

Union Calendar No. 404

109TH CONGRESS
2^D SESSION

H. R. 5637

[Report No. 109-649, Part I]

To streamline the regulation of nonadmitted insurance and reinsurance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2006

Ms. GINNY BROWN-WAITE of Florida (for herself, Mr. MOORE of Kansas, Mr. BAKER, Ms. HOOLEY, Mr. FEENEY, Ms. WASSERMAN SCHULTZ, Mr. SESSIONS, Mr. HOLDEN, Mr. FOSSELLA, Mr. SCOTT of Georgia, Mr. BACHUS, Ms. BEAN, Mr. RENZI, Mr. ISRAEL, Mr. FITZPATRICK of Pennsylvania, Mr. CROWLEY, and Mrs. BIGGERT) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 12, 2006

Reported from the Committee on Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

SEPTEMBER 12, 2006

Referral to the Committee on the Judiciary extended for a period ending not later than September 22, 2006

SEPTEMBER 22, 2006

Additional sponsors: Mr. GILLMOR, Mr. MCHENRY, Mr. CAMPBELL of California, and Mr. MANZULLO

SEPTEMBER 22, 2006

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To streamline the regulation of nonadmitted insurance and reinsurance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“Nonadmitted and Reinsurance Reform Act of 2006”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 7 *this Act is as follows:*

Sec. 1. Short title and table of contents.

Sec. 2. Effective date.

TITLE I—NONADMITTED INSURANCE

Sec. 101. Reporting, payment, and allocation of premium taxes.

Sec. 102. Regulation of nonadmitted insurance by insured’s home State.

Sec. 103. Participation in national producer database.

Sec. 104. Uniform standards for surplus lines eligibility.

Sec. 105. Streamlined application for commercial purchasers.

Sec. 106. GAO study of nonadmitted insurance market.

Sec. 107. Definitions.

TITLE II—REINSURANCE

Sec. 201. Regulation of credit for reinsurance and reinsurance agreements.

Sec. 202. Regulation of reinsurer solvency.

Sec. 203. Definitions.

8 **SEC. 2. EFFECTIVE DATE.**

9 *Except as otherwise specifically provided in this Act,*
 10 *this Act shall take effect upon the expiration of the 12-*

1 month period beginning on the date of the enactment of this
2 Act.

3 **TITLE I—NONADMITTED**
4 **INSURANCE**

5 **SEC. 101. REPORTING, PAYMENT, AND ALLOCATION OF PRE-**
6 **MIUM TAXES.**

7 (a) *HOME STATE'S EXCLUSIVE AUTHORITY.*—No
8 State other than the home State of an insured may require
9 any premium tax payment for nonadmitted insurance.

10 (b) *ALLOCATION OF NONADMITTED PREMIUM*
11 *TAXES.*—

12 (1) *IN GENERAL.*—The States may enter into a
13 compact or otherwise establish procedures to allocate
14 among the States the premium taxes paid to an in-
15 sured's home State described in subsection (a).

16 (2) *EFFECTIVE DATE.*—Except as expressly oth-
17 erwise provided in such compact or other procedures,
18 any such compact or other procedures—

19 (A) if adopted on or before the expiration of
20 the 330-day period that begins on the date of the
21 enactment of this Act, shall apply to any pre-
22 mium taxes that, on or after such date of enact-
23 ment, are required to be paid to any State that
24 is subject to such compact or procedures; and

1 (B) if adopted after the expiration of such
2 330-day period, shall apply to any premium
3 taxes that, on or after January 1 of the first cal-
4 endar year that begins after the expiration of
5 such 330-day period, are required to be paid to
6 any State that is subject to such compact or pro-
7 cedures.

8 (3) *REPORT.*—Upon the expiration of the 330-
9 day period referred to in paragraph (2), the NAIC
10 may submit a report to the Committee on Financial
11 Services of the House of Representatives and the Com-
12 mittee on Banking, Housing, and Urban Affairs of
13 the Senate identifying and describing any compact or
14 other procedures for allocation among the States of
15 premium taxes that have been adopted during such
16 period by any States.

