

28. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MOORE, DENNIS OF KANSAS OR HIS DESIGNEE, DEBATABLE
FOR 10 MINUTES

80

AMENDMENT TO H.R. 4173
OFFERED BY MR. MOORE OF KANSAS AND MR.
GARRETT OF NEW JERSEY

Base text: H.R. 4173 with title7_02

Add at the end the following new title (and update the table of contents accordingly):

1 **TITLE VIII—NONADMITTED AND**
2 **REINSURANCE REFORM ACT**

3 **SECTION 10001. SHORT TITLE.**

4 This title may be cited as the “Nonadmitted and Re-
5 insurance Reform Act of 2009”.

6 **SEC. 10002. EFFECTIVE DATE.**

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

11 **Subtitle A—Nonadmitted**
12 **Insurance.**

13 **SEC. 10101. REPORTING, PAYMENT, AND ALLOCATION OF**
14 **PREMIUM TAXES.**

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

1 (b) ALLOCATION OF NONADMITTED PREMIUM
2 TAXES.—

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

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

10 (A) if adopted on or before the expiration
11 of the 330-day period that begins on the date
12 of the enactment of this Act, shall apply to any
13 premium taxes that, on or after such date of
14 enactment, are required to be paid to any State
15 that is subject to such compact or procedures;
16 and

17 (B) if adopted after the expiration of such
18 330-day period, shall apply to any premium
19 taxes that, on or after January 1 of the first
20 calendar year that begins after the expiration of
21 such 330-day period, are required to be paid to
22 any State that is subject to such compact or
23 procedures.

24 (3) REPORT.—Upon the expiration of the 330-
25 day period referred to in paragraph (2), the NAIC

1 may submit a report to the Committee on Financial
2 Services and Committee on the Judiciary of the
3 House of Representatives and the Committee on
4 Banking, Housing, and Urban Affairs of the Senate
5 identifying and describing any compact or other pro-
6 cedures for allocation among the States of premium
7 taxes that have been adopted during such period by
8 any States.

9 (4) NATIONWIDE SYSTEM.—The Congress in-
10 tends that each State adopt nationwide uniform re-
11 quirements, forms, and procedures, such as an inter-
12 state compact, that provides for the reporting, pay-
13 ment, collection, and allocation of premium taxes for
14 nonadmitted insurance consistent with this section.

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

1 **SEC. 10102. REGULATION OF NONADMITTED INSURANCE BY**
2 **INSURED'S HOME STATE.**

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

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

11 (c) **ENFORCEMENT PROVISION.**—With respect to sec-
12 tion 10101 and subsections (a) and (b) of this section,
13 any law, regulation, provision, or action of any State that
14 applies or purports to apply to nonadmitted insurance sold
15 to, solicited by, or negotiated with an insured whose home
16 State is another State shall be preempted with respect to
17 such application.

18 (d) **WORKERS' COMPENSATION EXCEPTION.**—This
19 section may not be construed to preempt any State law,
20 rule, or regulation that restricts the placement of workers'
21 compensation insurance or excess insurance for self-fund-
22 ed workers' compensation plans with a nonadmitted in-
23 surer.

1 **SEC. 10103. PARTICIPATION IN NATIONAL PRODUCER**
2 **DATABASE.**

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

12 **SEC. 10104. UNIFORM STANDARDS FOR SURPLUS LINES**
13 **ELIGIBILITY.**

14 A State may not—

15 (1) impose eligibility requirements on, or other-
16 wise establish eligibility criteria for, nonadmitted in-
17 surers domiciled in a United States jurisdiction, ex-
18 cept in conformance with such requirements and cri-
19 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
20 mitted Insurance Model Act, unless the State has
21 adopted nationwide uniform requirements, forms,
22 and procedures developed in accordance with section
23 10101(b) of this title that include alternative nation-
24 wide uniform eligibility requirements; and

25 (2) prohibit a surplus lines broker from placing
26 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. 10105. STREAMLINED APPLICATION FOR COMMER-**
7 **CIAL 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. 10106. GAO STUDY OF NONADMITTED INSURANCE
2 MARKET.

