

109TH CONGRESS
2^D SESSION

H. R. 5637

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2006

Received

NOVEMBER 13, 2006

Read twice and referred to the Committee on Banking, Housing, and Urban
Affairs

AN ACT

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,*

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

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

4 (b) **TABLE OF CONTENTS.**—The table of contents for
 5 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

TITLE III—RULE OF CONSTRUCTION

Sec. 301. Rule of Construction

6 **SEC. 2. EFFECTIVE DATE.**

7 Except as otherwise specifically provided in this Act,
 8 this Act shall take effect upon the expiration of the 12-
 9 month period beginning on the date of the enactment of
 10 this Act.

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

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

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

8 (b) ALLOCATION OF NONADMITTED PREMIUM
9 TAXES.—

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

14 (2) EFFECTIVE DATE.—Except as expressly
15 otherwise provided in such compact or other proce-
16 dures, any such compact or other procedures—

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

24 (B) if adopted after the expiration of such
25 330-day period, shall apply to any premium

1 taxes that, on or after January 1 of the first
2 calendar year that begins after the expiration of
3 such 330-day period, are required to be paid to
4 any State that is subject to such compact or
5 procedures.

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

16 (4) NATIONWIDE SYSTEM.—The Congress in-
17 tends that each State adopt a nationwide or uniform
18 procedure, such as an interstate compact, that pro-
19 vides for the reporting, payment, collection, and allo-
20 cation of premium taxes for nonadmitted insurance
21 consistent with this section.

22 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
23 PORT.—To facilitate the payment of premium taxes
24 among the States, an insured's home State may require
25 surplus lines brokers and insureds who have independently

1 procured insurance to annually file tax allocation reports
2 with the insured's home State detailing the portion of the
3 nonadmitted insurance policy premium or premiums at-
4 tributable to properties, risks or exposures located in each
5 State. The filing of a nonadmitted insurance tax allocation
6 report and the payment of tax may be made by a person
7 authorized by the insured to act as its agent.

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

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

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

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

24 (d) WORKERS' COMPENSATION EXCEPTION.—This
25 section may not be construed to preempt any State law,

1 rule, or regulation that restricts the placement of workers'
2 compensation insurance or excess insurance for self-fund-
3 ed workers' compensation plans with a nonadmitted in-
4 surer.

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

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

16 **SEC. 104. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
17 **GIBILITY.**

18 A State may not—

19 (1) impose eligibility requirements on, or other-
20 wise establish eligibility criteria for, nonadmitted in-
21 surers domiciled in a United States jurisdiction, ex-
22 cept in conformance with section 5A(2) and
23 5C(2)(a) of the Non-Admitted Insurance Model Act;
24 and

1 (2) prohibit a surplus lines broker from placing
2 nonadmitted insurance with, or procuring non-
3 admitted insurance from, a nonadmitted insurer
4 domiciled outside the United States that is listed on
5 the Quarterly Listing of Alien Insurers maintained
6 by the International Insurers Department of the
7 NAIC.

8 **SEC. 105. STREAMLINED APPLICATION FOR COMMERCIAL**
9 **PURCHASERS.**

10 A surplus lines broker seeking to procure or place
11 nonadmitted insurance in a State for an exempt commer-
12 cial purchaser shall not be required to satisfy any State
13 requirement to make a due diligence search to determine
14 whether the full amount or type of insurance sought by
15 such exempt commercial purchaser can be obtained from
16 admitted insurers if—

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

23 (2) the exempt commercial purchaser has sub-
24 sequently requested in writing the broker to procure
25 or 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
5 insurance market to determine the effect of the enactment
6 of this title on the size and market share of the non-
7 admitted insurance market for providing coverage typi-
8 cally provided 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 num-
13 ber of insurance companies and insurance holding
14 companies providing such business in the 18-month
15 period that begins upon the effective date of this
16 Act;

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

20 (3) the consequences of any change in the size
21 and market share of the nonadmitted insurance
22 market, including differences in the price and avail-
23 ability of coverage available in both the admitted
24 and nonadmitted insurance markets;

25 (4) the extent to which insurance companies
26 and insurance holding companies that provide both

1 admitted and nonadmitted insurance have experi-
2 enced shifts in the volume of business between ad-
3 mitted and nonadmitted insurance; and

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

9 (c) CONSULTATION WITH NAIC.—In conducting the
10 study under this section, the Comptroller General shall
11 consult with the NAIC.

