
A BILL FOR AN ACT

RELATING TO INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this act is to amend chapter
2 431, Hawaii Revised Statutes, to comply with the federal
3 Nonadmitted and Reinsurance Reform Act of 2010 relating to
4 surplus lines insurance and to enable the Insurance Commissioner
5 to participate in a multistate cooperative to collect surplus
6 lines premium taxes and fees and distribute the proper taxes and
7 fees to individual member states.

8 SECTION 2. Section 431:1-213, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§431:1-213 State defined.** State means any state of the
11 United States and the governments of Puerto Rico, American
12 Samoa, Guam, Northern Mariana Islands, United States Virgin
13 Islands, and the District of Columbia."

14 SECTION 3. Section 431:1-214, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§431:1-214 United States defined.** United States, when
17 used to signify a place, means the states of the United States
18 and the governments of Puerto Rico, American Samoa, Guam,



1 Northern Mariana Islands, United States Virgin Islands, and the
2 District of Columbia."

3 SECTION 4. Section 431:8-101, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§431:8-101 Scope. This article shall apply to the
6 placement of insurance [~~on any subject resident, located, or to~~
7 ~~be performed in this State,~~] in insurers not authorized to
8 transact insurance in [~~this State.~~] the state in which the
9 insured is located or in which the insurance contract will be
10 performed."

11 SECTION 5. Section 431:8-102, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding ten new definitions to be appropriately
14 inserted and to read:

15 "Exempt commercial purchaser" means a:

16 (1) Person that possesses a net worth in excess of
17 \$20,000,000;

18 (2) Person that generates annual revenues in excess of
19 \$50,000,000;

20 (3) Person that employs more than five hundred full-time
21 or full-time equivalent employees per individual
22 insured;



1 (4) Person that is a member of an affiliated group
2 employing more than 1,000 employees in the aggregate;

3 (5) Not-for-profit organization or public entity that
4 generates annual budgeted expenditures of at least
5 \$30,000,000; or

6 (6) Municipality with a population in excess of 50,000
7 individuals,

8 that at the time of a purchase of commercial insurance, employs
9 or retains a qualified risk manager to negotiate insurance
10 coverage and paid aggregate nationwide commercial property and
11 casualty insurance premiums in excess of \$100,000 in the twelve
12 months immediately preceding the purchase of commercial
13 insurance; provided that beginning on January 1, 2015, and every
14 five years thereafter, the amount of net worth, annual revenues,
15 and annual budgeted expenditures of the exempt commercial
16 purchaser shall be adjusted to reflect the percentage change for
17 that five-year period in the Consumer Price Index for All Urban
18 Consumers published by the Bureau of Labor Statistics of the
19 federal Department of Labor.

20 "Home state", with respect to an insured, means the state
21 in which an insured maintains the insured's principal place of
22 business or, in the case of an individual, the state in which



1 the individual maintains the individual's principal residence;
2 provided that if one hundred per cent of the insured risk is
3 located outside of the state where the insured maintains the
4 insured's principal place of business or principal residence,
5 the home state shall be the state where the greatest percentage
6 of the insured's taxable premium for that insurance contract is
7 allocated.

8 "Home state of affiliated group" means the home state of
9 the member of the affiliated group that has the largest
10 percentage of premium attributed to it under an insurance
11 contract where more than one insured from the affiliated group
12 is listed as a named insured on a single nonadmitted insurance
13 contract.

14 "Home state of group insurance" means the home state of the
15 group policyholder who pays one hundred per cent of the premium
16 from the policyholder's own funds; provided that if the group
17 policyholder does not pay one hundred per cent of the premium
18 from the policyholder's own funds, the term means the home state
19 of the group member.

20 "Independently procured insurance" means insurance obtained
21 by an insured directly from an unauthorized insurer as permitted
22 by the laws of the insured's home state.



1 "Multistate risk" means a risk covered by an unauthorized
2 insurer with insured exposures in more than one state.

