

107TH CONGRESS
2^D SESSION

H. R. 3766

To establish an Office of the National Insurers within the Department of the Treasury to authorize the issuance of Federal charters for carrying out the underwriting and sale of insurance or any other insurance operations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2002

Mr. LAFALCE (for himself and Mrs. JONES of Ohio) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on the Judiciary, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish an Office of the National Insurers within the Department of the Treasury to authorize the issuance of Federal charters for carrying out the underwriting and sale of insurance or any other insurance operations, 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 “Insurance Industry Modernization and Consumer Protec-
4 tion Act”.

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

Sec. 1. Short title and table of contents.

TITLE I—PURPOSE AND DEFINITIONS

Sec. 101. Purposes.

Sec. 102. Definitions.

TITLE II—DIRECTOR OF THE OFFICE OF NATIONAL INSURERS

Sec. 201. Director of the Office of National Insurers.

Sec. 202. Supervision of national insurers.

Sec. 203. Authority to prescribe regulations.

Sec. 204. Examination, assessments, and fees.

Sec. 205. Enforcement.

Sec. 206. Insurance fraud.

Sec. 207. International regulatory support.

TITLE III—NATIONAL INSURERS

Subtitle A—Organization, Licensing, and Operations

Sec. 301. Organization, operation, and regulation of national insurers.

Sec. 302. U.S branches of non-U.S. insurers.

Sec. 303. Federal licensing of national insurers.

Sec. 304. Corporate governance.

Sec. 305. Main office.

Sec. 306. Conversion of State insurer to national insurer.

Sec. 307. Conversion of national insurer to State insurer.

Subtitle B—Powers

Sec. 321. Powers of national insurers.

Sec. 322. Separate accounts.

Sec. 323. Protected cells.

Subtitle C—Financial Regulation

Sec. 331. Accounting principles and auditing standards.

Sec. 332. Investments.

Sec. 333. Asset valuation and rating.

Sec. 334. Valuation of liabilities.

Sec. 335. Continuing and alternate benefits.

Sec. 336. Actuarial opinion.

Sec. 337. Risk-based capital standards.

Sec. 338. Dividends to shareholders.

Subtitle D—Reinsurance

- Sec. 351. Definitions.
- Sec. 352. Reserve credit.
- Sec. 353. Risk transfer regulation.
- Sec. 354. International standards; host country reserves.
- Sec. 355. Reinsurance contract terms.
- Sec. 356. Licensing of Federally qualified reinsurers.
- Sec. 357. Transition.
- Sec. 358. Applicability of other subtitles and laws.

Subtitle E—Insurance Business

- Sec. 361. Product regulation.
- Sec. 362. Underwriting standards for life insurers.
- Sec. 363. Group, blanket, and franchise insurance.
- Sec. 364. Insurable interests under life insurance policies.
- Sec. 365. Law applicable to life insurance policies or other products of national life insurers.

Subtitle F—Market Conduct

- Sec. 371. Purposes and regulations.
- Sec. 372. Unfair or deceptive practices.
- Sec. 373. Replacement of life insurance policies.
- Sec. 374. Unfair discrimination, unfair claims settlement practices, and unlawful inducements.
- Sec. 375. HIV written informed consent, discrimination against abuse victims, and Holocaust victims claims.
- Sec. 376. Minimum national standards.

Subtitle G—Acquisitions of Control, Mergers, Bulk Transfers, and Domestication

- Sec. 381. Acquisition of control.
- Sec. 382. Mergers, consolidations, and acquisitions.
- Sec. 383. Bulk transfers.
- Sec. 384. Domestication of U.S. branch of a non-U.S. insurer.

Subtitle H—Health Insurance

- Sec. 391. Recommendations for health insurance.

TITLE IV—STATE TAXATION

- Sec. 401. State taxation.

TITLE V—TREATMENT OF MCCARRAN-FERGUSON ACT

- Sec. 501. Repeal of antitrust exemption for business of insurance.

TITLE VI—HOLDING COMPANIES

- Sec. 601. Definitions
- Sec. 602. Registration.
- Sec. 603. Standards and management of national insurer within an insurance holding company system.
- Sec. 604. Conflict with other Federal laws.