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

19 **SEC. 107. DEFINITIONS.**

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

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

1 (2) EXEMPT COMMERCIAL PURCHASER.—The
2 term “exempt commercial purchaser” means any
3 person purchasing commercial insurance that meets
4 the following requirements:

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

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

12 (C) The person meets at least one of the
13 following criteria:

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

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

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

23 (iv) The person is a not-for-profit or-
24 ganization or public entity generating an-

1 nual budgeted expenditures of at least
2 \$30,000,000.

3 (v) The person is a municipality with
4 a population in excess of 50,000 persons.

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

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

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

16 (6) NONADMITTED INSURANCE.—The term
17 “nonadmitted insurance” means any property and
18 casualty insurance permitted to be placed directly or
19 through a surplus lines broker with a nonadmitted
20 insurer eligible to accept such insurance.

21 (7) NON-ADMITTED INSURANCE MODEL ACT.—
22 The term “Non-Admitted Insurance Model Act”
23 means the provisions of the Non-Admitted Insurance
24 Model Act, as adopted by the NAIC on August 3,

1 1994, and amended on September 30, 1996, Decem-
2 ber 6, 1997, October 2, 1999, and June 8, 2002.

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

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

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

14 (B) The person provides skilled services in
15 loss prevention, loss reduction, or risk and in-
16 surance coverage analysis, and purchase of in-
17 surance.

18 (C) The person possesses at least two of
19 the following credentials:

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

23 (ii) At least 5 years of experience in
24 one or more of the following areas of com-

1 commercial property insurance or commercial
2 casualty insurance:

3 (I) Risk financing.

4 (II) Claims administration.

5 (III) Loss prevention.

6 (IV) Risk and insurance coverage
7 analysis.

8 (iii) At least one of the following des-
9 ignations:

10 (I) A designation as a Chartered
11 Property and Casualty Underwriter
12 (in this clause referred to as
13 “CPCU”) issued by the American In-
14 stitute for CPCU/Insurance Institute
15 of America.

16 (II) A designation as an Asso-
17 ciate in Risk Management (ARM)
18 issued by American Institute for
19 CPCU/Insurance Institute of America.

20 (III) A designation as a Certified
21 Risk Manager (CRM) issued by the
22 National Alliance for Insurance Edu-
23 cation & Research.

1 (IV) A designation as a RIMS
2 Fellow (RF) issued by the Global Risk
3 Management Institute.

4 (V) Any other designation, cer-
5 tification, or license determined by a
6 State insurance commissioner or other
7 State insurance regulatory official or
8 entity to demonstrate minimum com-
9 petency in risk management.

10 (10) PREMIUM TAX.—The term “premium tax”
11 means, with respect to surplus lines or independently
12 procured insurance coverage, any tax, fee, assess-
13 ment, or other charge imposed by a State on an in-
14 sured based on any payment made as consideration
15 for an insurance contract for such insurance, includ-
16 ing premium deposits, assessments, registration fees,
17 and any other compensation given in consideration
18 for a contract of insurance.

19 (11) SURPLUS LINES BROKER.—The term “sur-
20 plus lines broker” means an individual, firm, or cor-
21 poration which is licensed in a State to sell, solicit,
22 or negotiate insurance on properties, risks, or expo-
23 sures located or to be performed in a State with
24 nonadmitted insurers.

1 (12) STATE.—The term “State” includes any
2 State of the United States, the District of Columbia,
3 the Commonwealth of Puerto Rico, Guam, the
4 Northern Mariana Islands, the Virgin Islands, and
5 American Samoa.