3 "Principal place of business" means:

4 (1) The state where the insured maintains the insured's
5 headquarters and where the insured's high-level
6 officers direct, control, and coordinate the business
7 activities;

8 (2) If the insured's high-level officers direct, control,
9 and coordinate the business activities in more than
10 one state, the state in which the greatest percentage
11 of the insured's taxable premium for that insurance
12 contract is allocated; or

13 (3) If the insured maintains the insured's headquarters or
14 the insured's high-level officers direct, control, and
15 coordinate the business activities of the insured
16 outside of any state, the state in which the greatest
17 percentage of the insured's taxable premium for that
18 insurance contract is allocated.

19 "Person" means a natural or legal person.

20 "Principal residence" means:

21 (1) The state where the individual insured resides for the
22 greatest number of days during a calendar year; or



1 (2) If the insured's principal residence is located
2 outside of any state, the state in which the greatest
3 percentage of the insured's taxable premium for that
4 insurance contract is allocated.

5 "Single state risk" means a risk with insured exposures in
6 only one state."

7 2. By amending the definitions of "authorized insurer",
8 "surplus lines insurance", and "unauthorized insurer" to read:

9 "Authorized insurer" means an insurer holding a valid
10 certificate of authority to transact an insurance business in
11 [~~this State.~~] the state in which the insured is located or in
12 which the insurance contract will be performed.

13 "Surplus lines insurance" means any property and casualty
14 insurance on risks [~~resident, located or to be performed in this~~
15 ~~State,~~] procured from or placed with an unauthorized insurer
16 under the laws of the insured's home state; provided that
17 surplus lines insurance when this State is the home state of the
18 insured shall be in accordance with part III of this article.

19 "Unauthorized insurer" means an insurer not holding a valid
20 certificate of authority to transact an insurance business in
21 [~~this State.~~] the state in which the insured is located or in
22 which the insurance contract will be performed."



1 SECTION 6. Section 431:8-201, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§431:8-201 **Transacting insurance business without**
4 **certificate of authority prohibited.** It shall be unlawful for
5 any insurer to transact an insurance business in this State, as
6 defined in section 431:1-215, without a certificate of
7 authority[~~, except~~]; provided that this section shall not apply
8 to:

- 9 (1) The lawful transaction of surplus lines insurance;
10 (2) The lawful transaction of reinsurance by insurers;
11 (3) Transactions in this State involving a policy lawfully
12 solicited, written, and delivered outside of this
13 State covering only subjects of insurance not
14 resident, located, or expressly to be performed in
15 this State at the time of issuance, and which
16 [~~transactions~~] are subsequent to the issuance of
17 [~~such~~] the policy;
18 (4) Attorneys acting in the ordinary relation of attorney
19 and client in the adjustment of claims or losses;
20 (5) Transactions in this State involving group life and
21 group accident and health or sickness or blanket
22 accident and health or sickness insurance or group



1 annuities where the master policy of [~~such~~] the groups
2 was lawfully issued in and delivered [~~in and~~] pursuant
3 to the laws of a state in which the insurer was
4 authorized to do an insurance business;

5 (6) Transactions in this State involving any policy of
6 insurance or annuity contract issued prior to July 1,
7 1988; [~~and~~]

8 (7) Transactions in this State involving ocean marine
9 insurance [~~-~~]; and

10 (8) Transactions of contracts of insurance for property
11 and casualty multistate risks; provided that the
12 producer is licensed to sell, solicit, or negotiate
13 that insurance in the home state of the insured."

14 SECTION 7. Section 431:8-205, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§431:8-205 Insurance independently procured; duty to**
17 **report and pay tax.** (a) Nothing in this part shall prohibit a
18 person from independently procuring, continuing, or renewing
19 insurance from an insurer [~~which~~] that is not authorized to
20 transact insurance in this State.

