

110TH CONGRESS
1ST SESSION

S. 929

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

IN THE SENATE OF THE UNITED STATES

MARCH 20, 2007

Mr. MARTINEZ (for himself and Mr. NELSON of Florida) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Nonadmitted and Reinsurance Reform Act of 2007”.

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

Sec. 1. Short title; 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.

1 **SEC. 2. EFFECTIVE DATE.**

2 Except as otherwise specifically provided in this Act,
 3 this Act shall take effect upon the expiration of the 12-
 4 month period beginning on the date of enactment of this
 5 Act.

6 **TITLE I—NONADMITTED** 7 **INSURANCE**

8 **SEC. 101. REPORTING, PAYMENT, AND ALLOCATION OF** 9 **PREMIUM TAXES.**

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

13 (b) ALLOCATION OF NONADMITTED PREMIUM
 14 TAXES.—

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

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

4 (A) if adopted on or before the expiration
5 of the 330-day period that begins on the date
6 of the enactment of this Act, shall apply to any
7 premium taxes that, on or after such date of
8 enactment, are required to be paid to any State
9 that is subject to such compact or procedures;
10 and

11 (B) if adopted after the expiration of such
12 330-day period, shall apply to any premium
13 taxes that, on or after January 1 of the first
14 calendar year that begins after the expiration of
15 such 330-day period, are required to be paid to
16 any State that is subject to such compact or
17 procedures.

18 (3) REPORT.—Upon the expiration of the 330-
19 day period referred to in paragraph (2), the NAIC
20 may submit a report to the Committee on Financial
21 Services and Committee on the Judiciary of the
22 House of Representatives and the Committee on
23 Banking, Housing, and Urban Affairs of the Senate
24 identifying and describing any compact or other pro-
25 cedures for allocation among the States of premium

1 taxes that have been adopted during such period by
2 any States.

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

9 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
10 PORT.—To facilitate the payment of premium taxes
11 among the States, an insured’s home State may require
12 surplus lines brokers and insureds who have independently
13 procured insurance to annually file tax allocation reports
14 with the insured’s home State detailing the portion of the
15 nonadmitted insurance policy premium or premiums at-
16 tributable to properties, risks or exposures located in each
17 State. The filing of a nonadmitted insurance tax allocation
18 report and the payment of tax may be made by a person
19 authorized by the insured to act as its agent.

20 **SEC. 102. REGULATION OF NONADMITTED INSURANCE BY**
21 **INSURED’S HOME STATE.**

22 (a) HOME STATE AUTHORITY.—Except as otherwise
23 provided in this section, the placement of nonadmitted in-
24 surance shall be subject to the statutory and regulatory
25 requirements solely of the insured’s home State.

1 (b) **BROKER LICENSING.**—No State other than an in-
 2 sured’s home State may require a surplus lines broker to
 3 be licensed in order to sell, solicit, or negotiate non-
 4 admitted insurance with respect to such insured.

5 (c) **ENFORCEMENT PROVISION.**—Any law, regula-
 6 tion, provision, or action of any State that applies or pur-
 7 ports to apply to nonadmitted insurance sold to, solicited
 8 by, or negotiated with an insured whose home State is an-
 9 other State shall be preempted with respect to such appli-
 10 cation.

11 (d) **WORKERS’ COMPENSATION EXCEPTION.**—This
 12 section may not be construed to preempt any State law,
 13 rule, or regulation that restricts the placement of workers’
 14 compensation insurance or excess insurance for self-fund-
 15 ed workers’ compensation plans with a nonadmitted in-
 16 surer.

17 **SEC. 103. PARTICIPATION IN NATIONAL PRODUCER DATA-**
 18 **BASE.**

19 After the expiration of the 2-year period beginning
 20 on the date of the enactment of this Act, a State may
 21 not collect any fees relating to licensing of an individual
 22 or entity as a surplus lines broker in the State unless the
 23 State has in effect at such time laws or regulations that
 24 provide for participation by the State in the national in-
 25 surance producer database of the NAIC, or any other

1 equivalent uniform national database, for the licensure of
2 surplus lines brokers and the renewal of such licenses.

3 **SEC. 104. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
4 **GIBILITY.**

5 A State may not—

6 (1) impose eligibility requirements on, or other-
7 wise establish eligibility criteria for, nonadmitted in-
8 surers domiciled in a United States jurisdiction, ex-
9 cept in conformance with section 5A(2) and
10 5C(2)(a) of the Non-Admitted Insurance Model Act;
11 and

12 (2) prohibit a surplus lines broker from placing
13 nonadmitted insurance with, or procuring non-
14 admitted insurance from, a nonadmitted insurer
15 domiciled outside the United States that is listed on
16 the Quarterly Listing of Alien Insurers maintained
17 by the International Insurers Department of the
18 NAIC.

