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# A BILL FOR AN ACT

RELATING TO SURPLUS LINES.

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

1           SECTION 1. Section 431:8-302, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§431:8-302 Surplus lines insurers. (a) No surplus lines  
4 broker shall, either knowingly or without reasonable  
5 investigation of the financial condition and general reputation  
6 of the insurer, place insurance with a financially unsound  
7 insurer or with an insurer engaging in an unfair practice.

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

11           (c) A surplus lines broker shall not place coverage with  
12 an unauthorized insurer unless, at the time of placement, the  
13 surplus lines broker has determined that:

14           (1) The unauthorized insurer has capital and surplus or  
15 its equivalent under the laws of its domiciliary state  
16 that equal the greater of the minimum capital



1 requirement of this State or a minimum of \$15,000,000;  
2 provided that:

3 (A) Minimum capital requirements may be satisfied by  
4 the insurer's possessing less than the minimum  
5 capital and surplus upon an affirmative finding  
6 of acceptability by the commissioner;

7 (B) A finding of acceptability pursuant to  
8 subparagraph (A) shall be based upon factors such  
9 as quality of management, capital and surplus of  
10 any parent company, company underwriting profit  
11 and investment income trends, market  
12 availability, and company record and reputation  
13 within the industry; and

14 (C) The commissioner shall not make an affirmative  
15 finding of acceptability pursuant to subparagraph  
16 (A) if the unauthorized insurer's capital and  
17 surplus is less than \$4,500,000; or

18 (2) For an insurer not domiciled in the United States or  
19 its territories, the insurer shall be listed on the  
20 Quarterly Listing of Alien Insurers maintained by the



1 National Association of Insurance Commissioners  
2 International Insurers Department; provided that:  
3 (A) If an alien insurer is not in the Quarterly  
4 Listing of Alien Insurers, the surplus lines  
5 broker shall maintain in the broker's office  
6 evidence of the financial responsibility of the  
7 insurer; and  
8 (B) Evidence satisfactory to the commissioner that  
9 the insurer maintains in the United States an  
10 irrevocable trust fund in either a national bank  
11 or a member of the Federal Reserve System in an  
12 amount of not less than \$5,400,000 consisting of  
13 cash, securities, letters of credit, or of  
14 investments of substantially the same character  
15 and quality as those which are eligible  
16 investments for the capital and statutory  
17 reserves of authorized insurers writing like  
18 kinds of insurance in this State, for the  
19 protection of all its policyholders in the United  
20 States, shall constitute prima facie evidence of  
21 the financial responsibility of the insurer.



1       ~~[(d) The commissioner is authorized to enter into a~~  
2 ~~cooperative agreement or interstate agreement or compact to~~  
3 ~~establish additional and alternative nationwide uniform~~  
4 ~~eligibility requirements that shall be applicable to~~  
5 ~~unauthorized insurers domiciled in another state.]"~~

6       SECTION 2. Section 431:8-305, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8       "(a) Upon placing surplus lines insurance, the surplus  
9 lines broker shall as soon as reasonably possible deliver to the  
10 insured the policy or, if the policy is not available, the  
11 surplus lines broker's certificate, cover note, binder, or other  
12 evidence of insurance. Any confirmation of insurance shall be  
13 executed by the surplus lines broker and shall show:

14       (1) The policy number, effective date, home state, and a  
15 description and location of the subject of the  
16 insurance;

17       (2) A general description of the coverages, including any  
18 material limitations other than those in standard  
19 forms;

20       (3) The premium and rate charged~~[, itemized by each~~  
21 state];



- 1           (4) The taxes and fees to be collected from the insured[~~7~~
- 2           ~~itemized by each state~~];
- 3           (5) The name and address of the insured;
- 4           (6) The name and address of the insurer;
- 5           (7) If the direct risk is assumed by more than one
- 6           insurer, the certificate shall state the name and
- 7           address and proportion of the entire direct risk
- 8           assumed by each insurer; and
- 9           (8) The name of the surplus lines broker and such broker's
- 10          license number."

11          SECTION 3. Section 431:8-312, Hawaii Revised Statutes, is  
 12 amended by amending subsection (a) to read as follows:

13          "(a) Each licensed surplus lines broker shall keep in the  
 14 broker's office in this State a full and true record of each  
 15 surplus lines contract placed by the broker including a copy of  
 16 the policy, certificate, cover note, or other evidence of  
 17 insurance including, as applicable:

- 18           (1) Amount of the insurance and perils insured;
- 19           (2) Brief description of the property insured and its
- 20           location;



- 1           (3) Gross premium, taxes, and fees charged[~~, itemized by~~
- 2            ~~each state~~];
- 3           (4) Any return premium, taxes, and fees paid[~~, itemized by~~
- 4            ~~each state~~];
- 5           (5) Rate of premium charged upon the several items of
- 6            property;
- 7           (6) Effective date of the contract and its terms;
- 8           (7) Name, address, and home state of the insured;
- 9           (8) Name and address of the insurer;
- 10          (9) Amount of tax and other sums to be collected from the
- 11          insured[~~, itemized by each state~~]; and
- 12          (10) Any additional information required by the
- 13          commissioner."