21 (b) Each insured who in this State procures [~~or~~],
22 continues, or renews [~~insurance with an unauthorized insurer~~]



1 surplus lines insurance on a risk located or to be performed in
2 whole [~~or in part~~] in this State, other than insurance procured
3 through a surplus lines broker pursuant to part III of this
4 article shall, within sixty days after the date the insurance
5 was [~~se~~] procured, continued, or renewed, file a written report
6 [~~of the same~~] with the commissioner [~~, upon forms prescribed by~~
7 ~~the commissioner, showing~~]. Each insured who in this State,
8 after June 30, 2011, procures, continues, or renews surplus
9 lines insurance for which this State is the home state of the
10 insured, other than lines procured through an insurance broker
11 pursuant to part III of this article, shall, within forty-five
12 days after the end of the calendar quarter in which the
13 insurance was procured, continued, or renewed, file a written
14 report with the commissioner on a form prescribed by the
15 commissioner that includes:

- 16 (1) The name and address of the insured or insureds;
- 17 (2) The name and address of the insurer;
- 18 (3) The subject of the insurance;
- 19 (4) A general description of the coverage;
- 20 (5) The itemized amount of [~~premium~~] premiums, taxes, and
21 fees currently charged [~~therefor, and~~] for each state;



1 (6) The policy number, effective date of the policy, and
2 home state of the insurer; and

3 ~~[(6)]~~ (7) [Such] Other additional, pertinent information
4 [as is reasonably] requested by the commissioner.

5 (c) Gross premiums charged for the surplus lines
6 insurance ~~[7]~~ allocable to this State, less any return premiums,
7 are subject to a tax at the rate of 4.68 per cent. At the time
8 of filing the report required in subsection (b) ~~[7]~~ for insurance
9 procured, continued, or renewed after June 30, 2011, if this
10 State is the home state of the insured, the insured shall pay
11 the tax and fees of this State and all other states to the
12 director of finance, through the commissioner. If this State is
13 not the home state of the insured, the insured shall pay the tax
14 and fees of this State to the home state of the insured.

15 As used in this subsection, "gross premiums" mean the
16 amount of the policy or coverage premium charged by the insurer
17 in consideration for the insurance contract ~~[. Any]~~ ; provided
18 that charges for policy, survey, inspection, service, or similar
19 fees or other charges added by the broker shall not be
20 considered part of gross premiums.

21 (d) If an independently procured policy covers risks or
22 exposures only partially located or to be performed in this



1 State, the tax payable shall be computed on the portion of the
2 premium properly attributable to the risks or exposures located
3 or to be performed in this State.

4 (e) Delinquent taxes shall bear interest at the rate of
5 ten per cent per annum.

6 (f) This section does not abrogate or modify, and shall
7 not be construed or deemed to abrogate or modify, any provision
8 of section 431:8-202 or any other provision of this code.

9 (g) This section shall not apply to life insurance,
10 accident and health or sickness insurance, or annuities."

11 SECTION 8. Section 431:8-301, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§431:8-301 Insurance placed with unauthorized insurer**
14 **permitted.** (a) In addition to section 431:8-205, insurance may
15 be procured from an unauthorized insurer; provided[+] that the:

16 (1) [~~The insured~~] Insurance is procured through a
17 [~~licensed~~] surplus lines broker[+] licensed in the
18 insured's home state;

19 (2) [~~The full~~] Full amount or kind of insurance cannot be
20 obtained from insurers who are authorized to do
21 business in this State; provided that a diligent
22 search is made among the insurers who are authorized



1 to transact and are actually writing the particular
2 kind and class of insurance in this State each time
3 [~~sueh~~] the insurance is placed or renewed;

4 (3) [~~The surplus~~] Surplus lines insurance procured is in
5 addition to or in excess of the amount and coverage
6 which can be procured from the authorized insurers;
7 and

8 (4) [~~The insurance~~] Insurance is not procured at a rate
9 lower than the lowest rate which is generally
10 acceptable to authorized insurers transacting that
11 kind of business and providing insurance affording
12 substantially the same protection.

13 (b) A surplus lines broker is not required to make a due
14 diligence search to determine whether the full amount or type of
15 insurance can be obtained from authorized insurers when the
16 broker is seeking to procure or place surplus lines insurance
17 for an exempt commercial purchaser; provided that the:

18 (1) Broker procuring or placing the surplus lines
19 insurance has disclosed to the exempt commercial
20 purchaser that the insurance may or may not be
21 available from the authorized market that may provide
22 greater protection with more regulatory oversight; and



1 (2) Exempt commercial purchaser has subsequently requested
2 in writing for the broker to procure or place the
3 insurance from an unauthorized insurer."

