*** § 2130. Excess line association.** (a) There is hereby created a non-profit association to be known as the excess line association of New York. All excess line licensees shall be deemed to be members of the association. The association must perform its functions under the plan of operation established and approved under subsection (c) of this section and must exercise its powers through a board of directors established under subsection (b) of this section. The association shall be supervised by the superintendent. The association shall be authorized and have the duty to:

(1) receive and record all excess line insurance documents which excess line brokers are required to file with the association under section two thousand one hundred eighteen of this article. All records which an excess line broker is required to maintain under section two thousand one hundred eighteen of this article shall be open to examination by the excess line association;

(2) notify the superintendent or his designee prior to stamping submitted insurance documents as provided in paragraph three of this subsection if the association believes that the unauthorized insurer does not meet the standards of eligibility imposed by section two thousand one hundred eighteen of this article, together with any rules and regulations promulgated pursuant to said section;

(3) stamp all excess line insurance documents which excess line brokers are required to file with the association under section two thousand one hundred eighteen of this article, provided that an unauthorized insurer meets the standards of eligibility imposed by section two thousand one hundred eighteen of this article, together with any rules and regulations promulgated pursuant to said section;

(4) prepare reports to be provided to the superintendent on the fifteenth day of every month, which reports shall include premium data from excess line licensee affidavits relating to excess line insurance filed by each licensee and stamped by the association during the preceding calendar month. Such reports shall also include corresponding licensee affidavits in such form as the superintendent may prescribe. The association shall provide each licensee with a copy of the report as it pertains to said licensee's business for the calendar month;

(5) prepare and deliver to each licensee and to the superintendent annually the reports of excess line business, which reports shall

include a delineation of the classes and kinds of business procured during the preceding calendar year in such form as the superintendent may prescribe;

(6) deliver to each licensee standard forms for affidavits required under section two thousand one hundred eighteen of this article;

(7) employ and retain such persons as are necessary to carry out the duties of the association;

(8) borrow money as necessary to effect the purposes of the association;

(9) enter contracts as necessary to effect the purposes of the association;

(10) perform such other acts as will facilitate and encourage compliance by its members with the excess line law of this state and rules promulgated thereunder; and

(11) provide such other services to its members as are incidental or related to the purposes of the association; and

(12) utilize the authority granted to unincorporated associations under section twelve of the general associations law.

(b)(1) The association shall function through a board of directors elected by the association members, and officers who shall be elected by the board of directors.

(2) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The plan of operation shall provide for the election of a board of directors by the members of the association from its membership. The plan of operation shall fix the manner of voting and may weigh each member's vote to reflect the annual excess line insurance premium written by the member. Members employed by the same or affiliated employers may consolidate their premiums written and delegate an individual officer or partner to represent the member in the exercise of association affairs, including service on the association board of directors. The superintendent shall, within thirty days after the enactment date of this section, appoint an interim board of directors for the sole purpose of conducting an election of directors which election shall be conducted within sixty days after the enactment date of this section.

(3) The board of directors shall elect such officers as may be

provided in the plan of operation.

(c)(1) The association shall submit to the superintendent a plan of operation and any amendments thereto to provide operating procedures for the administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the superintendent.

(2) All association members must comply with the plan of operation.

(d) (1) The superintendent shall at least once in three years, make or cause to be made an examination of the association. The reasonable cost of any such examination shall be paid by the association upon presentation to it by the superintendent of a detailed account of such cost. Any examiner authorized by the superintendent shall have the power to administer oaths and to examine under oath any director, officer, member, agent or employee of the association. During the course of such examination, the directors, officers, members, agents and employees of the association shall make available all books, records, accounts, documents and agreements pertaining thereto. The superintendent shall furnish a copy of the examination report to the association. Within thirty days after receipt of the report, the association may request a hearing on the report or any facts or recommendations therein. If the superintendent finds the association is not in compliance with this section he may issue an order requiring compliance or discontinuance of such violation and the association shall be subject to the penalty provisions of this chapter.

(2) A director may be removed from the association's board of directors by the superintendent for cause, stated in writing, after an opportunity has been given to the director to be heard thereon.

(e) In the absence of gross negligence, fraud, or bad faith, there shall be no liability on the part of and no causes of action of any nature shall arise against the association, its directors, officers, agents, or employees for any action taken or omitted by them in the performance of their powers and duties under this section and subsections (b), (c) and (f) of section two thousand one hundred eighteen of this article.

(f) The services performed by the association shall be funded by a stamping fee assessed for each declarations page, cover note or other premium bearing document submitted to the association. The stamping fee

shall be established by the board of directors of the association from time to time and shall be subject to approval by the superintendent. The stamping fee shall be paid by the excess line licensee. Provided, however, the licensee shall be allowed to receive and collect from the insured the stamping fee if the licensee obtains a written memorandum, signed by the insured, specifying the amount and the insured's agreement to pay the stamping fee.

(g) Nothing in this section shall be construed to modify the obligation of an excess line licensee to comply with the provisions of sections two thousand one hundred five and two thousand one hundred eighteen of this chapter, nor to diminish the power of the superintendent to take any other disciplinary action otherwise authorized by this chapter.

(h) The superintendent may declare an unauthorized insurer ineligible and order the association not to stamp insurance documents issued by such unauthorized insurer.

(i) Compliance by the association with the duties set forth in subsection (a) of this section in connection with filing, receiving, recording and stamping of excess line insurance documents, as well as the requirement to deliver standard forms for affidavits, may be accomplished by means of electronic or other media transmission, provided that the superintendent first approves such methods of filing, receiving, recording and stamping.

* NB Expires July 1, 2029