

---

---

# 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 participate in a multi-state  
5 cooperative to collect surplus lines premium taxes and fees and  
6 distribute to the individual states their taxes and fees.

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

9 "**§431:1-213 State defined.** State means any state of the  
10 United States and the governments of Puerto Rico, American  
11 Samoa, Guam, Northern Mariana Islands, United States Virgin  
12 Islands, and the District of Columbia."

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

15 "**§431:1-214 United States defined.** United States, when  
16 used to signify a place, means the states of the United States  
17 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 subject resident is located or in which the insurance contract  
10 will be performed."

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

13 1. By adding definitions for "exempt commercial  
14 purchaser", "home state", "home state of affiliated group",  
15 "home state of group insurance", "independently procured  
16 insurance", "multi-state risk", "principal place of business",  
17 "principal residence", and "single state risk" to read as  
18 follows:

19 ""Exempt commercial purchaser" means any person purchasing  
20 commercial insurance which, at the time of placement, employs or  
21 retains a qualified risk manager to negotiate insurance  
22 coverage; and has paid aggregate nationwide commercial property



1 and casualty insurance premiums in excess of \$100,000 in the  
2 immediately preceding twelve months. The person shall possess a  
3 net worth in excess of \$20,000,000, or the person shall generate  
4 annual revenues in excess of \$50,000,000, or the person shall  
5 employ more than five hundred full time or full time equivalent  
6 employees per individual insured or is a member of an affiliated  
7 group employing more than 1,000 employees in the aggregate, or  
8 the person is a not-for-profit organization or public entity  
9 generating annual budgeted expenditures of at least \$30,000,000,  
10 or the person is a municipality with a population in excess of  
11 50,000 persons. Effective on January 1, 2015, and every five  
12 years thereafter, the amount of net worth, annual revenues, and  
13 budgeted expenditures shall be adjusted to reflect the  
14 percentage change for that five-year period in the Consumer  
15 Price Index for All Urban Consumers published by the Bureau of  
16 Labor Statistics of the federal Department of Labor.

17 "Home State", with respect to an insured, means the state  
18 in which an insured maintains the insured's principal place of  
19 business or, in the case of an individual, the state in which  
20 the individual maintains the individual's principal residence;  
21 except that if one hundred per cent of the insured risk is  
22 located out of the state where the insured maintains the



1 insured's principal place of business or the state where the  
2 individual maintains the principal residence, the home state  
3 shall be the state where the greatest percentage of the  
4 insured's taxable premium for that insurance contract is  
5 allocated.

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

12 "Home state of group insurance" means the home state of the  
13 group policyholder who pays one hundred per cent of the premium  
14 from the policyholder's own funds. When the group policyholder  
15 does not pay one hundred per cent of the premium from the  
16 policyholder's own funds, the term "home state" means the home  
17 state of the group member.

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

21 "Multi-state risk" means a risk covered by an unauthorized  
22 insurer with insured exposures in more than one state.



1       "Principal place of business" means, with respect to  
2 determining the home state of the insured, means:

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

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

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

18       "Principal residence", with respect to determining the home  
19 state of the individual insured, means:

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

1       (2) If the insured's principal residence is located  
2           outside 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 as  
9 follows:

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

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

20        "Unauthorized insurer" means an insurer not holding a valid  
21 certificate of authority to transact an insurance business in



1 ~~[this State.]~~ the State in which the subject resident is located  
2 or in which the insurance contract will be performed."

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

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

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



1 accident and health or sickness insurance or group  
2 annuities where the master policy of such groups was  
3 lawfully issued and delivered in and pursuant to the  
4 laws of a state in which the insurer was authorized to  
5 do an insurance business;

6 (6) Transactions in this State involving any policy of  
7 insurance or annuity contract issued prior to July 1,  
8 1988; ~~and~~

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

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

15 SECTION 7. Section 431:8-205, Hawaii Revised Statutes, is  
16 amended by amending subsections (b) and (c) to read as follows:

17 **"§431:8-205 Insurance independently procured; duty to**  
18 **report and pay tax.**

19 "(b) Each insured who in this State, before July 1, 2011,  
20 procures ~~[or]~~ , continues, or renews ~~[insurance with an~~  
21 ~~unauthorized insurer]~~ surplus lines insurance on a risk located  
22 or to be performed in whole ~~[or in part]~~ in this State, other





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

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



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

3 (c) Gross premiums charged for the surplus lines  
4 insurance[~~7~~] allocable to this State, less any return premiums,  
5 are subject to a tax at the rate of 4.68 per cent. At the time  
6 of filing the report required in subsection (b) for insurance  
7 procured, continued, or renewed before July 1, 2011, the insured  
8 shall pay the tax to the commissioner. At the time of filing  
9 the report required in subsection (b) for insurance procured,  
10 continued, or renewed after June 30, 2011, when this State is  
11 the home state of the insured, the insured shall pay the tax and  
12 fees of this State and all other states to the director of  
13 finance, through the commissioner. When this State is not the  
14 home state of the insured, the insured shall pay the tax and  
15 fees of this State to the home state of the insured.