19 **SEC. 105. STREAMLINED APPLICATION FOR COMMERCIAL**
20 **PURCHASERS.**

21 A surplus lines broker seeking to procure or place
22 nonadmitted insurance in a State for an exempt commer-
23 cial purchaser shall not be required to satisfy any State
24 requirement to make a due diligence search to determine
25 whether the full amount or type of insurance sought by

1 such exempt commercial purchaser can be obtained from
2 admitted insurers if—

3 (1) the broker procuring or placing the surplus
4 lines insurance has disclosed to the exempt commer-
5 cial purchaser that such insurance may or may not
6 be available from the admitted market that may pro-
7 vide greater protection with more regulatory over-
8 sight; and

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

12 **SEC. 106. GAO STUDY OF NONADMITTED INSURANCE MAR-**
13 **KET.**

14 (a) IN GENERAL.—The Comptroller General of the
15 United States shall conduct a study of the nonadmitted
16 insurance market to determine the effect of the enactment
17 of this title on the size and market share of the non-
18 admitted insurance market for providing coverage typi-
19 cally provided by the admitted insurance market.

20 (b) CONTENTS.—The study shall determine and ana-
21 lyze—

22 (1) the change in the size and market share of
23 the nonadmitted insurance market and in the num-
24 ber of insurance companies and insurance holding
25 companies providing such business in the 18-month

1 period that begins upon the effective date of this
2 Act;

3 (2) the extent to which insurance coverage typi-
4 cally provided by the admitted insurance market has
5 shifted to the nonadmitted insurance market;

6 (3) the consequences of any change in the size
7 and market share of the nonadmitted insurance
8 market, including differences in the price and avail-
9 ability of coverage available in both the admitted
10 and nonadmitted insurance markets;

11 (4) the extent to which insurance companies
12 and insurance holding companies that provide both
13 admitted and nonadmitted insurance have experi-
14 enced shifts in the volume of business between ad-
15 mitted and nonadmitted insurance; and

16 (5) the extent to which there has been a change
17 in the number of individuals who have nonadmitted
18 insurance policies, the type of coverage provided
19 under such policies, and whether such coverage is
20 available in the admitted insurance market.

21 (c) CONSULTATION WITH NAIC.—In conducting the
22 study under this section, the Comptroller General shall
23 consult with the NAIC.

24 (d) REPORT.—The Comptroller General shall com-
25 plete the study under this section and submit a report to

1 the Committee on Financial Services of the House of Rep-
2 resentatives and the Committee on Banking, Housing, and
3 Urban Affairs of the Senate regarding the findings of the
4 study not later than 30 months after the effective date
5 of this Act.

6 **SEC. 107. DEFINITIONS.**

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

9 (1) **ADMITTED INSURER.**—The term “admitted
10 insurer” means, with respect to a State, an insurer
11 licensed to engage in the business of insurance in
12 such State.

13 (2) **EXEMPT COMMERCIAL PURCHASER.**—The
14 term “exempt commercial purchaser” means any
15 person purchasing commercial insurance that meets
16 the following requirements:

17 (A) The person employs or retains a quali-
18 fied risk manager to negotiate insurance cov-
19 erage.

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

24 (C) The person meets at least one of the
25 following criteria:

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

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

5 (iii) The person employs more than
6 500 full time or full time equivalent em-
7 ployees per individual insured or is a mem-
8 ber of affiliated group employing more
9 than 1,000 employees in the aggregate.

10 (iv) The person is a not-for-profit or-
11 ganization or public entity generating an-
12 nual budgeted expenditures of at least
13 \$30,000,000.

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

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

20 (4) INDEPENDENTLY PROCURED INSURANCE.—
21 The term “independently procured insurance”
22 means insurance procured directly by an insured
23 from a nonadmitted insurer.

1 (5) NAIC.—The term “NAIC” means the Na-
2 tional Association of Insurance Commissioners, or
3 any successor entity.

4 (6) NONADMITTED INSURANCE.—The term
5 “nonadmitted insurance” means any property and
6 casualty insurance permitted to be placed directly or
7 through a surplus lines broker with a nonadmitted
8 insurer eligible to accept such insurance.

9 (7) NON-ADMITTED INSURANCE MODEL ACT.—
10 The term “Non-Admitted Insurance Model Act”
11 means the provisions of the Non-Admitted Insurance
12 Model Act, as adopted by the NAIC on August 3,
13 1994, and amended on September 30, 1996, Decem-
14 ber 6, 1997, October 2, 1999, and June 8, 2002.

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

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

23 (A) The person is an employee of, or third
24 party consultant retained by, the commercial
25 policyholder.

1 (B) The person provides skilled services in
2 loss prevention, loss reduction, or risk and in-
3 surance coverage analysis, and purchase of in-
4 surance.

5 (C) The person possesses at least two of
6 the following credentials:

7 (i) An advanced degree in risk man-
8 agement issued by an accredited college or
9 university.