4 SECTION 9. Section 431:8-302, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§431:8-302 Surplus lines [~~in solvent~~] insurers. (a) No
7 surplus lines broker shall, either knowingly or without
8 reasonable investigation of the financial condition and general
9 reputation of the insurer, place insurance with a financially
10 unsound [~~insurers~~] insurer or with [~~insurers~~] an insurer
11 engaging in an unfair [~~practices.~~] practice.

12 [~~(b) Before placing insurance with any unauthorized~~
13 ~~insurer, the broker shall ascertain the financial condition of~~
14 ~~the insurer and:~~

15 ~~(1) In the case of a foreign insurer, shall maintain in~~
16 ~~the broker's office a current certificate, in proper~~
17 ~~form, from the regulatory authority in the domicile of~~
18 ~~the unauthorized insurer, to the effect that the~~
19 ~~insurer has capital and surplus, or its equivalent~~
20 ~~under the laws of its domiciliary jurisdiction, which~~
21 ~~equals the minimum capital and surplus requirements of~~



1 ~~this State for that kind of insurer as set out in~~
2 ~~article 3, or~~

3 ~~(2) In the case of an alien insurer, shall maintain in the~~
4 ~~broker's office evidence of the financial~~
5 ~~responsibility of the insurer. Evidence satisfactory~~
6 ~~to the commissioner that the insurer maintains in the~~
7 ~~United States an irrevocable trust fund in either a~~
8 ~~national bank or a member of the Federal Reserve~~
9 ~~System in an amount not less than \$5,400,000 for the~~
10 ~~protection of all its policyholders in the United~~
11 ~~States consisting of cash, securities, letters of~~
12 ~~credit, or of investments of substantially the same~~
13 ~~character and quality as those which are eligible~~
14 ~~investments for the capital and statutory reserves of~~
15 ~~authorized insurers writing like kinds of insurance in~~
16 ~~this State, shall constitute prima facie evidence of~~
17 ~~responsibility.~~

18 ~~Upon request by the commissioner, the broker shall immediately~~
19 ~~submit to the commissioner the items described in this~~
20 ~~subsection.~~

21 ~~(c) The requirements of this section may be satisfied by~~
22 ~~an insurer possessing less than the capital and surplus set~~



1 ~~forth in subsection (b) upon an affirmative finding of~~
2 ~~acceptability by the commissioner. The finding shall be based~~
3 ~~upon such factors as quality of management, capital and surplus~~
4 ~~of parent company, company underwriting profit and investment~~
5 ~~income trends, and company record and reputation within the~~
6 ~~industry. In no event shall the commissioner make an~~
7 ~~affirmative finding of acceptability when the surplus lines~~
8 ~~insurer's capital and surplus is less than \$500,000.]~~

9 (b) A surplus lines broker may place surplus lines
10 insurance only with insurers who are authorized to write that
11 type of insurance in the insurer's domiciliary state.

12 (c) A surplus lines broker shall not place coverage with
13 an unauthorized insurer unless, at the time of placement, the
14 surplus lines broker has determined that the unauthorized
15 insurer has capital and surplus or its equivalent under the laws
16 of its domiciliary state that equal the greater of:

17 (1) The minimum capital requirement of this State or
18 \$15,000,000; provided that minimum capital
19 requirements may be satisfied by the insurer's
20 possessing less than the minimum capital and surplus
21 upon an affirmative finding of acceptability by the
22 commissioner; provided further that:



- 1 (A) A finding of acceptability pursuant to paragraph
2 (1) shall be based upon factors such as quality
3 of management, capital and surplus of any parent
4 company, company underwriting profit and
5 investment income trends, market availability,
6 and company record and reputation within the
7 industry;
- 8 (B) The commissioner shall not make an affirmative
9 finding of acceptability pursuant to paragraph
10 (1) if the unauthorized insurer's capital and
11 surplus is less than \$4,500,000; or
- 12 (2) For an insurer not domiciled in the United States or
13 its territories, the insurer shall be listed on the
14 Quarterly Listing of Alien Insurers maintained by the
15 National Association of Insurance Commissioners
16 International Insurers Department; provided that for
17 an alien insurer that is not in the Quarterly Listing
18 of Alien Insurers, the surplus lines broker shall
19 maintain in the broker's office evidence of the
20 financial responsibility of the insurer; provided
21 further that evidence satisfactory to the commissioner
22 that the insurer maintains in the United States an