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



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

3 "**§431:8-301 Insurance placed with unauthorized insurer**  
4 **permitted.** (a) In addition to section 431:8-205, insurance may  
5 be procured from an unauthorized insurer; provided that:

6 (1) The insurance is procured through a [~~licensed~~] surplus  
7 lines broker licensed in the insured's home state;

8 (2) The full amount or kind of insurance cannot be  
9 obtained from insurers who are authorized to do  
10 business in this State; provided that a diligent  
11 search is made among the insurers who are authorized  
12 to transact and are actually writing the particular  
13 kind and class of insurance in this State each time  
14 such insurance is placed or renewed;

15 (3) The surplus lines insurance procured is in addition to  
16 or in excess of the amount and coverage which can be  
17 procured from the authorized insurers; and

18 (4) The insurance is not procured at a rate lower than the  
19 lowest rate which is generally acceptable to  
20 authorized insurers transacting that kind of business  
21 and providing insurance affording substantially the  
22 same protection.



1        (b) A surplus lines broker is not required to make a due  
2 diligence search to determine whether the full amount or type of  
3 insurance can be obtained from admitted insurers when the broker  
4 is seeking to procure or place nonadmitted insurance for an  
5 exempt commercial purchaser provided:

6        (1) The broker procuring or placing the surplus lines  
7 insurance has disclosed to the exempt commercial  
8 purchaser that such insurance may or may not be  
9 available from the admitted market that may provide  
10 greater protection with more regulatory oversight; and

11        (2) The exempt commercial purchaser has subsequently  
12 requested in writing for the broker to procure or  
13 place the insurance from a nonadmitted insurer."

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

16        "**§431:8-302 Surplus lines [~~in-solvent~~] insurers.** (a) No  
17 surplus lines broker shall, either knowingly or without  
18 reasonable investigation of the financial condition and general  
19 reputation of the insurer, place insurance with a financially  
20 unsound [~~insurers~~] insurer or with [~~insurers~~] an insurer  
21 engaging in an unfair [~~practices~~] practice.



1       ~~[(b) Before placing insurance with any unauthorized~~  
2 ~~insurer, the broker shall ascertain the financial condition of~~  
3 ~~the insurer and:~~

4       ~~(1) In the case of a foreign insurer, shall maintain in~~  
5 ~~the broker's office a current certificate, in proper~~  
6 ~~form, from the regulatory authority in the domicile of~~  
7 ~~the unauthorized insurer, to the effect that the~~  
8 ~~insurer has capital and surplus, or its equivalent~~  
9 ~~under the laws of its domiciliary jurisdiction, which~~  
10 ~~equals the minimum capital and surplus requirements of~~  
11 ~~this State for that kind of insurer as set out in~~  
12 ~~article 3; or~~

13       ~~(2) In the case of an alien insurer, shall maintain in the~~  
14 ~~broker's office evidence of the financial~~  
15 ~~responsibility of the insurer. Evidence satisfactory~~  
16 ~~to the commissioner that the insurer maintains in the~~  
17 ~~United States an irrevocable trust fund in either a~~  
18 ~~national bank or a member of the Federal Reserve~~  
19 ~~System in an amount not less than \$5,400,000 for the~~  
20 ~~protection of all its policyholders in the United~~  
21 ~~States consisting of cash, securities, letters of~~  
22 ~~credit, or of investments of substantially the same~~



1 ~~character and quality as those which are eligible~~  
2 ~~investments for the capital and statutory reserves of~~  
3 ~~authorized insurers writing like kinds of insurance in~~  
4 ~~this State, shall constitute prima facie evidence of~~  
5 ~~responsibility.~~

6 ~~Upon request by the commissioner, the broker shall immediately~~  
7 ~~submit to the commissioner the items described in this~~  
8 ~~subsection.~~

9 ~~(c) The requirements of this section may be satisfied by~~  
10 ~~an insurer possessing less than the capital and surplus set~~  
11 ~~forth in subsection (b) upon an affirmative finding of~~  
12 ~~acceptability by the commissioner. The finding shall be based~~  
13 ~~upon such factors as quality of management, capital and surplus~~  
14 ~~of parent company, company underwriting profit and investment~~  
15 ~~income trends, and company record and reputation within the~~  
16 ~~industry. In no event shall the commissioner make an~~  
17 ~~affirmative finding of acceptability when the surplus lines~~  
18 ~~insurer's capital and surplus is less than \$500,000.]~~

