of a lapsed license  
shall submit a completed renewal form and the fee required by  
this act.

(3) The department shall reinstate a license under this  
subsection retroactively, with the reinstatement effective on  
the date the license lapsed, if the department receives a  
request for reinstatement together with a completed renewal  
application and payment of the lapsed license fee within sixty  
(60) days after the license lapsed.

(4) The department shall reinstate a license under this  
subsection prospectively, with reinstatement effective on the  
date that the license is reinstated, if the department receives  
a request for reinstatement of a lapsed license more than sixty  
(60) days after the license lapsed but within one year after the  
license lapsed.

(5) If a person applies for reinstatement more than one year  
after the lapse date, the person must reapply for the license  
under this act.

Section 8. Section 1616 of the act, added December 18, 1992

1 (P.L.1519, No.178), is amended to read:

2 Section 1616. Surplus Lines Licensees May Accept Business  
3 from [Brokers] Insurance Producer.--A surplus lines licensee may  
4 originate surplus lines insurance or accept such insurance from  
5 [any broker] an insurance producer duly licensed as to the kind  
6 or kinds of insurance involved, and the surplus lines licensee  
7 may compensate [such broker therefor] the insurance producer.

8 Section 9. Section 1619 of the act, amended July 10, 2002  
9 (P.L.749, No.110), is amended to read:

10 Section 1619. Records of Surplus Lines Licensee.--(a) Each  
11 surplus lines licensee shall keep in its office a full and true  
12 record of each surplus lines insurance contract placed by or  
13 through it, including a copy of the policy, certificate, cover  
14 note or other evidence of insurance, showing such of the  
15 following items as may be applicable:

- 16 (1) Amount of the insurance and perils insured.
- 17 (2) Brief description of the risk insured and its location.
- 18 (3) Gross premium charged.
- 19 (4) Any return premium paid.
- 20 (5) Rate of premium charged for each risk insured.
- 21 (6) Effective date and terms of the contract.
- 22 (7) Name and address of the insured.
- 23 (8) Name and address of the eligible surplus lines insurer  
24 and any nonadmitted insured involved pursuant to section 1606.
- 25 (9) Amount of tax and other sums to be collected from the  
26 insured.
- 27 (10) Identity of the [producing broker] writing producer,  
28 any confirming correspondence from the insurer or its  
29 representative and the application.
- 30 (11) A copy of the written notice required by section [1408]

1 1608.

2 (b) The record of each contract shall be kept open at all  
3 reasonable times to examination by the department without notice  
4 for a period of not less than five (5) years following  
5 termination of the contract.

6 (c) If the surplus lines licensee is a natural person who is  
7 associated with a business entity which is a valid surplus lines  
8 licensee, the business entity with which the licensee is  
9 associated shall retain the records which are required by this  
10 section to be kept by each surplus lines licensee.

11 Section 10. Sections 1620, 1621 and 1622 of the act, added  
12 December 18, 1992 (P.L.1519, No.178), are amended to read:

13 Section 1620. Monthly Reports.--Within thirty (30) days  
14 following the end of each month, each surplus lines licensee  
15 shall file with the department, on forms prescribed by the  
16 department, a verified report [in duplicate] of all surplus  
17 lines insurance transacted during the preceding month.

18 Section 1621. Surplus Lines Tax.--(a) There is hereby  
19 levied a tax of three per centum (3%) on all premiums charged  
20 for insurance which is placed with either an eligible surplus  
21 lines insurer, other than a risk retention group, or other  
22 nonadmitted insurer in accordance with this article, such taxes  
23 to be based on the gross premiums charged less any return  
24 premiums. This tax shall be in addition to the full amount of  
25 the gross premium charged by the insurer for the insurance. The  
26 tax on any unearned portion of the premium shall be returned to  
27 the insured.

28 (b) Neither the surplus lines licensee nor the [producing  
29 broker] writing producer shall pay directly or indirectly such  
30 tax or any portion thereof, either as an inducement to the

1 insured to purchase the insurance or for any other reason.

2 (c) The surplus lines licensee shall collect from the  
3 insured or the [producing broker] writing producer the amount of  
4 the tax at the time of delivery of the initial policy, cover  
5 note or other evidence of insurance or at such time thereafter  
6 as is reasonably consistent with normal credit terms customary  
7 in the business. Each surplus lines licensee shall, on or before  
8 January 31 of each year, file with the Department of Revenue a  
9 report of all transactions involving the placement of insurance  
10 with either an eligible surplus lines insurer or other  
11 nonadmitted insurers during the previous calendar year. The  
12 report shall set forth the name of the insured, identification  
13 of the insurer, the type of insurance, gross premiums charged  
14 less any return premiums allowed and the tax due as provided in  
15 this section. The remittance for the taxes due shall accompany  
16 this report. Such report shall be made on forms prescribed and  
17 furnished by the Department of Revenue. A copy of the report  
18 shall be filed with the [commissioner] department by the surplus  
19 lines licensee. A surplus lines licensee that is a business  
20 entity licensee which files the annual premium tax return with  
21 the Department of Revenue shall include in its return the  
22 premium taxes generated during the year subject to reporting by  
23 all licensees associated with said business entity during the  
24 reporting period.

