

Union Calendar No. 652

114TH CONGRESS
2D SESSION

H. R. 5143

[Report No. 114–831]

To provide greater transparency and congressional oversight of international insurance standards setting processes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2016

Mr. LUETKEMEYER (for himself, Mr. HUIZENGA of Michigan, Mr. PEARCE, Mrs. WAGNER, Mr. BARR, Mr. ROTHFUS, and Mr. WESTMORELAND) introduced the following bill; which was referred to the Committee on Financial Services

NOVEMBER 22, 2016

Additional sponsors: Mr. LOUDERMILK, Mr. PITTENGER, Mr. SESSIONS, Mr. TIPTON, Mr. NEUGEBAUER, Mr. WILLIAMS, Mr. EMMER of Minnesota, Mr. LUCAS, Mr. ROSS, Mrs. LOVE, Mr. POSEY, Mr. STIVERS, Mr. MESSER, Mr. KING of New York, Mr. GUINTA, Mr. HULTGREN, Mr. DUFFY, Mr. GARRETT, Mr. HILL, Mr. SCHWEIKERT, Mr. HURT of Virginia, Mr. POLIQUIN, Mr. MCHENRY, Mr. FINCHER, Mr. LAHOOD, Mr. MULVANEY, Mr. LANCE, Mr. BABIN, Mr. RENACCI, Mr. CRAWFORD, Mr. MACARTHUR, Mr. HARRIS, and Mr. GROTHMAN

NOVEMBER 22, 2016

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 29, 2016]

A BILL

To provide greater transparency and congressional oversight
of international insurance standards setting processes,
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.**

4 *This Act may be cited as the “Transparent Insurance*
5 *Standards Act of 2016”.*

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 *The Congress finds the following:*

8 (1) *The State-based system for insurance regula-*
9 *tion in the United States has served American con-*
10 *sumers well for more than 150 years and has fostered*
11 *an open and competitive marketplace with a diversity*
12 *of insurance products to the benefit of policyholders*
13 *and consumers.*

14 (2) *Protecting policyholders by regulating to en-*
15 *sure an insurer’s ability to pay claims has been the*
16 *hallmark of the successful United States system and*
17 *should be the paramount objective of domestic pruden-*
18 *tial regulation and emerging international standards.*

19 (3) *United States officials participating in dis-*
20 *cussions or negotiations regarding international in-*
21 *surance standards shall support standards designed*
22 *for the protection of policyholders.*

23 (4) *The Secretary of the Treasury shall seek ad-*
24 *vice and recommendations from a diverse group of*
25 *outside experts in performing the duties and authori-*

1 *ties of the Secretary to coordinate Federal efforts and*
 2 *develop Federal policy on prudential aspects of inter-*
 3 *national insurance matters.*

4 *(5) The draft of the Higher Loss Absorbency cap-*
 5 *ital standard adopted in 2015 by the International*
 6 *Association of Insurance Supervisors, notwith-*
 7 *standing the concerns of U.S. parties to the Inter-*
 8 *national Association of Insurance Supervisors, un-*
 9 *equally affects insurance products offered in the*
 10 *United States, an issue that must be addressed.*

11 *(6) Any international standard agreed to at the*
 12 *International Association of Insurance Supervisors is*
 13 *not self-executing in the United States for any insurer*
 14 *until implemented through the required Federal or*
 15 *State legislative or regulatory process.*

16 **SEC. 3. OBJECTIVES FOR INTERNATIONAL INSURANCE**
 17 **STANDARDS.**

18 *The objectives of the United States regarding inter-*
 19 *national insurance standards are as follows:*

20 *(1) To ensure standards that maintain strong*
 21 *protection of policy holders, as reflected in the United*
 22 *States solvency regime.*

23 *(2) To ensure, pursuant to enactment of the In-*
 24 *surance Capital Standards Clarification Act of 2014*
 25 *(Public Law 113–279), standards that are appro-*