1 irrevocable trust fund in either a national bank or a
2 member of the Federal Reserve System in an amount of
3 not less than \$5,400,000 consisting of cash,
4 securities, letters of credit, or of investments of
5 substantially the same character and quality as those
6 which are eligible investments for the capital and
7 statutory reserves of authorized insurers writing like
8 kinds of insurance in this State for the protection of
9 all its policyholders in the United States, shall
10 constitute prima facie evidence of responsibility.

11 (d) The commissioner is authorized to enter into a
12 cooperative agreement or interstate agreement or compact to
13 establish additional and alternative nationwide uniform
14 eligibility requirements that shall be applicable to
15 unauthorized insurers domiciled in another state."

16 SECTION 10. Section 431:8-305, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Upon placing surplus lines insurance, the surplus
19 lines broker shall as soon as reasonably possible deliver to the
20 insured the policy, or if the policy is not available, the
21 surplus lines broker's certificate, cover note, binder or other
22 evidence of insurance. Any confirmation of insurance shall be



1 executed by the surplus lines broker and shall show the
2 following:

- 3 (1) The policy number, effective date, home state, and the
4 description and location of the subject of the
5 insurance [] ;
6 (2) A general description of the coverages, including any
7 material limitations other than those in standard
8 forms [] ;
9 (3) The premium and rate charged [] itemized by state;
10 (4) The taxes and fees to be collected from the insured []
11 itemized by state;
12 (5) The name and address of the insured [] ;
13 (6) The name and address of the insurer [] ;
14 (7) If the direct risk is assumed by more than one
15 insurer, the certificate shall state the name and
16 address and proportion of the entire direct risk
17 assumed by each insurer [] ; and
18 (8) The name of the surplus lines broker and such broker's
19 license number."

20 SECTION 11. Section 431:8-312, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Each licensed surplus lines broker shall keep in the
2 broker's office in this State a full and true record of each
3 surplus lines contract placed by the broker including a copy of
4 the policy, certificate, cover note, or other evidence of
5 insurance showing such of the following items as may be
6 applicable:

- 7 (1) Amount of the insurance and perils insured;
- 8 (2) Brief description of the property insured and its
9 location;
- 10 (3) Gross premium, taxes, and fees charged[+] itemized by
11 each state;
- 12 (4) Any return premium, taxes, and fees paid[+] itemized
13 by each state;
- 14 (5) Rate of premium charged upon the several items of
15 property;
- 16 (6) Effective date of the contract, and the terms thereof;
- 17 (7) Name [and], address, and home state of the insured;
- 18 (8) Name and address of the insurer;
- 19 (9) Amount of tax and other sums to be collected from the
20 insured[+] itemized by each state; and
- 21 (10) Any additional information required by the
22 commissioner."



1 SECTION 12. Section 431:8-313, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§431:8-313 Surplus lines broker's [annual statement.]
4 reports to the commissioner. (a) Each surplus lines broker
5 shall file with the commissioner on or before March 15 [~~of each~~
6 ~~year~~], 2011, a verified statement of all surplus lines insurance
7 transacted during [~~the preceding calendar year.~~] 2010. Each
8 surplus lines broker shall file with the commissioner on or
9 before September 15, 2011, a verified statement of all surplus
10 lines insurance transacted after December 31, 2010, and before
11 July 1, 2011. After June 30, 2011, each surplus lines broker
12 shall file with the commissioner within forty-five days of the
13 end of each calendar quarter a verified statement of all surplus
14 lines insurance transacted during the calendar quarter as
15 follows:

- 16 (1) The statement for the quarter ending March 31 shall be
17 filed on or before May 15;
18 (2) The statement for the quarter ending June 30 shall be
19 filed on or before August 15;
20 (3) The statement for the quarter ending September 30
21 shall be filed on or before November 15; and



1 (4) The statement for the quarter ending December 31 shall
2 be filed on or before February 15.