TITLE VII—RELATIONSHIPS WITH STATE LAW

- Sec. 701. Definitions.
- Sec. 702. General prohibition.
- Sec. 703. State license not required.
- Sec. 704. State insurance law.
- Sec. 705. Prohibition of discrimination.
- Sec. 706. Permissible State regulation.
- Sec. 707. Sales activities by State-licensed insurance producers.

TITLE VIII—CONFORMING AMENDMENTS AND OTHER PROVISIONS

- Sec. 801. Federal court jurisdiction.
- Sec. 802. Federal court venue.
- Sec. 803. Judicial review.
- Sec. 804. Amendment to Freedom of Information Act.
- Sec. 805. Amendments to Internal Revenue Code of 1986.
- Sec. 806. Amendments to Federal securities laws.
- Sec. 807. Amendments to Employee Retirement Income Security Act of 1974.
- Sec. 808. Amendments to Gramm-Leach-Bliley Act.
- Sec. 809. Amendment to Act of October 28, 1974.
- Sec. 810. Amendments to Federal Deposit Insurance Act.
- Sec. 811. Amendments to Bank Holding Company Act of 1956.
- Sec. 812. Amendments to title 18, United States Code.
- Sec. 813. Amendments to Americans With Disabilities Act of 1990.

TITLE IX—RECEIVERSHIP

Subtitle A—Definitions

- Sec. 901. Definitions.
- Sec. 902. Construction.

Subtitle B—The Court

- Sec. 903. Jurisdiction.
- Sec. 904. Powers.
- Sec. 905. Appeals.
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Subtitle C—General Provisions

- Sec. 907. Duty to provide information to corporation, State commissioners, and associations.
- Sec. 908. Cooperation of officers, owners, and employees.
- Sec. 909. Right to appear and be heard.

Subtitle D—Administration

- Sec. 910. Entities subject to this title.
- Sec. 911. Commencement of receivership.
- Sec. 912. Grounds for entry of a rehabilitation or liquidation order.
- Sec. 913. Service of summons and return.
- Sec. 914. Automatic stay.
- Sec. 915. Answer and hearing.
- Sec. 916. Notice of entry of order of rehabilitation or liquidation.
- Sec. 917. Contents of notice of receivership.

- Sec. 918. Initial status hearing.
- Sec. 919. Dismissal of receivership proceeding.
- Sec. 920. Receivership proceedings for non-U.S. States insurers.
- Sec. 921. Trusteed assets of a United States branch of a non-U.S. insurer.
- Sec. 922. Trust fund claims.
- Sec. 923. Limited appearance.
- Sec. 924. Advisory committees.
- Sec. 925. Ex parte orders of conservation and seizure.
- Sec. 926. Confidentiality of hearings.
- Sec. 927. Modification of orders.
- Sec. 928. Authority to operate and restructure insurer's business.
- Sec. 929. Conversion to liquidation.
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Subtitle E—Office of the Receiver

- Sec. 932. Appointment of receiver.
- Sec. 933. Title to and possession of assets and records.
- Sec. 934. Immunity and indemnification of the receiver and employees.
- Sec. 935. Employment of professional persons.
- Sec. 936. Powers of rehabilitators and liquidators.
- Sec. 937. Advances to the receiver.
- Sec. 938. Executory contracts.
- Sec. 939. Abandonment of property and records.
- Sec. 940. Extension of time.
- Sec. 941. Periodic reports.
- Sec. 942. Document depository.
- Sec. 943. Audit of receivership records.
- Sec. 944. General service list.
- Sec. 945. Routine matters.
- Sec. 946. Matters requiring prior court approval.
- Sec. 947. Notice of proposed claims disposition.

Subtitle F—The Estate

- Sec. 948. Turnover of property to receiver.
- Sec. 949. Turnover of premiums owed.
- Sec. 950. Limitation on avoiding powers.
- Sec. 951. Receiver as lien creditor and as successor to certain creditors, purchasers and fiduciaries.
- Sec. 952. Preferences.
- Sec. 953. Fraudulent transfers and obligations.
- Sec. 954. Transfer of national insurer's property to good faith purchaser.
- Sec. 955. Recoupment from affiliates.
- Sec. 956. Liability of transferee of an avoided transfer.
- Sec. 957. Automatic preservation of avoided transfer.
- Sec. 958. Setoff.
- Sec. 959. Qualified financial contracts.
- Sec. 960. Recovery from reinsurers.
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- Sec. 962. Life reinsurance.

Subtitle G—Creditors and Claims

- Sec. 963. Rights and liabilities of creditors fixed upon liquidation.