1 *priate for insurers and are not bank-centric in na-*
2 *ture.*

3 *(3) To promote a principles-based approach to*
4 *insurance supervision, in which capital adequacy is*
5 *assessed using risk-based capital requirements for in-*
6 *surance combined with qualitative risk assessment*
7 *and management tools.*

8 *(4) To consider the most efficient and least dis-*
9 *ruptive approaches to enhancing regulatory assess-*
10 *ment of the capital adequacy of insurance groups, in-*
11 *cluding tools that are already in place.*

12 *(5) To ensure that any international insurance*
13 *standard recognizes prudential measures used within*
14 *the United States as satisfying standards finalized by*
15 *international standard-setting organizations.*

16 *(6) To support increasing transparency at any*
17 *global insurance or international standard-setting or-*
18 *ganization in which the United States participates,*
19 *including advocating for greater stakeholder public*
20 *observer access to working groups and committee*
21 *meetings of the International Association of Insurance*
22 *Supervisors.*

23 *(7) To ensure that there is a sufficient period for*
24 *public consultation and comment regarding any pro-*

1 *posed international insurance standard before it takes*
2 *effect.*

3 *(8) To ensure that the Secretary of the Treasury*
4 *and the Board of Governors of the Federal Reserve*
5 *System achieve consensus positions with State insur-*
6 *ance commissioners when the Secretary and the*
7 *Board are United States participants in discussions*
8 *on insurance issues before the International Associa-*
9 *tion of Insurance Supervisors, Financial Stability*
10 *Board, or any other international forum of financial*
11 *regulators or supervisors that considers such issues.*

12 *(9) To consider the impact of any such standard*
13 *on the availability and cost of products to consumers.*

14 *(10) To avoid measures that could limit the*
15 *availability and accessibility of risk protection and*
16 *retirement security products that are essential to*
17 *meeting the needs of aging populations.*

18 *(11) To ensure that the merits of existing State-*
19 *based capital standards are recognized and incor-*
20 *porated in any domestic or global insurance capital*
21 *standard.*

22 *(12) To advocate for insurance regulatory stand-*
23 *ards that are based on the nature, scale, and com-*
24 *plexity of the risks posed by the regulated insurance*
25 *group and entity or activity.*

1 **SEC. 4. REQUIREMENTS FOR CONSENT TO ADOPT INTER-**
2 **NATIONAL INSURANCE STANDARDS.**

3 (a) *PUBLICATION OF STANDARDS; ADOPTION OF CAP-*
4 *ITAL AND PRUDENTIAL STANDARDS.*—*The United States*
5 *may not agree to, accept, establish, enter into, or consent*
6 *to the adoption of a final international insurance standard*
7 *with an international standard-setting organization or a*
8 *foreign government, authority, or regulatory entity unless*
9 *the requirements under both of the following paragraphs are*
10 *complied with:*

11 (1) *PUBLICATION.*—*The requirements under this*
12 *paragraph are complied with if the conditions under*
13 *one of the following subparagraphs have been met:*

14 (A) *BY FEDERAL RESERVE AND TREAS-*
15 *URY.*—*The Chairman of the Board of Governors*
16 *of the Federal Reserve System and the Secretary*
17 *of the Treasury have caused the proposed text of*
18 *the proposed final international insurance stand-*
19 *ard to be published in the Federal Register and*
20 *made available for public comment for a period*
21 *of not fewer than 30 days (which period may*
22 *run concurrently with the 90-day period referred*
23 *to in subsection (b)(3)).*

24 (B) *BY STATE INSURANCE COMMIS-*
25 *SIONERS.*—*The State insurance commissioners*
26 *have caused the proposed text of the proposed*

1 *international insurance standard to be published*
2 *in a similar form and manner that provides for*
3 *notice and public comment.*

4 (2) *CAPITAL STANDARD.—In the case only of a*
5 *final international insurance standard setting forth*
6 *any capital standard or standards for insurers—*

7 (A) *such international capital standard is*
8 *consistent with capital requirements set forth in*
9 *the State-based system of insurance regulation;*