3 (b) The statement shall be on forms as prescribed and
4 furnished by the commissioner and shall show:

5 (1) Gross amount of premiums for each kind of insurance
6 transacted;

7 (2) Aggregate gross premiums charged[+] itemized by each
8 state;

9 (3) Aggregate of returned premiums paid to insureds[+]
10 itemized by each state;

11 (4) Aggregate of net premiums[+] and fees itemized by each
12 state;

13 (5) Amount of aggregate [~~tax~~] taxes and fees remitted[+]
14 itemized by each state; and

15 (6) Additional information as required by the
16 commissioner."

17 SECTION 13. Section 431:8-315, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§431:8-315 Tax on surplus lines.** (a) [~~On or before~~
20 ~~March 15 of each year,~~] On or before March 15, 2011, each
21 surplus lines broker shall pay to the director of finance,
22 through the commissioner, a premium tax on surplus lines



1 insurance transacted by [~~such~~] the broker during [~~the preceding~~
2 ~~calendar year.~~] 2010. On or before September 15, 2011, each
3 surplus lines broker shall pay to the director of finance,
4 through the commissioner, a premium tax on surplus lines
5 insurance transacted by the broker after December 31, 2010, and
6 before July 1, 2011. After June 30, 2011, within forty-five
7 days after the end of each calendar quarter, each surplus lines
8 broker shall pay to the director of finance, through the
9 commissioner, a premium tax on surplus lines insurance
10 transacted by the broker during the calendar quarter for
11 insurance for which this State is the home state of the insured.
12 The tax rate shall be in the amount of 4.68 per cent of gross
13 premiums, less return premiums, on [~~taxable~~] surplus lines
14 insurance[~~-~~] allocated to this State. The tax rate and fees of
15 other states shall be applied to the gross premiums, less return
16 premiums, allocated to those states.

17 (b) The commissioner shall collect the taxes and fees on
18 independently procured surplus lines insurance and from surplus
19 lines licensees and disburse to the other states the funds
20 allocated to that state; provided that the other state has a
21 reciprocal allocation and disbursement procedure for the benefit
22 of this State. To the extent that other states where portions



1 of the properties, risks, or exposures reside have failed to
2 establish a reciprocal allocation and disbursement procedure
3 with this State, the net premium tax collected shall be retained
4 by this State.

5 As used in this subsection, "gross premiums" mean the
6 amount of the policy or coverage premium charged by the insurer
7 in consideration for the insurance contract. Any charges for
8 policy, survey, inspection, service, or similar fees or other
9 charges added by the broker shall not be considered part of
10 gross premiums.

11 [~~(b)~~] (c) If a surplus lines policy covers risks or
12 exposures only partially resident in this State, the tax so
13 payable shall be computed upon the proportion of the premium
14 which is properly allocable to the risks or exposures located in
15 this State. The taxes and fees payable to this State on
16 policies that cover risks and exposures only partially resident
17 in this State shall be remitted, on the quarterly schedule, to
18 the home state of the insured for disbursement to this State.

19 [~~(e)~~] (d) The tax on any portion of the premium unearned
20 at the termination of the insurance contract shall be returned
21 to the policyholder.



1 (e) The commissioner may enter into a cooperative
2 agreement, reciprocal agreement, or compact with other states to
3 facilitate and provide for the collection, allocation, and
4 disbursement of premium taxes attributable to the placement of
5 surplus lines insurance; provide for uniform methods of
6 allocation and reporting among surplus lines insurance risk
7 classifications; conform to the requirements of the federal
8 Nonadmitted and Reinsurance Reform Act of 2010; and share
9 information among states relating to surplus lines insurance
10 premium taxes. The commissioner:

11 (1) May establish a uniform statewide rate of taxation
12 applicable to surplus lines insurance that shall be
13 collected by other states; provided that the rate
14 shall encompass all existing rates of taxation, fees,
15 and assessments imposed by this State and any of its
16 political subdivisions; provided further that the
17 commissioner shall document the method by which the
18 statewide rate is calculated;

19 (2) May utilize a method adopted in cooperation with other
20 states to allocate risk and compute the tax due on the
21 portion of premium attributable to each risk



- 1 classification and to each state where properties,
2 risks, or exposures are located;
- 3 (3) Shall assess the insured for the cost of the
4 cooperative agreement, reciprocal agreement, or
5 compact to collect and distribute the premium taxes;
6 and
- 7 (4) Shall, upon application of the insured, refund the
8 insured for excess payments of taxes received by the
9 State that are the result of the statewide tax rate."