- Sec. 964. Claims filing; late filing.
- Sec. 965. Proof of claim.
- Sec. 966. Allowance of claims.
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- Sec. 968. Reserve for third party claims against insured.
- Sec. 969. Allowance of secured claims.
- Sec. 970. Preliminary notice of claims determination.
- Sec. 971. Claims of co-debtors.
- Sec. 972. Approval of agreed claims.
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Subtitle H—The Plan

- Sec. 977. Who may file a plan.
- Sec. 978. Contents of a plan.
- Sec. 979. Court approval of plan.
- Sec. 980. Effect of court approval of plan.
- Sec. 981. Partial and final distributions or dividends.
- Sec. 982. Transfer of assets and liabilities to liquidating trust.
- Sec. 983. Collateralization of case reserves and incurred but not reported losses.
- Sec. 984. Commutations.
- Sec. 985. Mandatory negotiation and arbitration.
- Sec. 986. Reinsurance recoverable trust provisions.
- Sec. 987. Liquidating trust provisions.

Subtitle I—Post Plan

- Sec. 988. Unclaimed and undistributed funds.
- Sec. 989. Termination of receivership proceedings and discharge of receiver.
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TITLE X—INSOLVENCY PROTECTION

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- Sec. 1001. Definitions.
- Sec. 1002. National insurer participation in qualified State associations.
- Sec. 1003. Qualified State defined.
- Sec. 1004. Transition rules when association preempted.
- Sec. 1005. Establishment of the National Life Insurance Guaranty Corporation; protection for residents in preempted States.
- Sec. 1006. Protections against insolvency: coverage and limitations.
- Sec. 1007. Accounts for administration and assessments.
- Sec. 1008. Board of directors.
- Sec. 1009. Powers and duties of the corporation.
- Sec. 1010. Assessments.
- Sec. 1011. Appeal by national insurer of assessments.
- Sec. 1012. Duties and powers of Director.
- Sec. 1013. Cooperation between Director and State commissioners.
- Sec. 1014. Prohibited discrimination in tax treatment.
- Sec. 1015. Miscellaneous provisions.
- Sec. 1016. Examination of the corporation; annual report.
- Sec. 1017. Immunity.

- Sec. 1018. Stay of proceedings; reopening default judgments.
 Sec. 1019. Prohibited advertisement of State association or the corporation in insurance sales; notice to policyowners.

Subtitle B—Property and Casualty Insurance

- Sec. 1020. Definitions.
 Sec. 1021. National insurer participation in qualified State associations.
 Sec. 1022. Qualified State defined.
 Sec. 1023. Transition rules when association preempted.
 Sec. 1024. Establishment of National Property and Casualty Insurance Guaranty Corporation; protection for residents in preempted States.
 Sec. 1025. Protections against insolvency; coverage and limitations.
 Sec. 1026. Board of directors.
 Sec. 1027. Powers and duties of the corporation.
 Sec. 1028. Duties and powers of Director.
 Sec. 1029. Effect of paid claim.
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TITLE XI—EFFECTIVE DATE

- Sec. 1101. Effective date.

1 **TITLE I—PURPOSE AND**
 2 **DEFINITIONS**

3 **SEC. 101. PURPOSES.**

4 The purposes of this Act are to—

5 (1) provide for the chartering of national insur-
 6 ers;

7 (2) provide for the licensing of national insur-
 8 ers;

9 (3) provide for the regulation of the under-
 10 writing and sale of insurance and other insurance
 11 operations as conducted by national insurers and in-
 12 surance producers; and

1 (4) provide for the establishment of the Office
2 of National Insurers and the position of Director of
3 the Office of National Insurers with responsibility
4 for administering and enforcing this Act, including
5 with respect to such chartering, licensing, and regu-
6 latory activities.

7 **SEC. 102. DEFINITIONS.**

8 For purposes of this Act:

9 (1) **ACQUIRING AND/OR ASSUMING INSURER.**—

10 The term “acquiring and/or assuming insurer”
11 means a national insurer that is the acquiring and/
12 or assuming insurer in an acquisition of assets and/
13 or an assumption of liabilities pursuant to sub-
14 section (a) of section 382.

15 (2) **AFFILIATE.**—Except as specifically provided
16 otherwise in this Act, the term “affiliate” means any
17 person that controls, is controlled by, or is under
18 common control with, a national insurer.