17 (4) *NATIONWIDE SYSTEM.*—The Congress intends
18 that each State adopt a nationwide or uniform proce-
19 dure, such as an interstate compact, that provides for
20 the reporting, payment, collection, and allocation of
21 premium taxes for nonadmitted insurance consistent
22 with this section.

23 (c) *ALLOCATION BASED ON TAX ALLOCATION RE-*
24 *PORT.*—To facilitate the payment of premium taxes among
25 the States, an insured’s home State may require surplus

1 *lines brokers and insureds who have independently procured*
2 *insurance to annually file tax allocation reports with the*
3 *insured's home State detailing the portion of the non-*
4 *admitted insurance policy premium or premiums attrib-*
5 *utable to properties, risks or exposures located in each State.*
6 *The filing of a nonadmitted insurance tax allocation report*
7 *and the payment of tax may be made by a person author-*
8 *ized by the insured to act as its agent.*

9 **SEC. 102. REGULATION OF NONADMITTED INSURANCE BY**
10 **INSURED'S HOME STATE.**

11 (a) *HOME STATE AUTHORITY.*—*Except as otherwise*
12 *provided in this section, the placement of nonadmitted in-*
13 *surance shall be subject to the statutory and regulatory re-*
14 *quirements solely of the insured's home State.*

15 (b) *BROKER LICENSING.*—*No State other than an in-*
16 *sured's home State may require a surplus lines broker to*
17 *be licensed in order to sell, solicit, or negotiate nonadmitted*
18 *insurance with respect to such insured.*

19 (c) *ENFORCEMENT PROVISION.*—*Any law, regulation,*
20 *provision, or action of any State that applies or purports*
21 *to apply to nonadmitted insurance sold to, solicited by, or*
22 *negotiated with an insured whose home State is another*
23 *State shall be preempted with respect to such application.*

24 (d) *WORKERS' COMPENSATION EXCEPTION.*—*This sec-*
25 *tion may not be construed to preempt any State law, rule,*

1 *or regulation that restricts the placement of workers' com-*
2 *ensation insurance or excess insurance for self-funded*
3 *workers' compensation plans with a nonadmitted insurer.*

4 **SEC. 103. PARTICIPATION IN NATIONAL PRODUCER DATA-**
5 **BASE.**

6 *After the expiration of the 2-year period beginning on*
7 *the date of the enactment of this Act, a State may not collect*
8 *any fees relating to licensing of an individual or entity as*
9 *a surplus lines broker in the State unless the State has in*
10 *effect at such time laws or regulations that provide for par-*
11 *ticipation by the State in the national insurance producer*
12 *database of the NAIC, or any other equivalent uniform na-*
13 *tional database, for the licensure of surplus lines brokers*
14 *and the renewal of such licenses.*

15 **SEC. 104. UNIFORM STANDARDS FOR SURPLUS LINES ELIGI-**
16 **BILITY.**

17 *A State may not—*

18 *(1) impose eligibility requirements on, or other-*
19 *wise establish eligibility criteria for, nonadmitted in-*
20 *surers domiciled in a United States jurisdiction, ex-*
21 *cept in conformance with section 5A(2) and 5C(2)(a)*
22 *of the Non-Admitted Insurance Model Act; and*

23 *(2) prohibit a surplus lines broker from placing*
24 *nonadmitted insurance with, or procuring non-*
25 *admitted insurance from, a nonadmitted insurer*

1 *domiciled outside the United States that is listed on*
2 *the Quarterly Listing of Alien Insurers maintained*
3 *by the International Insurers Department of the*
4 *NAIC.*

5 **SEC. 105. STREAMLINED APPLICATION FOR COMMERCIAL**
6 **PURCHASERS.**

7 *A surplus lines broker seeking to procure or place non-*
8 *admitted insurance in a State for an exempt commercial*
9 *purchaser shall not be required to satisfy any State require-*
10 *ment to make a due diligence search to determine whether*
11 *the full amount or type of insurance sought by such exempt*
12 *commercial purchaser can be obtained from admitted insur-*
13 *ers if—*

14 *(1) the broker procuring or placing the surplus*
15 *lines insurance has disclosed to the exempt commer-*
16 *cial purchaser that such insurance may or may not*
17 *be available from the admitted market that may pro-*
18 *vide greater protection with more regulatory over-*
19 *sight; and*

20 *(2) the exempt commercial purchaser has subse-*
21 *quently requested in writing the broker to procure or*
22 *place such insurance from a nonadmitted insurer.*

1 **SEC. 106. GAO STUDY OF NONADMITTED INSURANCE MAR-**
2 **KET.**

3 (a) *IN GENERAL.*—The Comptroller General of the
4 United States shall conduct a study of the nonadmitted in-
5 surance market to determine the effect of the enactment of
6 this title on the size and market share of the nonadmitted
7 insurance market for providing coverage typically provided
8 by the admitted insurance market.

