

ACT 216

S.B. NO. 19

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) ~~[Aggregate of returned]~~ Returned premiums paid to insureds~~[-itemized by each state];~~
- (4) ~~[Aggregate of net]~~ Net premiums and fees~~[-itemized by each state];~~
- (5) Amount of ~~[aggregate]~~ 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 on October 1, 2019.

(Approved July 2, 2019.)