19 (3) **BUSINESS ENTITY.**—The term “business
20 entity” means a corporation, association, partner-
21 ship, limited liability company, limited liability part-
22 nership, or other legal entity.

23 (4) **CONDUCT.**—The term “conduct” includes
24 acts, action, omissions, and inaction.

1 (5) CONTROL.—The terms “control”, “control-
2 ling”, “controlled by”, and “under common control
3 with”, means the possession, direct or indirect, of
4 the power to direct or cause the direction of the
5 management and policies of a business entity,
6 whether through the ownership of voting securities,
7 by contract or otherwise, unless the power is the re-
8 sult of an official position with or corporate office
9 held by a person. For purposes of section 381 and
10 title VI, control shall be presumed to exist if any
11 person, directly or indirectly, owns, controls, holds
12 with the power to vote, or holds proxies rep-
13 resenting, 10 percent or more of the voting securi-
14 ties of any other person.

15 (6) CORPORATE FORM.—The term “corporate
16 form” means, with respect to an insurer, stock, mu-
17 tual, or fraternal form.

18 (7) DIRECTOR.—The term “Director” means
19 the Director of the Office of National Insurers.

20 (8) DOMESTICATION.—The term “domestica-
21 tion” means the reorganization pursuant to subtitle
22 G of the U.S. branch of a non-U.S. insurer whereby
23 a national insurer succeeds to all business and assets
24 and assumes all liabilities of such U.S. branch.

1 (9) FEDERAL BANKING AGENCIES.—The term
2 “Federal banking agencies” means the Office of the
3 Comptroller of the Currency, the Board of Gov-
4 ernors of the Federal Reserve System, and the Fed-
5 eral Deposit Insurance Corporation.

6 (10) FEDERAL LICENSE.—The term “Federal
7 license” means a license issued under section 303.

8 (11) FOREIGN GOVERNMENTAL AUTHORITY.—
9 The term “foreign governmental authority” means a
10 governmental authority of a foreign jurisdiction.

11 (12) FOREIGN JURISDICTION.—The term “for-
12 eign jurisdiction” means any jurisdiction other than
13 the United States or a State.

14 (13) INSURANCE.—Except as specifically pro-
15 vided otherwise in this Act, the term “insurance” in-
16 cludes life insurance and property and casualty in-
17 surance. Such term does not include health insur-
18 ance.

19 (14) INSURANCE OPERATIONS.—The term “in-
20 surance operations” includes the business of insur-
21 ance.

22 (15) INSURANCE PRODUCER.—The term “in-
23 surance producer” means any person that sells, so-
24 licits or negotiates policies of insurance, except that
25 none of the following is an insurance producer:

1 (A) A national insurer.

2 (B) An officer, director or employee of a
3 national insurer or of an insurance producer,
4 if—

5 (i) the officer, director or employee
6 does not receive any commission or other
7 compensation on insurance policies written
8 or sold by the national insurer which com-
9 mission or other compensation is directly
10 dependent upon the amount of insurance
11 policies written or sold; and

12 (ii)(I) the officer, director or employ-
13 ee's activities are executive, administrative,
14 managerial, clerical or a combination of
15 these, and are only indirectly related to the
16 sale, solicitation or negotiation of insur-
17 ance;

18 (II) the officer, director or employee's
19 function relates to underwriting, loss con-
20 trol, inspection or the processing, adjust-
21 ing, investigating or settling of a claim on
22 a policy of insurance; or

23 (III) the officer, director or employee
24 is acting in the capacity of a special agent
25 or agency supervisor assisting insurance

1 producers where the person's activities are
2 limited to providing technical advice and
3 assistance to State licensed insurance pro-
4 ducers and do not include the sale, sollicita-
5 tion or negotiation of insurance.

6 (C) A person who secures and furnishes in-
7 formation for the purpose of group insurance
8 policies; or for the purpose of enrolling individ-
9 uals under plans, or issuing certificates under
10 plans or otherwise assisting in administering
11 plans, where no commission or other compensa-
12 tion directly dependent upon the amount of in-
13 surance policies written or sold is paid to the
14 person for the service.

