

109TH CONGRESS  
2D SESSION

# H. R. 5637

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

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## 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

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## 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. Definitions.

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. Definitions.

TITLE II—CREDIT FOR REINSURANCE

- Sec. 201. Prohibiting extraterritorial application of State laws.  
 Sec. 202. Solvency regulation.  
 Sec. 203. Definitions.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act, the following definitions  
 3 shall apply:

4 (1) INSURER.—The term “insurer”—

5 (A) means an entity chartered and licensed  
 6 as an insurance company and authorized to en-  
 7 gage in the business of insurance under the  
 8 laws of at least 1 State; and

9 (B) includes any entity that, under the  
 10 laws of a State, is considered to be an insurer  
 11 specifically for purposes of this title.

12 (2) STATE.—The term “State” includes any  
 13 State, the District of Columbia, the Commonwealth  
 14 of Puerto Rico, Guam, the Northern Mariana Is-  
 15 lands, the Virgin Islands, and American Samoa.

1                   **TITLE I—NONADMITTED**  
2                   **INSURANCE**

3 **SEC. 101. REPORTING, PAYMENT, AND ALLOCATION OF**  
4                   **PREMIUM TAXES.**

5           (a) HOME STATE'S EXCLUSIVE AUTHORITY.—

6               (1) IN GENERAL.—No State other than the  
7           home State of an insured may require any premium  
8           tax payment for nonadmitted insurance.

9               (2) AMOUNT OF PAYMENT.—The amount of  
10           any premium tax payment for nonadmitted insur-  
11           ance permitted under paragraph (1) shall be deter-  
12           mined on the basis of any compact or procedures en-  
13           tered into under subsection (b).

14           (b) ALLOCATION OF NONADMITTED PREMIUM  
15           TAXES.—The States may enter into a compact or other-  
16           wise establish procedures to allocate among the States the  
17           premium taxes paid to an insured's home State described  
18           in subsection (a).

19           (c) ALLOCATION BASED ON TAX ALLOCATION RE-  
20           PORT.—To facilitate the payment of premium taxes  
21           among the States, an insured's home State may require  
22           surplus lines brokers and insureds who have independently  
23           procured insurance to annually file tax allocation reports  
24           with the insured's home State detailing the portion of the  
25           nonadmitted insurance policy premium or premiums at-

1   tributable to properties, risks or exposures located in each  
2   State. The filing of a nonadmitted insurance tax allocation  
3   report and the payment of tax may be made by a person  
4   authorized by the insured to act as its agent.

5   **SEC. 102. REGULATION OF NONADMITTED INSURANCE BY**  
6                                   **INSURED'S HOME STATE.**

7           (a) HOME STATE AUTHORITY.—Except as otherwise  
8   provided in this title, nonadmitted insurance is subject to  
9   the applicable statutory and regulatory requirements sole-  
10  ly of the insured's home State.

11          (b) BROKER LICENSING.—No State other than an in-  
12  sured's home State may require a surplus lines broker to  
13  be licensed in order to sell, solicit, or negotiate non-  
14  admitted insurance with respect to such insured.

15          (c) ENFORCEMENT PROVISION.—Any law, regula-  
16  tion, provision, or action of any State that applies or pur-  
17  ports to apply to nonadmitted insurance sold to, solicited  
18  by, or negotiated with an insured whose home State is an-  
19  other State shall be preempted with respect to such appli-  
20  cation.

21   **SEC. 103. PARTICIPATION IN NATIONAL PRODUCER DATA-**  
22                                   **BASE.**

23          After the expiration of the 2-year period beginning  
24   on the date of the enactment of this Act, a State may  
25   not collect any fees relating to licensing of an individual

1 or entity as nonresident insurance broker in the State un-  
2 less the State has in effect at such time laws or regulations  
3 that provide for participation by the State in the national  
4 insurance producer database of the NAIC, or any other  
5 equivalent uniform national database, for the licensure of  
6 surplus lines brokers and the renewal of such licenses.