25 (d) In the event that a placement of insurance involves  
26 subjects of insurance resident, located or to be performed in  
27 one or more states other than this Commonwealth, then the  
28 premium taxes provided for in this section shall be levied only  
29 on that portion of the premium reasonably ascribable to that  
30 portion of the risk situated in this Commonwealth.

1 (e) With respect to insurance placed with or issued by a  
2 risk retention group which is an eligible surplus lines insurer,  
3 there is hereby levied a tax of two per centum (2%) on all  
4 premiums charged for risks resident, located or to be performed  
5 in this Commonwealth. The risk retention group shall be  
6 responsible for the payment of the taxes levied in this article  
7 in accordance with procedures set forth in Article XV.

8 (f) The settlement and resettlement of taxes imposed by this  
9 article, including the granting of extensions of time to file  
10 reports and the rights of the taxpayers to present and prosecute  
11 a petition for resettlement, a petition for review or an appeal  
12 to court or to file a petition for refund and the imposition of  
13 interest and penalties, shall be governed by the provisions of  
14 the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform  
15 Code of 1971," as approved in the case of capital stock and  
16 franchise taxes.

17 Section 1622. Tax on Independently Procured Insurance.--The  
18 tax provided by section 1621(a) is imposed upon an insured who  
19 independently procures insurance on a subject of insurance  
20 resident, located or to be performed in this Commonwealth from a  
21 nonadmitted insurer or continues or renews such independently  
22 procured insurance. The insured shall, within thirty (30) days  
23 after the date when such insurance was independently procured,  
24 continued or renewed, report such transaction on forms  
25 prescribed by the Department of Revenue. This report shall set  
26 forth the information required of surplus lines licensees as  
27 required in section 1621(c). The tax of three per centum (3%)  
28 shall be paid on the date the report is due as provided in this  
29 section. If the independently procured insurance covers risks  
30 resident, located or to be performed in one or more states other

1 than this Commonwealth, the premium taxes shall be prorated in  
2 accordance with provisions in section 1621(d). A copy of such  
3 report shall be filed with the [commissioner] department by the  
4 insured.

5 Section 11. Section 1623 of the act, amended July 10, 2002  
6 (P.L.749, No.110), is amended to read:

7 Section 1623. Suspension, Revocation or Nonrenewal of  
8 Surplus Lines Licensee's License.--The department may suspend,  
9 revoke or refuse to renew the license of a surplus lines  
10 licensee after notice and a hearing, as provided under the  
11 applicable provision of the laws of this Commonwealth, upon any  
12 one or more of the following grounds:

13 (3) Closing of the surplus lines licensee's office for a  
14 period of more than thirty (30) business days, unless permission  
15 is granted by the department.

16 (4) Failure to make and file required reports.

17 (5) Failure to transmit required tax on surplus lines  
18 premiums.

19 (7) Failure to remit premiums due insurers or return  
20 premiums due insureds in the normal course of business and  
21 within reasonable time limits.

22 (8) Violation of any provision of this article.

23 (9) For any other cause for which an insurance [agent's or  
24 broker's] producer's license could be denied, revoked or  
25 suspended or refused upon renewal.

26 Section 12. Section 1625 of the act, added December 18, 1992  
27 (P.L.1519, No.178), is amended to read:

28 Section 1625. Penalties.--(a) Any surplus lines licensee  
29 who, in this Commonwealth, represents or aids a nonadmitted  
30 insurer in violation of this article commits a misdemeanor of

1 the third degree and shall, upon conviction, be sentenced to pay  
2 a fine of not more than [one thousand (\$1,000)] two thousand  
3 (\$2,000) dollars.

4 (b) In addition to any other penalty provided for in  
5 subsection (a) or otherwise provided by law, including any  
6 suspension, revocation or refusal to renew a license, any  
7 person[, firm, association or corporation] violating any  
8 provision of this article shall be liable to a civil penalty not  
9 exceeding [one thousand (\$1,000)] two thousand (\$2,000) dollars  
10 for the first offense and not exceeding [two thousand (\$2,000)]  
11 four thousand (\$4,000) dollars for each succeeding offense.

12 (c) The penalties in this section are not exclusive  
13 remedies. Penalties may also be assessed under the act of July  
14 22, 1974 (P.L.589, No.205), known as the "Unfair Insurance  
15 Practices Act," and any other applicable statute.

16 Section 13. The act is amended by adding a section to read:

17 Section 1626. Compliance.--Nothing in this act shall relieve  
18 a surplus lines licensee involved in any transaction from  
19 compliance with this act or its predecessor acts.

20 Section 14. This act shall take effect in 60 days.