

**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 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. 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.

