A BILL FOR AN ACT

RELATING TO SURPLUS LINES.

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

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

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

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

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

(1) The unauthorized insurer has capital and surplus or its equivalent under the laws of its domiciliary state that equal the greater of the minimum capital
requirement of this State or a minimum of $15,000,000;
provided that:

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

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

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

(2) For an insurer not domiciled in the United States or
its territories, the insurer shall be listed on the
Quarterly Listing of Alien Insurers maintained by the
National Association of Insurance Commissioners
International Insurers Department; provided that:

(A) If an alien insurer is not in the Quarterly Listing of Alien Insurers, the surplus lines broker shall maintain in the broker's office evidence of the financial responsibility of the insurer; and

(B) Evidence satisfactory to the commissioner that the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System in an amount of not less than $5,400,000 consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of authorized insurers writing like kinds of insurance in this State, for the protection of all its policyholders in the United States, shall constitute prima facie evidence of the financial responsibility of the insurer.
[(d) The commissioner is authorized to enter into a
cooperative agreement or interstate agreement or compact to
establish additional and alternative nationwide uniform
eligibility requirements that shall be applicable to
unauthorized insurers domiciled in another state.]

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

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

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

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

(3) The premium and rate charged[,] itemized by each
state];
(4) The taxes and fees to be collected from the insured itemized by each state;

(5) The name and address of the insured;

(6) The name and address of the insurer;

(7) If the direct risk is assumed by more than one insurer, the certificate shall state the name and address and proportion of the entire direct risk assumed by each insurer; and

(8) The name of the surplus lines broker and such broker's license number."

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

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

(1) Amount of the insurance and perils insured;

(2) Brief description of the property insured and its location;
(3) Gross premium, taxes, and fees charged [itemized by each state];

(4) Any return premium, taxes, and fees paid [itemized by each state];

(5) Rate of premium charged upon the several items of property;

(6) Effective date of the contract and its terms;

(7) Name, address, and home state of the insured;

(8) Name and address of the insurer;

(9) Amount of tax and other sums to be collected from the insured [itemized by each state]; and

(10) Any additional information required by the commissioner."

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

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

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

(2) [Aggregate-gross] Gross premiums charged [itemized by each state];
(3) Returned premiums paid to insureds, itemized by each state;

(4) Net premiums and fees, itemized by each state;

(5) Amount of remitted taxes and fees, itemized by each state; and

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

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

"§431:8-315 Tax on surplus lines. (a) On or before March 15, 2011, each surplus lines broker shall pay to the director of finance, through the commissioner, a premium tax on surplus lines insurance transacted by the broker during 2010. On or before September 15, 2011, each surplus lines broker shall pay to the director of finance, through the commissioner, a premium tax on surplus lines insurance transacted by the broker after December 31, 2010, and before July 1, 2011. After June 30, 2011, within forty-five days after the end of each calendar quarter, each surplus lines broker shall pay to the director of finance, through the commissioner, a premium tax on
surplus lines insurance transacted by the broker during the
calendar quarter for insurance for which this State is the home
state of the insured. The tax rate shall be in the amount of
4.68 per cent of gross premiums, less return premiums, on
surplus lines insurance [allocated to] for which the home state
is this State. [The tax rate and fees of other states shall be
applied to the gross premiums, less return premiums, allocated
to those states.]

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

[(b) The commissioner shall collect the taxes and fees on
independently procured surplus lines insurance and from surplus
lines licensees and disburse to the other states the funds
earned by each state, provided that the other state has a
reciprocal allocation and disbursement procedure for the benefit
of this State. To the extent that other states, where portions
of the properties, risks, or exposures reside, have failed to
establish a reciprocal allocation and disbursement procedure
with this State, the net premium tax collected shall be retained
by this State.

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

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

(e) The commissioner may:

(1) Enter into a cooperative agreement, reciprocal
agreement, or compact with other states to facilitate
and provide for the collection, allocation, and
disbursement of premium taxes attributable to the
placement of surplus lines insurance;
(2) Provide for uniform methods of allocation and reporting among surplus lines insurance risk classifications;

(3) Conform to the requirements of the federal Nonadmitted and Reinsurance Reform Act of 2010;

(4) Share information among states relating to surplus lines insurance premium taxes; and

(5) Utilize a method adopted in cooperation with other states to allocate risk and compute the tax due on the portion of premium attributable to each risk classification and to each state where properties, risks, or exposures are located.

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

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 7. This Act shall take effect upon its approval.

INTRODUCED BY: __________________________

JAN 17 2019
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.

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