7 **SEC. 104. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**  
8 **GIBILITY.**

9 After the expiration of the 2-year period beginning  
10 on the date of the enactment of this Act, a State may  
11 not—

12 (1) impose eligibility requirements on, or other-  
13 wise establish eligibility criteria for, nonadmitted in-  
14 surers domiciled in a United States jurisdiction, ex-  
15 cept in conformance with section 5C(2)(a) of the  
16 Non-Admitted Insurance Model Act; and

17 (2) prohibit a surplus lines broker from placing  
18 nonadmitted insurance with, or procuring non-  
19 admitted insurance from, a nonadmitted insurer  
20 domiciled outside the United States that is listed on  
21 the Quarterly Listing of Alien Insurers maintained  
22 by the International Insurance Division of the  
23 NAIC.

1 **SEC. 105. STREAMLINED APPLICATION FOR COMMERCIAL**  
2 **PURCHASERS.**

3 A surplus lines broker seeking to procure or place  
4 nonadmitted insurance in a State for an exempt commer-  
5 cial purchaser shall not be required to satisfy any State  
6 requirement to make a due diligence search to determine  
7 whether the full amount or type of insurance sought by  
8 such exempt commercial purchaser can be obtained from  
9 admitted insurers if—

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

16 (2) the exempt commercial purchaser has sub-  
17 sequently requested in writing the broker to procure  
18 or place such insurance from a nonadmitted insurer.

19 **SEC. 106. DEFINITIONS.**

20 For purposes of this title, the following definitions  
21 shall apply:

22 (1) **EXEMPT COMMERCIAL PURCHASER.**—The  
23 term “exempt commercial purchaser” means any  
24 person purchasing commercial insurance that meets  
25 the following requirements:

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

4 (B) The person meets at least 2 of the fol-  
5 lowing criteria:

6 (i) The person possesses a net worth  
7 in excess of \$20,000,000.

8 (ii) The person generates annual reve-  
9 nues in excess of \$50,000,000.

10 (iii) The person employs more than  
11 500 full time or full time equivalent em-  
12 ployees per individual insured or is a mem-  
13 ber of affiliated group employing more  
14 than 1,000 employees in the aggregate.

15 (iv) The person pays annual aggregate  
16 nationwide insurance premiums in excess  
17 of \$100,000 for covered lines of insurance.

18 (v) The person is a not-for-profit or-  
19 ganization or public entity generating an-  
20 nual budgeted expenditures of at least  
21 \$30,000,000.

22 (vi) The person is a municipality with  
23 a population in excess of 50,000 persons.

1           (2) HOME STATE.—The term “home State”  
2 means the State in which an insured maintains its  
3 principal place of business or principal residence.

4           (3) INDEPENDENTLY PROCURED INSURANCE.—  
5 The term “independently procured insurance”  
6 means—

7                   (A) insurance procured directly by an in-  
8                   sured from a nonadmitted insurer on prop-  
9                   erties, risks, or exposures located or to be per-  
10                   formed in whole or in part in the home State  
11                   of the insured; or

12                   (B) a multi-State insurance policy with a  
13                   nonadmitted insurer, that covers properties,  
14                   risks, or exposures only partially located or to  
15                   be performed in a State, placed by a surplus  
16                   lines broker in another State.

17           (4) NAIC.—The term “NAIC” means the Na-  
18           tional Association of Insurance Commissioners or  
19           any other association that regularly establishes in-  
20           surance model acts or insurance standards.

21           (5) NONADMITTED INSURANCE.—The term  
22           “nonadmitted insurance” means any property and  
23           casualty insurance permitted to be placed directly or  
24           through a surplus lines broker with a nonadmitted  
25           insurer eligible to accept such insurance.

1           (6) NON-ADMITTED INSURANCE MODEL ACT.—  
2           The term “Non-Admitted Insurance Model Act”  
3           means the provisions of the Non-Admitted Insurance  
4           Model Act, as adopted by the NAIC on August 3,  
5           1994, and amended on September 30, 1996, Decem-  
6           ber 6, 1997, October 2, 1999, and June 8, 2002, ex-  
7           cept that such term shall not include any—

8                   (A) changes to the Non-Admitted Insur-  
9                   ance Model Act subsequent to the adoption of  
10                  this Act;

11                   (B) State-specific deviations or alternative  
12                  standards; or

13                   (C) best practices.

