

111TH CONGRESS
1ST SESSION

H. R. 2571

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2009

Received; 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 2009”.

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.

Sec. 302. Severability.

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 nationwide uniform re-
18 quirements, forms, and procedures, such as an inter-
19 state compact, that provides for the reporting, pay-
20 ment, collection, and allocation of premium taxes for
21 nonadmitted insurance 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.—With respect to sec-
19 tion 101 and subsections (a) and (b) of this section, any
20 law, regulation, provision, or action of any State that ap-
21 plies or purports to apply to nonadmitted insurance sold
22 to, solicited by, or negotiated with an insured whose home
23 State is another State shall be preempted with respect to
24 such application.

1 (d) WORKERS' COMPENSATION EXCEPTION.—This
2 section may not be construed to preempt any State law,
3 rule, or regulation that restricts the placement of workers'
4 compensation insurance or excess insurance for self-fund-
5 ed workers' compensation plans with a nonadmitted in-
6 surer.

7 **SEC. 103. PARTICIPATION IN NATIONAL PRODUCER DATA-**
8 **BASE.**

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 collect any fees relating to licensing of an individual
12 or entity as a surplus lines broker in the State unless the
13 State has in effect at such time laws or regulations that
14 provide for participation by the State in the national in-
15 surance producer database of the NAIC, or any other
16 equivalent uniform national database, for the licensure of
17 surplus lines brokers and the renewal of such licenses.

18 **SEC. 104. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
19 **GIBILITY.**

20 A State may not—

21 (1) impose eligibility requirements on, or other-
22 wise establish eligibility criteria for, nonadmitted in-
23 surers domiciled in a United States jurisdiction, ex-
24 cept in conformance with such requirements and cri-
25 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-

1 (3) the consequences of any change in the size
2 and market share of the nonadmitted insurance
3 market, including differences in the price and avail-
4 ability of coverage available in both the admitted
5 and nonadmitted insurance markets;

6 (4) the extent to which insurance companies
7 and insurance holding companies that provide both
8 admitted and nonadmitted insurance have experi-
9 enced shifts in the volume of business between ad-
10 mitted and nonadmitted insurance; and

11 (5) the extent to which there has been a change
12 in the number of individuals who have nonadmitted
13 insurance policies, the type of coverage provided
14 under such policies, and whether such coverage is
15 available in the admitted insurance market.

16 (c) CONSULTATION WITH NAIC.—In conducting the
17 study under this section, the Comptroller General shall
18 consult with the NAIC.

19 (d) REPORT.—The Comptroller General shall com-
20 plete the study under this section and submit a report to
21 the Committee on Financial Services of the House of Rep-
22 resentatives and the Committee on Banking, Housing, and
23 Urban Affairs of the Senate regarding the findings of the
24 study not later than 30 months after the effective date
25 of this Act.

1 **SEC. 107. 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) **AFFILIATE.**—The term “affiliate” means,
9 with respect to an insured, any entity that controls,
10 is controlled by, or is under common control with the
11 insured.

12 (3) **AFFILIATED GROUP.**—The term “affiliated
13 group” means any group of entities that are all af-
14 filiated.

15 (4) **CONTROL.**—An entity has “control” over
16 another entity if—

17 (A) the entity directly or indirectly or act-
18 ing through one or more other persons owns,
19 controls or has the power to vote 25 percent or
20 more of any class of voting securities of the
21 other entity; or

22 (B) the entity controls in any manner the
23 election of a majority of the directors or trust-
24 ees of the other entity.

25 (5) **EXEMPT COMMERCIAL PURCHASER.**—The
26 term “exempt commercial purchaser” means any

1 person purchasing commercial insurance that, at the
2 time of placement, meets the 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)(i) The person meets at least one of the
11 following criteria:

12 (I) The person possesses a net worth
13 in excess of \$20,000,000, as such amount
14 is adjusted pursuant to clause (ii).

15 (II) The person generates annual rev-
16 enues in excess of \$50,000,000, as such
17 amount is adjusted pursuant to clause (ii).

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 an 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-
25 nual budgeted expenditures of at least

1 \$30,000,000, as such amount is adjusted
2 pursuant to clause (ii).

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

5 (ii) Effective on the fifth January 1 occur-
6 ring after the date of the enactment of this Act
7 and each fifth January 1 occurring thereafter,
8 the amounts in subclauses (I), (II), and (IV) of
9 clause (i) shall be adjusted to reflect the per-
10 centage change for such five-year period in the
11 Consumer Price Index for All Urban Con-
12 sumers published by the Bureau of Labor Sta-
13 tistics of the Department of Labor.

14 (6) HOME STATE.—

15 (A) IN GENERAL.—Except as provided in
16 subparagraph (B), the term “home State”
17 means, with respect to an insured—

18 (i) the State in which an insured
19 maintains its principal place of business or,
20 in the case of an individual, the individ-
21 ual’s principal residence; or

22 (ii) if 100 percent of the insured risk
23 is located out of the State referred to in
24 subparagraph (A), the State to which the
25 greatest percentage of the insured’s tax-

1 able premium for that insurance contract
2 is allocated.

3 (B) AFFILIATED GROUPS.—If more than
4 one insured from an affiliated group are named
5 insureds on a single nonadmitted insurance con-
6 tract, the term “home State” means the home
7 State, as determined pursuant to subparagraph
8 (A), of the member of the affiliated group that
9 has the largest percentage of premium attrib-
10 uted to it under such insurance contract.