10 (B) *the Board has issued capital require-*
11 *ments for insurance companies supervised by the*
12 *Board and subject to such requirements, which*
13 *shall be issued through rulemaking in accordance*
14 *with the procedures established under section 553*
15 *of title 5, United States Code, regarding sub-*
16 *stantive rules, under which the periods for notice*
17 *and public comment shall each have a duration*
18 *of not fewer than 60 days; and*

19 (C) *to the extent that such international*
20 *capital standard is intended to be applied to a*
21 *company or companies supervised by the Board*
22 *of Governors of the Federal Reserve System, is*
23 *consistent with the capital requirements of the*
24 *Board for such companies.*

1 (b) *SUBMISSION AND LAYOVER PROVISIONS.*—*The Sec-*
2 *retary and the Board may not agree to, accept, establish,*
3 *enter into, or consent to the adoption of an international*
4 *insurance standard established through an international*
5 *standard-setting organization or a foreign government, au-*
6 *thority, or regulatory entity unless—*

7 (1) *the Secretary and the Board have—*

8 (A) *conducted an analysis under subsection*
9 (c) *of the proposed international insurance*
10 *standard; and*

11 (B) *submitted to the covered congressional*
12 *committees, on a day on which both Houses of*
13 *Congress are in session, a copy of the proposed*
14 *final text of the proposed international insurance*
15 *standard and the report required under sub-*
16 *section (c)(2) regarding such analysis;*

17 (2) *the Secretary and the Chairman of the Board*
18 *have determined, pursuant to such analysis, that the*
19 *proposed standard will not result in any change in*
20 *State law;*

21 (3) *with respect to a capital standard under sub-*
22 *section (a)(2), the Secretary and the Chairman of the*
23 *Board certify that the proposed international capital*
24 *standard is designed solely to help ensure that suffi-*
25 *cient funds are available to pay claims to an insur-*

1 *er's policyholders in the event of the liquidation of*
 2 *that entity; and*

3 *(4) a period of 90 calendar days beginning on*
 4 *the date on which the copy of the proposed final text*
 5 *of the standard is submitted to the covered congress-*
 6 *sional committees under paragraph (1)(B) has ex-*
 7 *pired, during which period the Congress may take ac-*
 8 *tion to approve or reject such final standard.*

9 *(c) JOINT ANALYSIS BY CHAIR OF THE FEDERAL RE-*
 10 *SERVE AND SECRETARY OF THE TREASURY.—*

11 *(1) IN GENERAL.—An analysis under this sub-*
 12 *section of a proposed final international insurance*
 13 *standard shall be an analysis conducted by the Sec-*
 14 *retary and the Chairman of the Board of Governors*
 15 *of the Federal Reserve System, in consultation with*
 16 *the State insurance commissioners, of the impact of*
 17 *such standard on consumers and markets in the*
 18 *United States and whether any changes in State law*
 19 *will result from such final standard.*

20 *(2) REPORT.—Upon completion of an analysis*
 21 *under this subsection of a final international insur-*
 22 *ance standard, the Secretary and the Board shall sub-*
 23 *mit a report on the results of the analysis to the cov-*
 24 *ered congressional committees and the Comptroller*
 25 *General of the United States. The report shall include*

1 *a statement setting forth the determination made pur-*
2 *suant to paragraph (1) regarding any changes in*
3 *State law resulting from such final standard.*

4 (3) *NOTICE AND COMMENT.*—

5 (A) *NOTICE.*—*The Secretary and the Chair-*
6 *man of the Board of Governors of the Federal*
7 *Reserve System shall provide notice before the*
8 *date on which drafting the report is commenced*
9 *and after the date on which the draft of the re-*
10 *port is completed.*

11 (B) *OPPORTUNITY FOR COMMENT.*—*There*
12 *shall be an opportunity for public comment for*
13 *a period beginning on the date on which the re-*
14 *port is submitted under paragraph (2) and end-*
15 *ing on the date that is not fewer than 60 days*
16 *after the date on which the report is submitted.*
17 *Nothing in this subparagraph shall affect the au-*
18 *thority of the Board to issue the rule referred to*
19 *in subsection (a)(2).*