6 **TITLE II—REINSURANCE**

7 **SEC. 201. REGULATION OF CREDIT FOR REINSURANCE AND** 8 **REINSURANCE AGREEMENTS.**

9 (a) CREDIT FOR REINSURANCE.—If the State of
10 domicile of a ceding insurer is an NAIC-accredited State,
11 or has financial solvency requirements substantially simi-
12 lar to the requirements necessary for NAIC accreditation,
13 and recognizes credit for reinsurance for the insurer’s
14 ceded risk, then no other State may deny such credit for
15 reinsurance.

16 (b) ADDITIONAL PREEMPTION OF
17 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
18 addition to the application of subsection (a), all laws, regu-
19 lations, provisions, or other actions of a State other than
20 those of the State of domicile of the ceding insurer are
21 preempted to the extent that they—

22 (1) restrict or eliminate the rights of the ceding
23 insurer or the assuming insurer to resolve disputes
24 pursuant to contractual arbitration to the extent

1 such contractual provision is not inconsistent with
2 the provisions of title 9, United States Code;

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

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

11 (4) otherwise apply the laws of the State to re-
12 insurance agreements of ceding insurers not domi-
13 ciled in that State.

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

15 (a) DOMICILIARY STATE REGULATION.—If the State
16 of domicile of a reinsurer is an NAIC-accredited State or
17 has financial solvency requirements substantially similar
18 to the requirements necessary for NAIC accreditation,
19 such State shall be solely responsible for regulating the
20 financial solvency of the reinsurer.

21 (b) NONDOMICILIARY STATES.—

22 (1) LIMITATION ON FINANCIAL INFORMATION
23 REQUIREMENTS.—If the State of domicile of a rein-
24 surer is an NAIC-accredited State or has financial
25 solvency requirements substantially similar to the re-

1 requirements necessary for NAIC accreditation, no
2 other State may require the reinsurer to provide any
3 additional financial information other than the infor-
4 mation the reinsurer is required to file with its
5 domiciliary State.

6 (2) RECEIPT OF INFORMATION.—No provision
7 of this section shall be construed as preventing or
8 prohibiting a State that is not the State of domicile
9 of a reinsurer from receiving a copy of any financial
10 statement filed with its domiciliary State.

11 **SEC. 203. DEFINITIONS.**

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

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

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

21 (3) REINSURANCE.—The term “reinsurance”
22 means the assumption by an insurer of all or part
23 of a risk undertaken originally by another insurer.

24 (4) REINSURER.—

1 (A) IN GENERAL.—The term “reinsurer”
2 means an insurer to the extent that the in-
3 surer—

4 (i) is principally engaged in the busi-
5 ness of reinsurance;

6 (ii) does not conduct significant
7 amounts of direct insurance as a percent-
8 age of its net premiums; and

9 (iii) is not engaged in an ongoing
10 basis in the business of soliciting direct in-
11 surance.

12 (B) DETERMINATION.—A determination of
13 whether an insurer is a reinsurer shall be made
14 under the laws of the State of domicile in ac-
15 cordance with this paragraph.

16 (5) STATE.—The term “State” includes any
17 State of the United States, the District of Columbia,
18 the Commonwealth of Puerto Rico, Guam, the
19 Northern Mariana Islands, the Virgin Islands, and
20 American Samoa.

21 **TITLE III—RULE OF** 22 **CONSTRUCTION**

23 **SEC. 301. RULE OF CONSTRUCTION.**

24 Nothing in this Act or amendments to this Act shall
25 be construed to modify, impair, or supersede the applica-

1 tion of the antitrust laws. Any implied or actual conflict
2 between this Act and any amendments to this Act and
3 the antitrust laws shall be resolved in favor of the oper-
4 ation of the antitrust laws.

Passed the House of Representatives September 27,
2006.

Attest:

KAREN L. HAAS,
Clerk.