14           SECTION 4. Section 431:8-313, Hawaii Revised Statutes, is  
 15 amended by amending subsection (b) to read as follows:

16           "(b) The statement shall be on forms as prescribed and  
 17 furnished by the commissioner and shall show:

- 18          (1) Gross amount of premiums for each kind of insurance
- 19          transacted;
- 20          (2) [~~Aggregate gross~~] Gross premiums charged[~~, itemized by~~
- 21          ~~each state~~];



- 1 (3) [~~Aggregate of returned~~] Returned premiums paid to  
2 insureds [~~, itemized by each state~~];
- 3 (4) [~~Aggregate of net~~] Net premiums and fees [~~, itemized by~~  
4 ~~each state~~];
- 5 (5) Amount of [~~aggregate~~] remitted taxes and fees [~~,  
6 itemized by each state~~]; and
- 7 (6) Additional information as required by the  
8 commissioner."

9 SECTION 5. Section 431:8-315, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§431:8-315 Tax on surplus lines.** (a) On or before  
12 March 15, 2011, each surplus lines broker shall pay to the  
13 director of finance, through the commissioner, a premium tax on  
14 surplus lines insurance transacted by the broker during 2010.  
15 On or before September 15, 2011, each surplus lines broker shall  
16 pay to the director of finance, through the commissioner, a  
17 premium tax on surplus lines insurance transacted by the broker  
18 after December 31, 2010, and before July 1, 2011. After  
19 June 30, 2011, within forty-five days after the end of each  
20 calendar quarter, each surplus lines broker shall pay to the  
21 director of finance, through the commissioner, a premium tax on



1 surplus lines insurance transacted by the broker during the  
2 calendar quarter for insurance for which this State is the home  
3 state of the insured. The tax rate shall be in the amount of  
4 4.68 per cent of gross premiums, less return premiums, on  
5 surplus lines insurance ~~[allocated to]~~ for which the home state  
6 is this State. ~~[The tax rate and fees of other states shall be~~  
7 ~~applied to the gross premiums, less return premiums, allocated~~  
8 ~~to those states.]~~

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

15 ~~[(b) The commissioner shall collect the taxes and fees on~~  
16 ~~independently procured surplus lines insurance and from surplus~~  
17 ~~lines licensees and disburse to the other states the funds~~  
18 ~~earned by each state; provided that the other state has a~~  
19 ~~reciprocal allocation and disbursement procedure for the benefit~~  
20 ~~of this State. To the extent that other states, where portions~~  
21 ~~of the properties, risks, or exposures reside, have failed to~~





1 ~~establish a reciprocal allocation and disbursement procedure~~  
2 ~~with this State, the net premium tax collected shall be retained~~  
3 ~~by this State.~~

4 ~~(c) If a surplus lines policy covers risks or exposures~~  
5 ~~only partially resident in this State, the tax payable shall be~~  
6 ~~computed upon the proportion of the premium which is properly~~  
7 ~~allocable to the risks or exposures located in this State. The~~  
8 ~~taxes and fees payable to this State on policies that cover~~  
9 ~~risks and exposures only partially resident in this State shall~~  
10 ~~be remitted on the quarterly schedule established by subsection~~  
11 ~~(a) to the home state of the insured for disbursement to this~~  
12 ~~State.~~

13 ~~(d)]~~ (b) The tax on any portion of the premium unearned at  
14 the termination of the insurance contract shall be returned to  
15 the policyholder.

16 ~~[(c) The commissioner may:~~

17 ~~(1) Enter into a cooperative agreement, reciprocal~~  
18 ~~agreement, or compact with other states to facilitate~~  
19 ~~and provide for the collection, allocation, and~~  
20 ~~disbursement of premium taxes attributable to the~~  
21 ~~placement of surplus lines insurance;~~



- 1       ~~(2) Provide for uniform methods of allocation and~~  
2       ~~reporting among surplus lines insurance risk~~  
3       ~~classifications;~~
- 4       ~~(3) Conform to the requirements of the federal Nonadmitted~~  
5       ~~and Reinsurance Reform Act of 2010;~~
- 6       ~~(4) Share information among states relating to surplus~~  
7       ~~lines insurance premium taxes; and~~
- 8       ~~(5) Utilize a method adopted in cooperation with other~~  
9       ~~states to allocate risk and compute the tax due on the~~  
10       ~~portion of premium attributable to each risk~~  
11       ~~classification and to each state where properties,~~  
12       ~~risks, or exposures are located.~~

13       ~~The commissioner shall assess the insured for the cost of~~  
14       ~~the cooperative agreement, reciprocal agreement, or compact to~~  
15       ~~collect and distribute the premium taxes. Upon application of~~  
16       ~~the insured, the commissioner shall refund the insured for~~  
17       ~~excess payments of taxes received by the State that are the~~  
18       ~~result of the statewide tax rate.] "~~

19       SECTION 6. Statutory material to be repealed is bracketed  
20       and stricken. New statutory material is underscored.

21       SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

Surplus Lines Premium Tax; Insurance

**Description:**

Amends the calculation of surplus lines insurance premium tax to tax the entirety of the premium using the rate established by Hawaii statute regardless of location of risk. Repeals the authority for the Insurance Commissioner to enter into interstate compacts to collect surplus lines premium taxes.  
(HB71 HD1)

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