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



1        (c) A surplus lines broker shall not place coverage with a  
2 nonadmitted insurer unless, at the time of placement, the  
3 surplus lines broker has determined that the nonadmitted insurer  
4 has capital and surplus or its equivalent under the laws of its  
5 domiciliary state that equal the greater of:

6        (1) The minimum capital requirement of this State or a  
7 minimum of \$15,000,000. These requirements may be  
8 satisfied by the insurer's possessing less than the  
9 minimum capital and surplus upon an affirmative  
10 finding of acceptability by the commissioner. The  
11 finding shall be based upon such factors as quality of  
12 management, capital and surplus of any parent company,  
13 company underwriting profit and investment income  
14 trends, market availability, and company record and  
15 reputation within the industry. In no event shall the  
16 commissioner make an affirmative finding of  
17 acceptability when the nonadmitted insurer's capital  
18 and surplus is less than \$4,500,000.

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



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

18 (d) The commissioner is authorized to enter into a  
19 cooperative agreement or interstate agreement or compact to  
20 establish additional and alternative nationwide uniform  
21 eligibility requirements that shall be applicable to nonadmitted  
22 insurers domiciled in another state."





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

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

- 10 (1) The policy number, effective date, home state, and the  
11 description and location of the subject of the  
12 insurance,
- 13 (2) A general description of the coverages, including any  
14 material limitations other than those in standard  
15 forms,
- 16 (3) The premium and rate charged itemized by each state,
- 17 (4) The taxes and fees to be collected from the insured  
18 itemized by each state,
- 19 (5) The name and address of the insured,
- 20 (6) The name and address of the insurer,
- 21 (7) If the direct risk is assumed by more than one  
22 insurer, the certificate shall state the name and



1 address and proportion of the entire direct risk  
2 assumed by each insurer, and  
3 (8) The name of the surplus lines broker and such broker's  
4 license number."

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

7 "(a) Each licensed surplus lines broker shall keep in the  
8 broker's office in this State a full and true record of each  
9 surplus lines contract placed by the broker including a copy of  
10 the policy, certificate, cover note, or other evidence of  
11 insurance showing such of the following items as may be  
12 applicable:

- 13 (1) Amount of the insurance and perils insured;  
14 (2) Brief description of the property insured and its  
15 location;  
16 (3) Gross premium, taxes and fees charged itemized by each  
17 state;  
18 (4) Any return premium, taxes and fees paid itemized by  
19 each state;  
20 (5) Rate of premium charged upon the several items of  
21 property;  
22 (6) Effective date of the contract, and the terms thereof;



- 1 (7) Name [~~and~~], address, and home state of the insured;
- 2 (8) Name and address of the insurer;
- 3 (9) Amount of tax and other sums to be collected from the
- 4 insured itemized by each state; and
- 5 (10) Any additional information required by the
- 6 commissioner."

7 SECTION 12. Section 431:8-313, Hawaii Revised Statutes, is

8 amended to read as follows:

9 "§431:8-313 Surplus lines broker's [~~annual statement~~]

10 reports to commissioner. (a) Each surplus lines broker shall

11 file with the commissioner on or before March 15 [~~of each year~~]

12 , 2011 a verified statement of all surplus lines insurance

13 transacted during [~~the preceding calendar year~~] 2010. Each

14 surplus lines broker shall file with the commissioner on or

15 before September 15, 2011, a verified statement of all surplus

16 lines insurance transacted after December 31, 2010, and before

17 July 1, 2011. After June 30, 2011, each surplus lines broker

18 shall file with the commissioner within forty-five days of the

19 end of each calendar quarter a verified statement of all surplus

20 lines insurance transacted during the calendar quarter. The

21 statement for the quarter ending September 30 shall be filed

22 before or on November 15. The statement for the quarter ending



1 December 31 shall be filed before or on February 15. The  
2 statement for the quarter ending March 31 shall be filed before  
3 or on May 15. The statement for the quarter ending June 30  
4 shall be filed before or on August 15.

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

- 7 (1) Gross amount of premiums for each kind of insurance  
8 transacted;
- 9 (2) Aggregate gross premiums charged[+] and itemized by  
10 state;
- 11 (3) Aggregate of returned premiums paid to insureds[+] and  
12 itemized by state;
- 13 (4) Aggregate of net premiums[+] and fees and itemized by  
14 state;
- 15 (5) Amount of aggregate [~~tax~~] remitted[+] taxes and fees  
16 and itemized by state; and
- 17 (6) Additional information as required by the  
18 commissioner."