15 (D) An employer or association or its offi-
16 cers, directors, employees, or the trustees of an
17 employee trust plan, to the extent that the em-
18 ployer, officer, employee, director or trustee is
19 engaged in the administration or operation of a
20 program of employee benefits for the employer's
21 or association's own employees or the employees
22 of its subsidiaries or affiliates, which program
23 involves the use of insurance written by the na-
24 tional insurer, as long as the employers, asso-
25 ciations, officers, directors, employees or trust-

1 ees are not in any manner compensated, di-
2 rectly or indirectly, by the national insurer.

3 (E) An employee of a national insurer or
4 an organization employed by a national insurer
5 that is engaging in the inspection, rating or
6 classification of risks, or in the supervision of
7 the training of insurance producers and that is
8 not individually engaged in the sale, solicitation
9 or negotiation of insurance.

10 (F) A person whose activities are limited
11 to advertising without the intent to solicit in-
12 surance through communications in printed
13 publications or other forms of electronic mass
14 media, provided that the person does not sell,
15 solicit or negotiate insurance.

16 (G) A salaried full-time employee who
17 counsels or advises his or her employer relative
18 to the insurance interests of the employer or of
19 the subsidiaries or business affiliates of the em-
20 ployer provided that the employee does not sell
21 or solicit insurance or receive a commission or
22 other compensation directly dependent upon the
23 amount of insurance policies written or sold.

24 (H) A person that sells, solicits or nego-
25 tiates a funding agreement.

1 (I) Any other kind of person identified by
2 the Director, by regulation, as not being an in-
3 surance producer within the meaning of this
4 paragraph.

5 (16) INSURANCE SECURITIZATION.—The term
6 “insurance securitization” means the issuance of
7 debt instruments, the proceeds from which support
8 the exposures attributed to a protected cell, by a na-
9 tional insurer where repayment of principal or inter-
10 est, or both, to investors pursuant to the transaction
11 terms is contingent upon the occurrence or non-
12 occurrence of an event with respect to which the na-
13 tional insurer is exposed to loss under insurance
14 policies or reinsurance contracts it has written.

15 (17) INSURER-AFFILIATED PARTY.—The term
16 “insurer-affiliated party” means—

17 (A) any director, officer, employee, or con-
18 trolling shareholder (other than a holding com-
19 pany) of, or agent for, a national insurer;

20 (B) any other person who has filed or is
21 required to file a statement with the Director
22 under section 381;

23 (C) any shareholder (other than a holding
24 company), consultant, joint venture partner,
25 and any other person as determined by the Di-

1 rector (by regulation or case-by-case) who par-
2 ticipates in the conduct of the affairs of a na-
3 tional insurer; and

4 (D) any independent contractor (including
5 any attorney, actuary, or accountant) of a na-
6 tional insurer who in that capacity knowingly or
7 recklessly participates in—

8 (i) any violation of any law or regula-
9 tion;

10 (ii) any breach of fiduciary duty; or

11 (iii) any conduct that involves an
12 undue risk of loss to a national insurer's
13 policyholders as a whole, which violation,
14 breach or conduct caused or is likely to
15 cause more than a minimal financial loss
16 to, or a significant adverse effect on, a na-
17 tional insurer or the policyholders of a na-
18 tional insurer.

19 (18) LIFE INSURANCE.—

20 (A) IN GENERAL.—The term “life insur-
21 ance” means insurance for which the prob-
22 abilities of the duration of human life or the
23 rate of mortality are an element or condition of
24 insurance.

1 (B) INCLUDED INSURANCE.—Life insur-
2 ance includes the granting of—

3 (i) endowment benefits;

4 (ii) additional benefits in the event of
5 death by accident or accidental means;

6 (iii) disability income benefits;

7 (iv) additional disability benefits that
8 operate to safeguard the contract from
9 lapse or to provide a special surrender
10 value, or special benefit in the event of
11 total and permanent disability;

12 (v) benefits that provide payment or
13 reimbursement for long-term home health
14 care, or long-term care in a nursing home
15 or other related facility;

16 (vi) burial insurance; and

17 (vii) optional modes of settlement of
18 proceeds of life insurance.

19 (C) EXCLUSIONS.—Life insurance does not
20 include workers compensation insurance.

21 (19) MAIN OFFICE.—The term “main office”
22 means the office of a national insurer designated as
23 its main office in accordance with section 305.

24 (20) NAIC.—The term “NAIC” means the Na-
25 tional Association of Insurance Commissioners.

1 (21) NATIONAL INSURER.—The term “national
2 insurer” means an insurer chartered under section
3 301 and the regulations thereunder.