20 (4) *REVIEW BY COMPTROLLER GENERAL.*—*Upon*
21 *submission of a report pursuant to paragraph (2) to*
22 *the Comptroller General, the Comptroller General*
23 *shall review the report and shall submit a report to*
24 *the Congress setting forth the conclusions of the*
25 *Comptroller General's review.*

1 (d) *LIMITED EFFECT.*—*This section may not be con-*
 2 *strued to establish or expand any authority to implement*
 3 *an international insurance standard in the United States*
 4 *or for the United States or any representative of the Federal*
 5 *Government to adopt or enter into any international insur-*
 6 *ance standard.*

7 (e) *TREATMENT OF STATE LAW.*—*In accordance with*
 8 *the Act of March 9, 1945 (Chapter 20; 59 Stat. 33; 15*
 9 *U.S.C. 1011 et seq.), commonly referred to as the*
 10 *“McCarran-Ferguson Act”, this section may not be con-*
 11 *strued to preempt State law.*

12 **SEC. 5. REPORTS.**

13 (a) *REPORTS AND TESTIMONY BY SECRETARY OF THE*
 14 *TREASURY AND CHAIR OF THE FEDERAL RESERVE.*—*The*
 15 *Secretary and the Chairman of the Board of Governors of*
 16 *the Federal Reserve System shall submit to the covered con-*
 17 *gressional committees an annual report and provide testi-*
 18 *mony, not less often than every 6 months, to the covered*
 19 *congressional committees on the efforts of the Secretary and*
 20 *the Chairman with the State insurance commissioners with*
 21 *respect to international insurance standard-setting organi-*
 22 *zations and international insurance standards, including—*
 23 (1) *a description of the insurance standard-set-*
 24 *ting issues under discussion at international stand-*
 25 *ard-setting bodies, including the Financial Stability*

1 *Board and the International Association of Insurance*
2 *Supervisors;*

3 (2) *a description of the effects that international*
4 *insurance standards could have on consumers and in-*
5 *surance markets in the United States;*

6 (3) *a description of any position taken by the*
7 *Secretary and the Board in international insurance*
8 *discussions or on any international insurance stand-*
9 *ard;*

10 (4) *a description of the efforts by the Secretary*
11 *and the Board to increase transparency and account-*
12 *ability at the Financial Stability Board with respect*
13 *to insurance proposals and the International Associa-*
14 *tion of Insurance Supervisors, including efforts to*
15 *provide additional public access to working groups*
16 *and committees of the International Association of*
17 *Insurance Supervisors; and*

18 (5) *a description of how the Secretary and the*
19 *Board are meeting the objectives set forth in section*
20 *3, or, if such objectives are not being met, an expla-*
21 *nation of the reasons for not meeting such objectives.*

22 (b) *REPORTS AND TESTIMONY BY STATE INSURANCE*
23 *COMMISSIONERS.—The State insurance commissioners may*
24 *provide testimony or reports to the Congress on the issues*
25 *described in subsection (a).*

1 (c) *REPORT ON TRANSPARENCY.*—Not later than 180
2 days after the date of enactment of this Act, the Chairman
3 of the Board of Governors of the Federal Reserve System
4 and the Secretary shall submit to the Congress a report and
5 provide testimony to the Congress on the efforts of the
6 Chairman and the Secretary pursuant to subsection (a)(4)
7 of this section to increase transparency at meetings of the
8 International Association of Insurance Supervisors.

9 (d) *GAO REPORT ON TRANSPARENCY OF OUTSIDE OR-*
10 *GANIZATIONS.*—

11 (1) *IN GENERAL.*—Not later than one year after
12 the date of enactment of this Act, the Comptroller
13 General of the United States shall submit to the cov-
14 ered congressional committees a report, and provide
15 testimony to such committees, identifying and ana-
16 lyzing the transparency and accountability of any or-
17 ganization acting as a designee of, or at the direction
18 of, the head of a State insurance department on issues
19 related to international insurance standards, which is
20 not employed directly by the State.