9 (b) *CONTENTS.*—The study shall determine and ana-
10 lyze—

11 (1) the change in the size and market share of
12 the nonadmitted insurance market and in the number
13 of insurance companies and insurance holding com-
14 panies providing such business in the 18-month pe-
15 riod that begins upon the effective date of this Act;

16 (2) the extent to which insurance coverage typi-
17 cally provided by the admitted insurance market has
18 shifted to the nonadmitted insurance market;

19 (3) the consequences of any change in the size
20 and market share of the nonadmitted insurance mar-
21 ket, including differences in the price and availability
22 of coverage available in both the admitted and non-
23 admitted insurance markets;

24 (4) the extent to which insurance companies and
25 insurance holding companies that provide both ad-
26 mitted and nonadmitted insurance have experienced

1 *shifts in the volume of business between admitted and*
2 *nonadmitted insurance; and*

3 *(5) the extent to which there has been a change*
4 *in the number of individuals who have nonadmitted*
5 *insurance policies, the type of coverage provided*
6 *under such policies, and whether such coverage is*
7 *available in the admitted insurance market.*

8 *(c) CONSULTATION WITH NAIC.—In conducting the*
9 *study under this section, the Comptroller General shall con-*
10 *sult with the NAIC.*

11 *(d) REPORT.—The Comptroller General shall complete*
12 *the study under this section and submit a report to the*
13 *Committee on Financial Services of the House of Represent-*
14 *atives and the Committee on Banking, Housing, and Urban*
15 *Affairs of the Senate regarding the findings of the study*
16 *not later than 30 months after the effective date of this Act.*

17 **SEC. 107. DEFINITIONS.**

18 *For purposes of this title, the following definitions*
19 *shall apply:*

20 *(1) ADMITTED INSURER.—The term “admitted*
21 *insurer” means, with respect to a State, an insurer*
22 *licensed to engage in the business of insurance in such*
23 *State.*

24 *(2) EXEMPT COMMERCIAL PURCHASER.—The*
25 *term “exempt commercial purchaser” means any per-*

1 *son purchasing commercial insurance that meets the*
2 *following requirements:*

3 *(A) The person employs or retains a quali-*
4 *fied risk manager to negotiate insurance cov-*
5 *erage.*

6 *(B) The person has paid aggregate nation-*
7 *wide commercial property and casualty insur-*
8 *ance premiums in excess of \$100,000 in the im-*
9 *mediately preceding 12 months.*

10 *(C) The person meets at least one of the fol-*
11 *lowing criteria:*

12 *(i) The person possesses a net worth in*
13 *excess of \$20,000,000.*

14 *(ii) The person generates annual reve-*
15 *nues in excess of \$50,000,000.*

16 *(iii) The person employs more than*
17 *500 full time or full time equivalent em-*
18 *ployees per individual insured or is a mem-*
19 *ber of affiliated group employing more than*
20 *1,000 employees in the aggregate.*

21 *(iv) The person is a not-for-profit or-*
22 *ganization or public entity generating an-*
23 *ual budgeted expenditures of at least*
24 *\$30,000,000.*

1 (v) *The person is a municipality with*
2 *a population in excess of 50,000 persons.*

3 (3) *HOME STATE.*—*The term “home State”*
4 *means the State in which an insured maintains its*
5 *principal place of business or, in the case of an indi-*
6 *vidual, the individual’s principal residence.*

7 (4) *INDEPENDENTLY PROCURED INSURANCE.*—
8 *The term “independently procured insurance” means*
9 *insurance procured directly by an insured from a*
10 *nonadmitted insurer.*

