

[Committee Print]

JULY 20, 2006

TEXT OF H.R. 5637

[As ordered reported by the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises on July 19, 2006]

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. Definitions.

TITLE II—REINSURANCE

Sec. 201. Regulation of credit for reinsurance and reinsurance agreements.
Sec. 202. Regulation of reinsurer solvency.
Sec. 203. Definitions.

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 of the House of Representatives and the
10 Committee on Banking, Housing, and Urban Affairs
11 of the Senate identifying and describing any com-
12 pact or other procedures for allocation among the
13 States of premium taxes that have been adopted
14 during such period by any States.

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

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

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

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

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

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

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

23 (d) WORKERS COMPENSATION EXCEPTION.—This
24 section may not be construed to preempt any State law,
25 rule, or regulation that restricts the placement of workers'

1 compensation insurance or excess insurance for self-fund-
2 ed workers' compensation plans with a nonadmitted in-
3 surer.

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

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

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

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
22 5C(2)(a) of the Non-Admitted Insurance Model Act;
23 and

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

1 admitted insurance from, a nonadmitted insurer
2 domiciled outside the United States that is listed on
3 the Quarterly Listing of Alien Insurers maintained
4 by the International Insurers Department of the
5 NAIC.

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

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

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

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

1 **SEC. 106. DEFINITIONS.**

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

4 (1) ADMITTED INSURER.—The term “admitted
5 insurer” means, with respect to a State, an insurer
6 licensed to engage in the business of insurance in
7 such State.

8 (2) EXEMPT COMMERCIAL PURCHASER.—The
9 term “exempt commercial purchaser” means any
10 person purchasing commercial insurance that meets
11 the following requirements:

12 (A) The person employs or retains a quali-
13 fied risk manager to negotiate insurance cov-
14 erage.

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

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

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

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

1 (iv) The person pays annual aggregate
2 nationwide insurance premiums in excess
3 of \$100,000.

4 (v) The person is a not-for-profit or-
5 ganization or public entity generating an-
6 nual budgeted expenditures of at least
7 \$30,000,000.

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

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

14 (4) INDEPENDENTLY PROCURED INSURANCE.—
15 The term “independently procured insurance”
16 means insurance procured directly by an insured
17 from a nonadmitted insurer.

18 (5) NAIC.—The term “NAIC” means the Na-
19 tional Association of Insurance Commissioners or
20 any successor entity.

21 (6) 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 (7) 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.

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

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

15 (A) The person is an employee of, or third
16 party consultant retained by, the commercial
17 policyholder.

18 (B) The person provides skilled services in
19 loss prevention, loss reduction, or risk and in-
20 surance coverage analysis, and purchase of in-
21 surance.

22 (C) The person possesses at least one of
23 the following credentials:

1 (i) A bachelor's or higher degree in
2 risk management issued by an accredited
3 college or university.

4 (ii) A designation as a Chartered
5 Property and Casualty Underwriter (in
6 this clause referred to as "CPCU") issued
7 by the American Institute for CPCU/Insur-
8 ance Institute of America.

9 (iii) A designation as an Associate in
10 Risk Management (ARM) issued by Amer-
11 ican Institute for CPCU/Insurance Insti-
12 tute of America.

13 (iv) A designation as a Certified Risk
14 Manager (CRM) issued by the National Al-
15 liance for Insurance Education & Re-
16 search.

17 (v) A designation as a RIMS Fellow
18 (RF) issued by the Global Risk Manage-
19 ment Institute.

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

24 (I) Risk financing.

25 (II) Claims administration.

1 (III) Loss prevention.

2 (IV) Risk and insurance coverage
3 analysis.

4 (10) PREMIUM TAX.—The term “premium tax”
5 means, with respect to surplus lines or independently
6 procured insurance coverage, any tax, fee, assess-
7 ment, or other charge imposed by a State on an in-
8 sured based on any payment made as consideration
9 for an insurance contract for such insurance, includ-
10 ing premium deposits, assessments, registration fees,
11 and any other compensation given in consideration
12 for a contract 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
18 nonadmitted 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
22 Northern Mariana Islands, the Virgin Islands, and
23 American 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
5 domicile of a ceding insurer is an NAIC-accredited State,
6 or has financial solvency requirements substantially simi-
7 lar to the requirements necessary for NAIC accreditation,
8 and recognizes credit for reinsurance for the insurer's
9 ceded risk, then no other State may deny such credit for
10 reinsurance.

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

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

22 (2) require that a certain State's law shall gov-
23 ern the reinsurance contract, disputes arising from
24 the reinsurance contract, or requirements of the re-
25 insurance contract;

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

5 (4) otherwise apply the laws of the State to re-
6 insurance agreements of ceding insurers not domi-
7 ciled 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,
13 such State shall be solely responsible for regulating the
14 financial solvency of the reinsurer.

15 (b) NONDOMICILIARY STATES.—

16 (1) LIMITATION ON FINANCIAL INFORMATION
17 REQUIREMENTS.—If the State of domicile of a rein-
18 surer is an NAIC-accredited State or has financial
19 solvency requirements substantially similar to the re-
20 quirements necessary for NAIC accreditation, no
21 other State may require the reinsurer to provide any
22 additional financial information other than the infor-
23 mation the reinsurer is required to file with its
24 domiciliary State.

1 (2) RECEIPT OF INFORMATION.—No provision
2 of this section shall be construed as preventing or
3 prohibiting a State that is not the State of domicile
4 of 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
18 of 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 percent-
3 age 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 ac-
10 cordance 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
14 Northern Mariana Islands, the Virgin Islands, and
15 American Samoa.