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

21 "**§431:8-315 Tax on surplus lines.** (a) [~~On or before~~  
22 ~~March 15 of each year,~~] On or before March 15, 2011, each



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

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  
22 establish a reciprocal allocation and disbursement procedure



1 with this State, the net premium tax collected shall be retained  
2 by this State.

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

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

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

20 (e) The commissioner may enter into a cooperative  
21 agreement, reciprocal agreement, or compact with other states to  
22 facilitate and provide for the collection, allocation, and



1 disbursement of premium taxes attributable to the placement of  
2 surplus lines insurance; provide for uniform methods of  
3 allocation and reporting among surplus lines insurance risk  
4 classifications; conform to the requirements of the federal  
5 Nonadmitted and Reinsurance Reform Act of 2010; and share  
6 information among states relating to surplus lines insurance  
7 premium taxes.

8       (1) The commissioner may utilize a method adopted in  
9       cooperation with other states to allocate risk and  
10       compute the tax due on the portion of premium  
11       attributable to each risk classification and to each  
12       state where properties, risks, or exposures are  
13       located;

14       (2) The commissioner shall assess the insured for the cost  
15       of the cooperative agreement, reciprocal agreement, or  
16       compact to collect and distribute the premium taxes;  
17       and

18       (3) Upon application of the insured, the commissioner  
19       shall refund the insured for excess payments of taxes  
20       received by the State that are the result of the  
21       statewide tax rate."



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

3 "**§431:8-316 Penalty for failure to file statement or remit**

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

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

7 (2) Pay the premium tax required by section 431:8-315 when  
8 the tax is due, the surplus lines broker may be liable  
9 for a fine of up to \$25 for each day of delinquency.

10 (b) The commissioner may:

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

13 (2) Recover the premium tax required by section 431:8-315  
14 and fine for failure to pay the premium tax by  
15 instituting an action in any court of competent  
16 jurisdiction; or

17 (3) Recover the fine for failure to file the [~~annual~~]  
18 statement by instituting an action in any court of  
19 competent jurisdiction."

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





1           (a) The commissioner may suspend, revoke, or refuse to  
2 extend any surplus lines broker's license for any cause  
3 specified in any other provision of this chapter, or for any of  
4 the following causes:

- 5           (1) Failure to file [~~the annual statement~~] statements  
6                 required by section 431:8-313 or to pay the tax  
7                 required by section 431:8-315;
- 8           (2) Failure to keep records or to allow the commissioner  
9                 to examine the surplus lines broker's records as  
10                provided in this article;
- 11           (3) Removal of office accounts and records from this State  
12                during the period in which the accounts are required  
13                to be maintained under this article;
- 14           (4) Any of the causes for which a producer's license may  
15                be suspended or revoked under article 9A;
- 16           (5) Any cause for which issuance of the license could have  
17                been refused had it then existed and been known to the  
18                commissioner;
- 19           (6) If the licensee wilfully violates or knowingly  
20                participates in the violation of any provision of this  
21                code;



- 1 (7) If the licensee has obtained or attempted to obtain  
2 the license through wilful misrepresentation or fraud,  
3 or has failed to pass any examination required by  
4 section 431:9A-105;
- 5 (8) If the licensee has misappropriated, converted to the  
6 licensee's own use, or illegally withheld moneys  
7 required to be held in a fiduciary capacity;
- 8 (9) If the licensee, with intent to deceive, has  
9 materially misrepresented the terms or effect of any  
10 insurance contract, or has engaged or is about to  
11 engage in any fraudulent transaction;
- 12 (10) If the licensee has been guilty of any unfair practice  
13 or fraud as defined in article 13;
- 14 (11) If in the conduct of the licensee's affairs under the  
15 license, the licensee has been a source of injury and  
16 loss to the public;
- 17 (12) If the licensee issues or purports to issue any binder  
18 as to any insurer named therein as to which the  
19 licensee is not then authorized so to bind; or
- 20 (13) If the licensee has dealt with, or attempted to deal  
21 with, insurance or to exercise powers relative to



1 insurance outside the scope of the licensee's  
2 licenses."

3 SECTION 16. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 17. This Act shall take effect upon its approval.



**Report Title:**

Insurance

**Description:**

Adopts amendments to the insurance code to comply with the federal Nonadmitted and Reinsurance Reform Act of 2010 relating to surplus lines insurance and participate in a multi-state cooperative to collect surplus lines premium taxes and fees and distribute to the individual states the taxes and fees they assessed. (HB1052 HD1)

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