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 subtitle 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 insurancee 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. 10107. DEFINITIONS.**

20 For purposes of this subtitle, 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) **AFFILIATE.**—The term “affiliate” means,
2 with respect to an insured, any entity that controls,
3 is controlled by, or is under common control with the
4 insured.

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

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

10 (A) the entity directly or indirectly or act-
11 ing through one or more other persons owns,
12 controls or has the power to vote 25 percent or
13 more of any class of voting securities of the
14 other entity; or

15 (B) the entity controls in any manner the
16 election of a majority of the directors or trust-
17 ees of the other entity.

18 (5) **EXEMPT COMMERCIAL PURCHASER.**—The
19 term “exempt commercial purchaser” means any
20 person purchasing commercial insurance that, at the
21 time of placement, meets the following requirements:

22 (A) The person employs or retains a quali-
23 fied risk manager to negotiate insurance cov-
24 erage.

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

5 (C)(i) The person meets at least one of the
6 following criteria:

7 (I) The person possesses a net
8 worth in excess of \$20,000,000, as
9 such amount is adjusted pursuant to
10 clause (ii).

11 (II) The person generates annual
12 revenues in excess of \$50,000,000, as
13 such amount is adjusted pursuant to
14 clause (ii).

15 (III) The person employs more
16 than 500 full time or full time equiva-
17 lent employees per individual insured
18 or is a member of an affiliated group
19 employing more than 1,000 employees
20 in the aggregate.

21 (IV) The person is a not-for-prof-
22 it organization or public entity gener-
23 ating annual budgeted expenditures of
24 at least \$30,000,000, as such amount
25 is adjusted pursuant to clause (ii).

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

4 (ii) Effective on the fifth January 1
5 occurring after the date of the enactment
6 of this Act and each fifth January 1 occur-
7 ring thereafter, the amounts in subclauses
8 (I), (II), and (IV) of clause (i) shall be ad-
9 justed to reflect the percentage change for
10 such five-year period in the Consumer
11 Price Index for All Urban Consumers pub-
12 lished by the Bureau of Labor Statistics of
13 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 experi-
5 ence in risk financing, claims adminis-
6 tration, loss prevention, risk and in-
7 surance analysis, or purchasing com-
8 mercial lines of insurance; or

9 (bb) has one of the following
10 designations:

11 (AA) a designation as a
12 Chartered Property and
13 Casualty Underwriter (in
14 this subparagraph referred
15 to as "CPCU") issued by
16 the American Institute for
17 CPCU/Insurance Institute of
18 America;

19 (BB) a designation as
20 an Associate in Risk Man-
21 agement (ARM) issued by
22 the American Institute for
23 CPCU/Insurance Institute of
24 America;

1 (CC) a designation as
2 Certified Risk Manager
3 (CRM) issued by the Na-
4 tional Alliance for Insurance
5 Education & Research;

6 (DD) a designation as
7 a RIMS Fellow (RF) issued
8 by the Global Risk Manage-
9 ment Institute; or

10 (EE) any other des-
11 ignation, certification, or li-
12 cense determined by a State
13 insurance commissioner or
14 other State insurance regu-
15 latory official or entity to
16 demonstrate minimum com-
17 petency in risk management;

18 (ii)(I) has at least seven years of ex-
19 perience in risk financing, claims adminis-
20 tration, loss prevention, risk and insurance
21 coverage analysis, or purchasing commer-
22 cial lines of insurance; and

23 (II) has any one of the designa-
24 tions specified in subitems (AA)
25 through (EE) of clause (i)(II)(bb);

1 (iii) has at least 10 years of experi-
2 ence in risk financing, claims administra-
3 tion, loss prevention, risk and insurance
4 coverage analysis, or purchasing commer-
5 cial lines of insurance; or

6 (iv) has a graduate degree from an
7 accredited college or university in risk
8 management, business administration, fi-
9 nance, economics, or any other field deter-
10 mined by a State insurance commissioner
11 or other State regulatory official or entity
12 to demonstrate minimum competence in
13 risk management.