10 (ii) At least 5 years of experience in
11 one or more of the following areas of com-
12 mercial property insurance or commercial
13 casualty insurance:

14 (I) Risk financing.

15 (II) Claims administration.

16 (III) Loss prevention.

17 (IV) Risk and insurance coverage
18 analysis.

19 (iii) At least one of the following des-
20 ignations:

21 (I) A designation as a Chartered
22 Property and Casualty Underwriter
23 (in this clause referred to as
24 “CPCU”) issued by the American In-

1 stitute for CPCU/Insurance Institute
2 of America.

3 (II) A designation as an Asso-
4 ciate in Risk Management (ARM)
5 issued by American Institute for
6 CPCU/Insurance Institute of America.

7 (III) A designation as a Certified
8 Risk Manager (CRM) issued by the
9 National Alliance for Insurance Edu-
10 cation & Research.

11 (IV) A designation as a RIMS
12 Fellow (RF) issued by the Global Risk
13 Management Institute.

14 (V) Any other designation, cer-
15 tification, or license determined by a
16 State insurance commissioner or other
17 State insurance regulatory official or
18 entity to demonstrate minimum com-
19 petency in risk management.

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

1 ing premium deposits, assessments, registration fees,
2 and any other compensation given in consideration
3 for a contract of insurance.

4 (11) SURPLUS LINES BROKER.—The term “sur-
5 plus lines broker” means an individual, firm, or cor-
6 poration which is licensed in a State to sell, solicit,
7 or negotiate insurance on properties, risks, or expo-
8 sures located or to be performed in a State with
9 nonadmitted insurers.

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

15 **TITLE II—REINSURANCE**

16 **SEC. 201. REGULATION OF CREDIT FOR REINSURANCE AND** 17 **REINSURANCE AGREEMENTS.**

18 (a) CREDIT FOR REINSURANCE.—If the State of
19 domicile of a ceding insurer is an NAIC-accredited State,
20 or has financial solvency requirements substantially simi-
21 lar to the requirements necessary for NAIC accreditation,
22 and recognizes credit for reinsurance for the insurer’s
23 ceded risk, then no other State may deny such credit for
24 reinsurance.

1 (b) ADDITIONAL PREEMPTION OF
2 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
3 addition to the application of subsection (a), all laws, regu-
4 lations, provisions, or other actions of a State other than
5 those of the State of domicile of the ceding insurer are
6 preempted to the extent that they—

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

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

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

20 (4) otherwise apply the laws of the State to re-
21 insurance agreements of ceding insurers not domi-
22 ciled in that State.

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

24 (a) DOMICILIARY STATE REGULATION.—If the State
25 of domicile of a reinsurer is an NAIC-accredited State or

1 has financial solvency requirements substantially similar
2 to the requirements necessary for NAIC accreditation,
3 such State shall be solely responsible for regulating the
4 financial solvency of the reinsurer.

5 (b) NONDOMICILIARY STATES.—

6 (1) LIMITATION ON FINANCIAL INFORMATION
7 REQUIREMENTS.—If the State of domicile of a rein-
8 surer is an NAIC-accredited State or has financial
9 solvency requirements substantially similar to the re-
10 quirements necessary for NAIC accreditation, no
11 other State may require the reinsurer to provide any
12 additional financial information other than the infor-
13 mation the reinsurer is required to file with its
14 domiciliary State.

15 (2) RECEIPT OF INFORMATION.—No provision
16 of this section shall be construed as preventing or
17 prohibiting a State that is not the State of domicile
18 of a reinsurer from receiving a copy of any financial
19 statement filed with its domiciliary State.

20 **SEC. 203. DEFINITIONS.**

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

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

1 (2) DOMICILIARY STATE.—The terms “State of
2 domicile” and “domiciliary State” means, with re-
3 spect to an insurer or reinsurer, the State in which
4 the insurer or reinsurer is incorporated or entered
5 through, and licensed.

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

9 (4) REINSURER.—

10 (A) IN GENERAL.—The term “reinsurer”
11 means an insurer to the extent that the in-
12 surer—

13 (i) is principally engaged in the busi-
14 ness of reinsurance;

15 (ii) does not conduct significant
16 amounts of direct insurance as a percent-
17 age of its net premiums; and

18 (iii) is not engaged in an ongoing
19 basis in the business of soliciting direct in-
20 surance.

21 (B) DETERMINATION.—A determination of
22 whether an insurer is a reinsurer shall be made
23 under the laws of the State of domicile in ac-
24 cordance with this paragraph.

1 (5) 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 III—RULE OF**
7 **CONSTRUCTION**

8 **SEC. 301. RULE OF CONSTRUCTION.**

9 Nothing in this Act or the amendments to this Act
10 shall be construed to modify, impair, or supersede the ap-
11 plication of the antitrust laws. Any implied or actual con-
12 flict between this Act and any amendments to this Act
13 and the antitrust laws shall be resolved in favor of the
14 operation of the antitrust laws.

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