21 (2) *CONTENT.*—The report and testimony re-
22 quired under this section shall include a description
23 and analysis of—

24 (A) the role, involvement, or relationship, of
25 any organization identified pursuant to para-

1 *graph (1), of, with, or to the State insurance de-*
2 *partments' activities as authorized by, directed*
3 *by, or otherwise referred to in this Act, including*
4 *a description and analysis regarding such orga-*
5 *nization's participation in policy and decision-*
6 *making deliberations and activities related to*
7 *international insurance standards;*

8 *(B) any financial support provided by such*
9 *organization to any State insurance department*
10 *personnel in furtherance of their activities re-*
11 *lated to international insurance standards, the*
12 *nature and amount of such support, and any*
13 *understandings between the organization and the*
14 *State regarding travel protocols and State laws*
15 *governing State officials' receipt of, benefitting*
16 *from, or being subsidized by, outside funds;*

17 *(C) the budget, including revenues and ex-*
18 *penses, of any organization identified pursuant*
19 *to paragraph (1) relating to participation in*
20 *international insurance discussions on issues be-*
21 *fore, involving, or relating to the International*
22 *Association of Insurance Supervisors, the Finan-*
23 *cial Stability Board, or any other international*
24 *forum of financial regulators or supervisors that*

1 *considers such issues, and how the organization*
2 *collects money to fund such activities;*

3 *(D) whether each such budget of such an or-*
4 *ganization is developed under a process com-*
5 *parable in its transparency and accountability*
6 *to the process under which budgets are developed*
7 *and appropriated for State departments of in-*
8 *surance and Federal executive branch regulatory*
9 *agencies, including—*

10 *(i) an identification of any bodies*
11 *independent of the organization that set*
12 *standards for and/or oversee that organiza-*
13 *tion’s budgeting process; and*

14 *(ii) a description of the extent to which*
15 *and how the organization, in funding its*
16 *operations, uses or benefits from its mem-*
17 *bers’ ability to compel entities subject to its*
18 *members’ regulatory authority to use the*
19 *services of the organization or any of its af-*
20 *filiates; and*

21 *(E) the extent to which the work product of*
22 *any organization identified pursuant to para-*
23 *graph (1) has the effect of establishing any self-*
24 *executing national standards, and in what way,*
25 *and whether such standards are developed under*

1 *processes comparable in their transparency and*
2 *accountability to the process under which na-*
3 *tional standards are developed by the Congress*
4 *or Federal executive branch agencies.*

5 **SEC. 6. DEFINITIONS.**

6 *In this Act:*

7 (1) *BOARD.*—*The term “Board” means the*
8 *Board of Governors of the Federal Reserve System, or*
9 *the designee of the Board.*

10 (2) *COVERED CONGRESSIONAL COMMITTEES.*—
11 *The term “covered congressional committees” means*
12 *the Committee on Financial Services of the House of*
13 *Representatives and the Committee on Banking,*
14 *Housing and Urban Affairs of the Senate.*

15 (3) *INTERNATIONAL INSURANCE STANDARD.*—
16 *The term “international insurance standard” means*
17 *any international insurance supervisory standard de-*
18 *veloped by an international standards setting organi-*
19 *zation, or regulatory or supervisory forum, in which*
20 *the United States participates, including the Common*
21 *Framework for the Supervision of Internationally Ac-*
22 *tive Insurance Groups, the Financial Stability Board,*
23 *and the International Association of Insurance Su-*
24 *pervisors.*

1 (4) *SECRETARY*.—The term “Secretary” means
2 the Secretary of the Treasury, or the Secretary’s des-
3 ignee.

4 (5) *STATE INSURANCE COMMISSIONERS*.—The
5 term “State insurance commissioners” means the
6 heads of the State insurance departments or their des-
7 ignees acting at their direction.