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

23 (14) SURPLUS LINES BROKER.—The term “sur-
24 plus lines broker” means an individual, firm, or cor-
25 poration which is licensed in a State to sell, solicit,

1 or negotiate insurance on properties, risks, or expo-
2 sures located or to be performed in a State with
3 nonadmitted insurers.

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

9 **Subtitle B—Reinsurance.**

10 **SEC. 10201. REGULATION OF CREDIT FOR REINSURANCE**
11 **AND REINSURANCE AGREEMENTS.**

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

19 (b) ADDITIONAL PREEMPTION OF
20 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
21 addition to the application of subsection (a), all laws, regu-
22 lations, provisions, or other actions of a State that is not
23 the domiciliary State of the ceding insurer, except those
24 with respect to taxes and assessments on insurance com-

1 panies or insurance income, are preempted to the extent
2 that they—

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

8 (2) require that a certain State's law shall gov-
9 ern the reinsurance contract, disputes arising from
10 the reinsurance contract, or requirements of the re-
11 insurance contract;

12 (3) attempt to enforce a reinsurance contract
13 on terms different than those set forth in the rein-
14 surance contract, to the extent that the terms are
15 not inconsistent with this subtitle; or

16 (4) otherwise apply the laws of the State to re-
17 insurance agreements of ceding insurers not domi-
18 ciled in that State.

19 **SEC. 10202. REGULATION OF REINSURER SOLVENCY.**

20 (a) **DOMICILIARY STATE REGULATION.**—If the State
21 of domicile of a reinsurer is an NAIC-accredited State or
22 has financial solvency requirements substantially similar
23 to the requirements necessary for NAIC accreditation,
24 such State shall be solely responsible for regulating the
25 financial solvency of the reinsurer.

1 (b) NONDOMICILIARY STATES.—

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

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

16 **SEC. 10203. DEFINITIONS.**

17 For purposes of this subtitle, the following definitions
18 shall apply:

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

21 (2) DOMICILIARY STATE.—The terms “State of
22 domicile” and “domiciliary State” means, with re-
23 spect to an insurer or reinsurer, the State in which
24 the insurer or reinsurer is incorporated or entered
25 through, and licensed.

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

4 (4) REINSURER.—

5 (A) IN GENERAL.—The term “reinsurer”
6 means an insurer to the extent that the in-
7 surer—

8 (i) is principally engaged in the busi-
9 ness of reinsurance;

10 (ii) does not conduct significant
11 amounts of direct insurance as a percent-
12 age of its net premiums; and

13 (iii) is not engaged in an ongoing
14 basis in the business of soliciting direct in-
15 surance.

16 (B) DETERMINATION.—A determination of
17 whether an insurer is a reinsurer shall be made
18 under the laws of the State of domicile in ac-
19 cordance with this paragraph.

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

1 **Subtitle C—Rule of Construction.**

2 **SEC. 10301. RULE OF CONSTRUCTION.**

3 Nothing in this title or amendments to this title shall
4 be construed to modify, impair, or supersede the applica-
5 tion of the antitrust laws. Any implied or actual conflict
6 between this title and any amendments to this title and
7 the antitrust laws shall be resolved in favor of the oper-
8 ation of the antitrust laws.

9 **SEC. 10302. SEVERABILITY.**

10 If any section or subsection of this title, or any appli-
11 cation of such provision to any person or circumstance,
12 is held to be unconstitutional, the remainder of this title,
13 and the application of the provision to any other person
14 or circumstance, shall not be affected.