14           (7) NONADMITTED INSURER.—The term “non-  
15           admitted insurer” means, with respect to a State, an  
16           insurer not licensed to engage in the business of in-  
17           surance in such State.

18           (8) PREMIUM TAX.—The term “premium tax”  
19           means, with respect to surplus lines or independently  
20           procured insurance coverage, any tax, fee, assess-  
21           ment, or other charge imposed by a State on an in-  
22           sured based on any payment made as consideration  
23           for an insurance contract for such insurance, includ-  
24           ing premium deposits, assessments, registration fees,

1 and any other compensation given in consideration  
2 for a contract of insurance.

3 (9) SURPLUS LINES BROKER.—The term “sur-  
4 plus lines broker” means an individual, firm, or cor-  
5 poration which sells, solicits, or negotiates insurance  
6 on properties, risks, or exposures located or to be  
7 performed in a State with nonadmitted insurers.

## 8 **TITLE II—CREDIT FOR** 9 **REINSURANCE**

### 10 **SEC. 201. PROHIBITING EXTRATERRITORIAL APPLICATION** 11 **OF STATE LAWS.**

12 (a) NO LIMIT ON DOMICILIARY STATE REGULA-  
13 TION.—This section may not be construed to limit the  
14 State of domicile of a ceding insurer from applying such  
15 State’s laws and regulation to the ceding insurer.

16 (b) PREEMPTION OF STATE LAW.—Except as pro-  
17 vided in subsection (a) with respect to the State of domi-  
18 cile of a ceding insurer, all laws, regulations, provisions,  
19 or other actions of a State are preempted to the extent  
20 that they—

21 (1) restrict or eliminate the rights of a ceding  
22 insurer or reinsurer to resolve disputes pursuant to  
23 contractual arbitration to the extent such contrac-  
24 tual provision is not inconsistent with the provisions  
25 of title 9, United States Code;

1           (2) require that a certain State’s law shall gov-  
2           ern the reinsurance contract, disputes arising from  
3           the reinsurance contract, or requirements of the re-  
4           insurance contract;

5           (3) attempt to enforce a reinsurance contract  
6           on terms different than those set forth in the rein-  
7           surance contract, to the extent that the terms are  
8           not inconsistent with this title; or

9           (4) apply the laws of the State to ceding insur-  
10          ers not domiciled in that State.

11 **SEC. 202. SOLVENCY REGULATION.**

12          (a) DOMICILIARY STATE REGULATION.—The State  
13 of domicile of a reinsurer shall be solely responsible for  
14 regulating the financial solvency of the reinsurer if such  
15 State is an NAIC accredited State.

16          (b) NONDOMICILIARY STATES.—

17           (1) LIMITATION ON FINANCIAL INFORMATION  
18           REQUIREMENTS.—If the State of domicile of a rein-  
19           surer is an NAIC accredited State, a State that is  
20           not the State of domicile of such reinsurer may not  
21           require the reinsurer to provide any additional finan-  
22           cial information other than the information required  
23           to be filed with or by the domiciliary State.

24           (2) RECEIPT OF INFORMATION.—No provision  
25           of this section shall be construed as preventing or

1 prohibiting a State that is not the State of domicile  
2 of a reinsurer from receiving a copy of any financial  
3 statement or information provided to the domiciliary  
4 State of the reinsurer.

5 (3) CREDIT FOR REINSURANCE.—If a reinsurer  
6 qualifies for credit for reinsurance in the State of  
7 domicile of the reinsurer, each State other than the  
8 State of domicile shall accept such credit for reinsur-  
9 ance.

10 **SEC. 203. DEFINITIONS.**

11 For purposes of this title, the following definitions  
12 shall apply:

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

18 (2) REINSURANCE.—The term “reinsurance”  
19 means the sharing of underwriting risk by insurers  
20 and reinsurers, under which part of all of an insur-  
21 er’s risk is assumed by the reinsurer in return for  
22 consideration.

1           (3) REINSURER.—The term “reinsurer” means  
2           an insurer engaged in the business of assuming in-  
3           surers’ risk.

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