11 (5) *NAIC.*—*The term “NAIC” means the Na-*
12 *tional Association of Insurance Commissioners or any*
13 *successor entity.*

14 (6) *NONADMITTED INSURANCE.*—*The term “non-*
15 *admitted insurance” means any property and cas-*
16 *ualty insurance permitted to be placed directly or*
17 *through a surplus lines broker with a nonadmitted in-*
18 *surer eligible to accept such insurance.*

19 (7) *NON-ADMITTED INSURANCE MODEL ACT.*—
20 *The term “Non-Admitted Insurance Model Act”*
21 *means the provisions of the Non-Admitted Insurance*
22 *Model Act, as adopted by the NAIC on August 3,*
23 *1994, and amended on September 30, 1996, December*
24 *6, 1997, October 2, 1999, and June 8, 2002.*

1 (8) *NONADMITTED INSURER.*—*The term “non-*
2 *admitted insurer” means, with respect to a State, an*
3 *insurer not licensed to engage in the business of in-*
4 *surance in such State.*

5 (9) *QUALIFIED RISK MANAGER.*—*The term*
6 *“qualified risk manager” means, with respect to a*
7 *policyholder of commercial insurance, a person who*
8 *meets all of the following requirements:*

9 (A) *The person is an employee of, or third*
10 *party consultant retained by, the commercial*
11 *policyholder.*

12 (B) *The person provides skilled services in*
13 *loss prevention, loss reduction, or risk and insur-*
14 *ance coverage analysis, and purchase of insur-*
15 *ance.*

16 (C) *The person possesses at least two of the*
17 *following credentials:*

18 (i) *An advanced degree in risk man-*
19 *agement issued by an accredited college or*
20 *university.*

21 (ii) *At least 5 years of experience in*
22 *one or more of the following areas of com-*
23 *mercial property insurance or commercial*
24 *casualty insurance:*

25 (I) *Risk financing.*

1 (ii) *Claims administration.*

2 (iii) *Loss prevention.*

3 (iv) *Risk and insurance coverage*
4 *analysis.*

5 (iii) *At least one of the following des-*
6 *ignations:*

7 (I) *A designation as a Chartered*
8 *Property and Casualty Underwriter*
9 *(in this clause referred to as “CPCU”)*
10 *issued by the American Institute for*
11 *CPCU/Insurance Institute of America.*

12 (II) *A designation as an Associate*
13 *in Risk Management (ARM) issued by*
14 *American Institute for CPCU/Insur-*
15 *ance Institute of America.*

16 (III) *A designation as a Certified*
17 *Risk Manager (CRM) issued by the*
18 *National Alliance for Insurance Edu-*
19 *cation & Research.*

20 (IV) *A designation as a RIMS*
21 *Fellow (RF) issued by the Global Risk*
22 *Management Institute.*

23 (V) *Any other designation, certifi-*
24 *cation, or license determined by a*
25 *State insurance commissioner or other*

1 *State insurance regulatory official or*
2 *entity to demonstrate minimum com-*
3 *petency in risk management.*

4 (10) *PREMIUM TAX.*—*The term “premium tax”*
5 *means, with respect to surplus lines or independently*
6 *procured insurance coverage, any tax, fee, assessment,*
7 *or other charge imposed by a State on an insured*
8 *based on any payment made as consideration for an*
9 *insurance contract for such insurance, including pre-*
10 *mium deposits, assessments, registration fees, and any*
11 *other compensation given in consideration for a con-*
12 *tract of insurance.*

13 (11) *SURPLUS LINES BROKER.*—*The term “sur-*
14 *plus lines broker” means an individual, firm, or cor-*
15 *poration which is licensed in a State to sell, solicit,*
16 *or negotiate insurance on properties, risks, or expo-*
17 *sures located or to be performed in a State with non-*
18 *admitted insurers.*

19 (12) *STATE.*—*The term “State” includes any*
20 *State of the United States, the District of Columbia,*
21 *the Commonwealth of Puerto Rico, Guam, the North-*
22 *ern Mariana Islands, the Virgin Islands, and Amer-*
23 *ican Samoa.*