4 (22) NATIONAL LIFE INSURER.—The term “na-
5 tional life insurer” means a life insurer chartered
6 under section 301 and the regulations thereunder.

7 (23) NATIONAL PROPERTY AND CASUALTY IN-
8 SURER.—The term “national property and casualty
9 insurer” means a property and casualty insurer
10 chartered under section 301 and the regulations
11 thereunder.

12 (24) NEGOTIATE.—The term “negotiate”
13 means, with respect to a policy of insurance, to en-
14 gage in the act of conferring directly with or offering
15 advice directly to a purchaser or prospective pur-
16 chaser of a particular policy of insurance concerning
17 any of the substantive benefits, terms or conditions
18 of the contract, provided that the person engaged in
19 that act either sells insurance or obtains insurance
20 from insurers for purchasers.

21 (25) NON-U.S. INSURER.—The term “non-U.S.
22 insurer” means an insurer organized under the laws
23 of a foreign jurisdiction.

24 (26) OFFICE.—The term “Office” means the
25 Office of National Insurers.

1 (27) PARENT.—The term “parent” means a
2 business entity that, directly or indirectly, controls
3 another business entity.

4 (28) PERSON.—The term “person” means any
5 natural person and any corporation, partnership,
6 limited liability company, limited liability partner-
7 ship, trust, association, governmental body or entity,
8 voluntary organization or similar organization.

9 (29) PERSON ASSOCIATED WITH A MEMBER.—
10 The term “person associated with a member” means
11 any director, officer, employee, controlling share-
12 holder, agent, or independent contractor (including
13 any attorney, actuary or accountant) of a national
14 insurer that is a member of an insurance self-regu-
15 latory organization.

16 (30) POLICY OF INSURANCE.—The term “policy
17 of insurance” or “insurance policy” means a policy,
18 contract, or certificate or evidence of insurance, an
19 annuity contract, and a funding agreement.

20 (31) POLICYHOLDER.—The term “policyholder”
21 of an insurance policy means the person who is iden-
22 tified as the legal owner under the terms of the in-
23 surance policy or who is otherwise vested with legal
24 title to the insurance policy through an assignment,
25 absolute on its face, completed in accordance with

1 the terms of the insurance policy and properly re-
2 corded as the policyholder on the books of the in-
3 surer. Such term does not include a person with a
4 mere beneficial interest in an insurance policy or a
5 person to which an insurance policy is assigned for
6 collateral security purposes.

7 (32) PROPERTY AND CASUALTY INSURANCE.—

8 (A) IN GENERAL.—The term “property
9 and casualty insurance” means insurance for
10 persons or properties in the United States
11 against—

12 (i) loss of or damage to property;

13 (ii) loss of income or extra expense in-
14 curred because of loss of or damage to
15 property;

16 (iii) third party liability claims caused
17 by negligence or imposed by statute or con-
18 tract, including workers compensation; or

19 (iv) loss resulting from debt or default
20 of another, including sureties.

21 (B) EXCLUSIONS.—Such term does not in-
22 clude health or life insurance, including group
23 life insurance;

24 (33) PROTECTED CELL.—The term “protected
25 cell” means an identified pool of assets and liabil-

1 ities of a national insurer segregated and insulated
2 from the remainder of the national insurer’s assets
3 and liabilities. The remainder of the national insurer-
4 er’s assets and liabilities includes general account
5 assets and liabilities, separate account assets and li-
6 abilities and assets and liabilities of other protected
7 cells.

8 (34) PROTECTED CELL ACCOUNT.—The term
9 “protected cell account” means a specifically identi-
10 fied bank or custodial account established by a na-
11 tional insurer for the purpose of segregating the pro-
12 tected cell assets of one protected cell from the pro-
13 tected cell assets of other protected cells and from
14 the assets of the national insurer’s general account
15 and separate accounts.

16 (35) RELEVANT STATE LAW.—The term “rel-
17 evant State law” means, with respect to a national
18 insurer, the law of the relevant State applicable to
19 an insurer that is chartered under the law of such
20 State and that is of the same corporate form as the
21 national insurer.

22 (36) RESULTING INSURER.—The term “result-
23 ing insurer” means a national insurer resulting from
24 a merger or consolidation pursuant to subsection (a)
25 of section 382.

1 (37) SELL.—The term “sell” means, with re-
2 spect to a policy of insurance, to exchange by any
3 means, for money or its equivalent, on behalf of an
4 insurer.

