

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1174 Session of
2007

INTRODUCED BY STACK, COSTA, LOGAN AND FONTANA, NOVEMBER 30, 2007

REFERRED TO BANKING AND INSURANCE, NOVEMBER 30, 2007

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:

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

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

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

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

13 "Commissioner." The Insurance Commissioner of the
14 Commonwealth.

15 "Department." The Insurance Department of the Commonwealth.

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

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

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

29 "Insurance producer." A person that is licensed to sell,
30 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:

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

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

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

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

This written declaration shall be open to public inspection.

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

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

(b) Subsection (a) shall not apply to any insurance which has been placed continuously with an eligible surplus lines insurer for a period of at least three (3) consecutive years immediately preceding the current placement. However, within forty-five (45) days after insurance has been placed with an eligible surplus lines insurer, the surplus lines licensee shall 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

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

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

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

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

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

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

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

(3) Has submitted or transmitted to the department the application for a surplus lines license submitted in its home 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.