1 **TITLE II—REINSURANCE**

2 **SEC. 201. REGULATION OF CREDIT FOR REINSURANCE AND**
3 **REINSURANCE AGREEMENTS.**

4 (a) *CREDIT FOR REINSURANCE.*—*If the State of domi-*
5 *cile of a ceding insurer is an NAIC-accredited State, or has*
6 *financial solvency requirements substantially similar to the*
7 *requirements necessary for NAIC accreditation, and recog-*
8 *nizes credit for reinsurance for the insurer’s ceded risk, then*
9 *no other State may deny such credit for reinsurance.*

10 (b) *ADDITIONAL PREEMPTION OF EXTRATERRITORIAL*
11 *APPLICATION OF STATE LAW.*—*In addition to the applica-*
12 *tion of subsection (a), all laws, regulations, provisions, or*
13 *other actions of a State other than those of the State of*
14 *domicile of the ceding insurer are preempted to the extent*
15 *that they—*

16 (1) *restrict or eliminate the rights of the ceding*
17 *insurer or the assuming insurer to resolve disputes*
18 *pursuant to contractual arbitration to the extent such*
19 *contractual provision is not inconsistent with the pro-*
20 *visions of title 9, United States Code;*

21 (2) *require that a certain State’s law shall gov-*
22 *ern the reinsurance contract, disputes arising from*
23 *the reinsurance contract, or requirements of the rein-*
24 *surance contract;*

1 (3) attempt to enforce a reinsurance contract on
2 terms different than those set forth in the reinsurance
3 contract, to the extent that the terms are not incon-
4 sistent with this title; or

5 (4) otherwise apply the laws of the State to rein-
6 surance agreements of ceding insurers not domiciled
7 in that State.

8 **SEC. 202. REGULATION OF REINSURER SOLVENCY.**

9 (a) *DOMICILIARY STATE REGULATION.*—If the State
10 of domicile of a reinsurer is an NAIC-accredited State or
11 has financial solvency requirements substantially similar
12 to the requirements necessary for NAIC accreditation, such
13 State shall be solely responsible for regulating the financial
14 solvency of the reinsurer.

15 (b) *NONDOMICILIARY STATES.*—

16 (1) *LIMITATION ON FINANCIAL INFORMATION RE-*
17 *QUIREMENTS.*—If the State of domicile of a reinsurer
18 is an NAIC-accredited State or has financial solvency
19 requirements substantially similar to the require-
20 ments necessary for NAIC accreditation, no other
21 State may require the reinsurer to provide any addi-
22 tional financial information other than the informa-
23 tion the reinsurer is required to file with its domi-
24 ciliary State.

1 (2) *RECEIPT OF INFORMATION.*—No provision of
2 this section shall be construed as preventing or pro-
3 hibiting a State that is not the State of domicile of
4 a reinsurer from receiving a copy of any financial
5 statement filed with its domiciliary State.

6 **SEC. 203. DEFINITIONS.**

7 For purposes of this title, the following definitions
8 shall apply:

9 (1) *CEDING INSURER.*—The term “ceding in-
10 surer” means an insurer that purchases reinsurance.

11 (2) *DOMICILIARY STATE.*—The terms “State of
12 domicile” and “domiciliary State” means, with re-
13 spect to an insurer or reinsurer, the State in which
14 the insurer or reinsurer is incorporated or entered
15 through, and licensed.

16 (3) *REINSURANCE.*—The term “reinsurance”
17 means the assumption by an insurer of all or part of
18 a risk undertaken originally by another insurer.

19 (4) *REINSURER.*—

20 (A) *IN GENERAL.*—The term “reinsurer”
21 means an insurer to the extent that the in-
22 surer—

23 (i) is principally engaged in the busi-
24 ness of reinsurance;

1 (ii) does not conduct significant
2 amounts of direct insurance as a percentage
3 of its net premiums; and

4 (iii) is not engaged in an ongoing
5 basis in the business of soliciting direct in-
6 surance.

7 (B) DETERMINATION.—A determination of
8 whether an insurer is a reinsurer shall be made
9 under the laws of the State of domicile in accord-
10 ance with this paragraph.

11 (5) STATE.—The term “State” includes any
12 State of the United States, the District of Columbia,
13 the Commonwealth of Puerto Rico, Guam, the North-
14 ern Mariana Islands, the Virgin Islands, and Amer-
15 ican Samoa.

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