5 (38) SEPARATE ACCOUNT.—The term “separate
6 account” means an account established and main-
7 tained by a national insurer under which income,
8 gains and losses, whether or not realized, from as-
9 sets allocated to such account, are, in accordance
10 with the applicable contract, credited to or charged
11 against such account without regard to other in-
12 come, gains, or losses of the national insurer.

13 (39) SOLICIT.—The term “solicit” means, with
14 respect to a policy of insurance, attempting to sell
15 insurance or asking or urging a person to apply for
16 a particular kind of insurance from a particular in-
17 surer.

18 (40) STATE.—The term “State” means any
19 State of the United States, the District of Columbia,
20 any territory of the United States, Puerto Rico,
21 Guam, American Samoa, the Trust Territory of the
22 Pacific Islands, the Virgin Islands, and the Northern
23 Mariana Islands.

1 (41) STATE INSURER.—The term “State in-
2 surer” means an insurer incorporated or organized
3 under the laws of a State.

4 (42) STATE LICENSED INSURANCE PRO-
5 DUCER.—The term “State licensed insurance pro-
6 ducer” means a person that is an insurance pro-
7 ducer licensed by a State, but only in those cir-
8 cumstances in which such person is acting, in any
9 respect, with regard to a insurance policy or other
10 product of a national insurer; and such person shall
11 not be subject to the provisions of this Act when act-
12 ing in any other circumstances.

13 (43) SUBSIDIARY.—The term “subsidiary”
14 means a business entity controlled, directly or indi-
15 rectly, by another business entity. For purposes of
16 this paragraph—

17 (A) a business entity is conclusively pre-
18 sumed to be controlled by a person that, di-
19 rectly or indirectly, with power to vote, owns,
20 controls or holds a majority of the outstanding
21 voting securities of such business entity;

22 (B) no presumption, either of control or of
23 absence of control, arises if such ownership,
24 control or holding of voting securities is less
25 than a majority but more than 5 percent;

1 (C) absence of control is presumed if such
2 ownership, control or holding of voting securi-
3 ties is 5 percent or less; and

4 (D) in determining control, voting securi-
5 ties held in separate accounts of a business en-
6 tity shall be deemed to be owned by the busi-
7 ness entity, but voting securities in an invest-
8 ment advisory account that are not owned by a
9 business entity but are held in an account as to
10 which the business entity is an investment ad-
11 viser shall not be deemed to be controlled or
12 held by such business entity.

13 (44) TRANSITION COMMENCEMENT DATE.—The
14 term “transition commencement date” means the
15 date on which the first national insurer is granted
16 a Federal license by the Director under this Act.

17 (45) TRANSITION TERMINATION DATE.—The
18 term “transition termination date” means the 5th
19 anniversary of the transition commencement date.

20 (46) TRUSTEED ASSETS.—The term “trusteed
21 assets” means assets required or permitted by this
22 Act to be deposited by a non-U.S. insurer with a
23 qualified trustee for the security of its policyholders
24 and creditors in the United States.

1 (47) TRUSTEED SURPLUS.—The term “trusteed
2 surplus” means, with respect to a U.S. branch, the
3 value of the insurer’s trustee assets deposited with
4 a trustee in compliance with subsection (b) of sec-
5 tion 302, plus accrued investment income thereon
6 where such interest is collected by the States trust-
7 ees, less the aggregate net amount of all of its re-
8 serves and other liabilities in the United States as
9 determined in accordance with subsection (b) of sec-
10 tion 302.

11 (48) U.S. BRANCH.—The term “U.S. branch”
12 means the business unit through which business is
13 transacted within the United States by a non-U.S.
14 insurer and the assets and liabilities of the insurer
15 within the United States pertaining to such busi-
16 ness.

17 (49) VIOLATION.—The term “violation” in-
18 cludes any action or inaction (alone or with another
19 or others) for or toward causing, bringing about,
20 participating in, counseling, or aiding or abetting a
21 violation.

22 (50) VOTING SECURITIES.—The term “voting
23 securities” means securities of any class or any own-
24 ership interest having voting power for the election
25 of directors, trustees or management of a business

1 entity, other than securities having such power only
2 by reason of the happening of a contingency.