8 **SEC. 7. TREATMENT OF COVERED AGREEMENTS.**

9 Section 314 of title 31, United States Code is amend-
10 ed—

11 (1) in subsection (c)—

12 (A) by redesignating paragraphs (1) and
13 (2) as paragraphs (2) and (3), respectively; and

14 (B) by inserting before paragraph (2), as so
15 redesignated, the following new paragraph:

16 “(1) the Secretary of the Treasury and the
17 United States Trade Representative have caused to be
18 published in the Federal Register, and made available
19 for public comment for a period of not fewer than 30
20 days (which period may run concurrently with the
21 90-day period for the covered agreement referred to in
22 paragraph (3)), the proposed text of the covered agree-
23 ment;” and

24 (2) by adding at the end the following new sub-
25 sections:

1 “(d) *CONSULTATION WITH STATE INSURANCE COM-*
 2 *MISSIONERS.—In any negotiations regarding a con-*
 3 *templated covered agreement, the Secretary and the United*
 4 *States Trade Representative shall consult with and directly*
 5 *include State insurance commissioners.*

6 “(e) *PROHIBITION ON REGULATORY AUTHORITY.—In*
 7 *accordance with subsections (k) and (l) of section 313, a*
 8 *covered agreement shall not be used to establish or provide*
 9 *the Federal Insurance Office or the Treasury with any gen-*
 10 *eral supervisory or regulatory authority over the business*
 11 *of insurance or with the authority to participate in a super-*
 12 *visory college or similar process.*

13 “(f) *TREATMENT UNDER OTHER LAW.—A covered*
 14 *agreement shall not be considered an international insur-*
 15 *ance standard for purposes of the Transparent Insurance*
 16 *Standards Act of 2016 and shall not be subject to such*
 17 *Act.”.*

18 **SEC. 8. DUTIES OF INDEPENDENT MEMBER OF FINANCIAL**
 19 **STABILITY OVERSIGHT COUNCIL.**

20 *Subsection (a) of section 112 of the Dodd-Frank Wall*
 21 *Street Reform and Consumer Protection Act (12 U.S.C.*
 22 *5322(a)) is amended by adding at the end the following*
 23 *new paragraph:*

24 “(3) *DUTIES OF INDEPENDENT MEMBER.—To*
 25 *assist the Council with its responsibilities to monitor*

1 *international insurance developments, advise Con-*
2 *gress, and make recommendations, the Independent*
3 *Member of the Council shall have the authority to—*

4 “(A) *regularly consult with international*
5 *insurance supervisors and international finan-*
6 *cial stability counterparts;*

7 “(B) *consult with, advise, and assist the*
8 *Secretary of the Treasury with respect to rep-*
9 *resenting the Federal Government of the United*
10 *States, as appropriate, in the International As-*
11 *sociation of Insurance Supervisors (including to*
12 *become a non-voting member thereof), particu-*
13 *larly on matters of systemic risk, and to consult*
14 *with the Board of Governors of the Federal Re-*
15 *serve System and the States concerning such*
16 *matters;*

17 “(C) *attend the Financial Stability Board*
18 *of The Group of Twenty and join with other*
19 *members from the United States, including on*
20 *matters related to insurance and financial sta-*
21 *bility, and provide for the attendance and par-*
22 *ticipation at such Board, on matters related to*
23 *insurance and financial stability, of State insur-*
24 *ance commissioners; and*

1 “(D) attend, with the United States delega-
 2 tion, the Organization for Economic Cooperation
 3 and Development and observe and participate at
 4 the Insurance and Private Pensions Committee
 5 of such Organization on matters related to insur-
 6 ance and financial stability.”.

7 **SEC. 9. STATE INSURANCE REGULATOR INVOLVEMENT IN**
 8 **INTERNATIONAL STANDARD SETTING.**

9 Parties representing the United States at the Finan-
 10 cial Stability Board of the Group of Twenty on matters,
 11 and in meetings, related to insurance and financial sta-
 12 bility shall consult with, and seek to include in such meet-
 13 ings, the State insurance commissioners.

14 **SEC. 10. RULE OF CONSTRUCTION.**

15 Nothing in this Act or the amendments made by this
 16 Act may be construed to support or endorse the domestic
 17 capital standard for insurers referred to in section 4(a)(2)
 18 or any such domestic capital standards established by the
 19 Board.

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