10 SECTION 14. Section 431:8-316, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§431:8-316 Penalty for failure to file statement or remit**

13 **tax.** (a) If any surplus lines broker fails to:

14 (1) File [~~an annual statement;~~] statements required by
15 section 431:8-313; or

16 (2) Pay the premium tax required by section 431:8-315 when
17 the tax is due,

18 the surplus lines broker may be liable for a fine of up to \$25
19 for each day of delinquency.

20 (b) The commissioner may:

21 (1) Collect the premium tax required by section 431:8-315
22 by distraint;



- 1 (2) Recover the premium tax required by section 431:8-315
2 and fine for failure to pay the premium tax by
3 instituting an action in any court of competent
4 jurisdiction; or
- 5 (3) Recover the fine for failure to file [~~the annual~~
6 statement] a statement required pursuant to section
7 431:8-313 by instituting an action in any court of
8 competent jurisdiction."

9 SECTION 15. Section 431:8-317, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) The commissioner may suspend, revoke, or refuse to
12 extend any surplus lines broker's license for any cause
13 specified in any other provision of this chapter, or for any of
14 the following causes:

- 15 (1) Failure to file [~~the annual~~] a statement required by
16 section 431:8-313 or to pay the tax required by
17 section 431:8-315;
- 18 (2) Failure to keep records or to allow the commissioner
19 to examine the surplus lines broker's records as
20 provided in this article;



- 1 (3) Removal of office accounts and records from this State
2 during the period in which the accounts are required
3 to be maintained under this article;
- 4 (4) Any of the causes for which a producer's license may
5 be suspended or revoked under article 9A;
- 6 (5) Any cause for which issuance of the license could have
7 been refused had it then existed and been known to the
8 commissioner;
- 9 (6) If the licensee wilfully violates or knowingly
10 participates in the violation of any provision of this
11 code;
- 12 (7) If the licensee has obtained or attempted to obtain
13 the license through wilful misrepresentation or fraud,
14 or has failed to pass any examination required by
15 section 431:9A-105;
- 16 (8) If the licensee has misappropriated, converted to the
17 licensee's own use, or illegally withheld moneys
18 required to be held in a fiduciary capacity;
- 19 (9) If the licensee, with intent to deceive, has
20 materially misrepresented the terms or effect of any
21 insurance contract [7] or has engaged or is about to
22 engage in any fraudulent transaction;



- 1 (10) If the licensee has been guilty of any unfair practice
- 2 or fraud as defined in article 13;
- 3 (11) If in the conduct of the licensee's affairs under the
- 4 license, the licensee has been a source of injury and
- 5 loss to the public;
- 6 (12) If the licensee issues or purports to issue any binder
- 7 as to any insurer named therein as to which the
- 8 licensee is not then authorized so to bind; or
- 9 (13) If the licensee has dealt with[7] or attempted to deal
- 10 with[7] insurance or to exercise powers relative to
- 11 insurance outside the scope of the licensee's
- 12 licenses."

13 SECTION 16. The Insurance Commissioner shall submit

14 recommendations for legislation pertaining to and enabling the

15 Insurance Commissioner to participate fully in the multistate

16 cooperative agreement, interstate agreement, reciprocal

17 agreement, or compact for the collection and distribution of

18 surplus lines premium taxes and fees created pursuant the

19 Nonadmitted and Reinsurance Reform Act of 2010 to the 2012

20 Legislature for adoption by the Legislature.

21 SECTION 17. Statutory material to be repealed is bracketed

22 and stricken. New statutory material is underscored.



1 SECTION 18. This Act shall take effect upon its approval.

2



Report Title:

Insurance

Description:

Amends the insurance code to comply with the federal Nonadmitted and Reinsurance Reform Act of 2010 and to authorize the Insurance Commissioner to participate in a multistate cooperative to collect surplus lines premium taxes and fees and distribute them to the applicable states. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