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

15 (8) NAIC.—The term “NAIC” means the Na-
16 tional Association of Insurance Commissioners or
17 any successor entity.

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

23 (10) NON-ADMITTED INSURANCE MODEL
24 ACT.—The term “Non-Admitted Insurance Model
25 Act” means the provisions of the Non-Admitted In-

1 insurance Model Act, as adopted by the NAIC on Au-
2 gust 3, 1994, and amended on September 30, 1996,
3 December 6, 1997, October 2, 1999, and June 8,
4 2002.

5 (11) NONADMITTED INSURER.—The term
6 “nonadmitted insurer” means, with respect to a
7 State, an insurer not licensed to engage in the busi-
8 ness of insurance in such State.

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

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

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

20 (C) The person—

21 (i)(I) has a bachelor’s degree or high-
22 er from an accredited college or university
23 in risk management, business administra-
24 tion, finance, economics, or any other field
25 determined by a State insurance commis-

1 sioner or other State regulatory official or
2 entity to demonstrate minimum com-
3 petence in risk management; and

4 (II)(aa) has three years of experience
5 in risk financing, claims administration,
6 loss prevention, risk and insurance anal-
7 ysis, or purchasing commercial lines of in-
8 surance; or

9 (bb) has one of the following designa-
10 tions:

11 (AA) a designation as a Char-
12 tered Property and Casualty Under-
13 writer (in this subparagraph referred
14 to as “CPCU”) issued by the Amer-
15 ican Institute for CPCU/Insurance In-
16 stitute of America;

17 (BB) a designation as an Asso-
18 ciate in Risk Management (ARM)
19 issued by the American Institute for
20 CPCU/Insurance Institute of America;

21 (CC) a designation as Certified
22 Risk Manager (CRM) issued by the
23 National Alliance for Insurance Edu-
24 cation & Research;

1 (DD) a designation as a RIMS
2 Fellow (RF) issued by the Global Risk
3 Management Institute; or

4 (EE) 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 (ii)(I) has at least seven years of ex-
11 perience in risk financing, claims adminis-
12 tration, loss prevention, risk and insurance
13 coverage analysis, or purchasing commer-
14 cial lines of insurance; and

15 (II) has any one of the designations
16 specified in subitems (AA) through (EE)
17 of clause (i)(II)(bb);

18 (iii) has at least 10 years of experi-
19 ence in risk financing, claims administra-
20 tion, loss prevention, risk and insurance
21 coverage analysis, or purchasing commer-
22 cial lines of insurance; or

23 (iv) has a graduate degree from an
24 accredited college or university in risk
25 management, business administration, fi-

1 nance, economics, or any other field deter-
2 mined by a State insurance commissioner
3 or other State regulatory official or entity
4 to demonstrate minimum competence in
5 risk management.

6 (13) PREMIUM TAX.—The term “premium tax”
7 means, with respect to surplus lines or independently
8 procured insurance coverage, any tax, fee, assess-
9 ment, or other charge imposed by a government en-
10 tity directly or indirectly based on any payment
11 made as consideration for an insurance contract for
12 such insurance, including premium deposits, assess-
13 ments, registration fees, and any other compensation
14 given in consideration for a contract of insurance.

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

21 (15) STATE.—The term “State” includes any
22 State of the United States, the District of Columbia,
23 the Commonwealth of Puerto Rico, Guam, the
24 Northern Mariana Islands, the Virgin Islands, and
25 American Samoa.

TITLE II—REINSURANCE

SEC. 201. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

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

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from

1 the reinsurance contract, or requirements of the re-
2 insurance contract;

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

7 (4) otherwise apply the laws of the State to re-
8 insurance agreements of ceding insurers not domi-
9 ciled in that State.

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

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

17 (b) NONDOMICILIARY STATES.—

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

1 mation the reinsurer is required to file with its
2 domiciliary State.

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

8 **SEC. 203. DEFINITIONS.**

9 For purposes of this title, the following definitions
10 shall apply:

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

13 (2) 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 (3) REINSURANCE.—The term “reinsurance”
19 means the assumption by an insurer of all or part
20 of a risk undertaken originally by another insurer.

21 (4) REINSURER.—

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

1 (i) is principally engaged in the busi-
2 ness of reinsurance;

3 (ii) does not conduct significant
4 amounts of direct insurance as a percent-
5 age of its net premiums; and

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

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

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

18 **TITLE III—RULE OF**
19 **CONSTRUCTION**

20 **SEC. 301. RULE OF CONSTRUCTION.**

21 Nothing in this Act or amendments to this Act shall
22 be construed to modify, impair, or supersede the applica-
23 tion of the antitrust laws. Any implied or actual conflict
24 between this Act and any amendments to this Act and

1 the antitrust laws shall be resolved in favor of the oper-
2 ation of the antitrust laws.

3 **SEC. 302. SEVERABILITY.**

4 If any section or subsection of this Act, or any appli-
5 cation of such provision to any person or circumstance,
6 is held to be unconstitutional, the remainder of this Act,
7 and the application of the provision to any other person
8 or circumstance, shall not be affected.

Passed the House of Representatives September 9,
2009.

Attest:

LORRAINE C. MILLER,

Clerk.