3 **TITLE II—DIRECTOR OF THE**
4 **OFFICE OF NATIONAL INSURERS**

5 **SEC. 201. DIRECTOR OF THE OFFICE OF NATIONAL INSUR-**
6 **ERS.**

7 (a) ESTABLISHMENT OF OFFICE.—There is estab-
8 lished the Office of National Insurers, which shall be an
9 office in the Department of the Treasury.

10 (b) ESTABLISHMENT OF POSITION OF DIRECTOR.—
11 There is established the position of the Director of the
12 Office of National Insurers, who shall be the head of the
13 Office of National Insurers and shall be subject to the gen-
14 eral oversight of the Secretary of the Treasury.

15 (c) AUTONOMY OF DIRECTOR.—The Secretary of the
16 Treasury may not intervene in any matter or proceeding
17 before the Director (including agency enforcement actions)
18 unless otherwise specifically provided by law.

19 (d) APPOINTMENT; TERM.—

20 (1) APPOINTMENT.—The Director shall be ap-
21 pointed by the President, by and with the advice and
22 consent of the Senate, from among individuals who
23 are citizens of the United States.

24 (2) TERM.—The Director shall be appointed for
25 a term of 4 years that begins on August 1 of the

1 year following the year in which a Presidential elec-
2 tion occurs. The term of the first Director appointed
3 pursuant to this section shall terminate at the end
4 of July 31 of the year following the first Presidential
5 election occurring after confirmation of such Direc-
6 tor to the office of Director.

7 (3) VACANCY.—A vacancy in the position of Di-
8 rector which occurs before the expiration of the term
9 for which a Director was appointed shall be filled in
10 the manner established in paragraph (1) and the Di-
11 rector appointed to fill such vacancy shall be ap-
12 pointed only for the remainder of such term.

13 (4) SERVICE AFTER END OF TERM.—An indi-
14 vidual may serve as Director after the expiration of
15 the term for which appointed until a successor Di-
16 rector has been appointed.

17 (e) PROHIBITION ON FINANCIAL INTERESTS.—The
18 Director shall not have a direct or indirect financial inter-
19 est in any national insurer or State licensed insurance pro-
20 ducer, except that the Director may own, directly or indi-
21 rectly, or may have a direct or indirect beneficial interest
22 in any insurance policy underwritten or sold by a national
23 insurer.

24 (f) ANNUAL REPORT REQUIRED.—The Director shall
25 make an annual report to the Congress. Such report shall

1 include a description of any changes the Director has
2 made or is considering making in any district offices of
3 the Office, including a description of the geographic allo-
4 cation of the Office's resources and personnel used to
5 carry out examination and supervision functions.

6 (g) STAFF.—

7 (1) APPOINTMENT AND COMPENSATION.—The
8 Director shall fix the compensation and number of,
9 and appoint and direct, all employees of the Office
10 of National Insurers notwithstanding section
11 301(f)(1) of title 31, United States Code, without
12 regard to the provisions of title 5, United States
13 Code, governing appointments in the competitive
14 service (except such provisions that relate to dis-
15 crimination), and without regard to the provisions of
16 chapter 51 and subchapter III of chapter 53 of that
17 title relating to classification and General Schedule
18 pay rates.

19 (2) RATES OF BASIC PAY.—Rates of basic pay
20 for employees of the Office may be set and adjusted
21 by the Director without regard to the provisions of
22 chapter 51 or subchapter III of chapter 53 of title
23 5, United States Code.

24 (3) ADDITIONAL COMPENSATION AND BENE-
25 FITS.—The Director may provide additional com-

1 pensation and benefits to employees of the Office if
2 the same type of compensation or benefits are then
3 being provided by any Federal banking agency or, if
4 not then being provided, could be provided by such
5 an agency under applicable provisions of law, rule or
6 regulation. In setting and adjusting the total amount
7 of compensation and benefits for employees of the
8 Office, the Director shall consult, and seek to main-
9 tain comparability with, the Federal banking agen-
10 cies.

11 (4) DELEGATION AUTHORITY.—Except to the
12 extent expressly prohibited by the provisions of this
13 Act, the Director may—

14 (A) designate who shall act as Director in
15 the Director’s absence; and

16 (B) delegate to any employee, representa-
17 tive, or agent any power conferred on the Direc-
18 tor by this Act.

19 (h) LITIGATION AUTHORITY.—The Director shall
20 have authority to sue and be sued, complain and defend,
21 and otherwise litigate, in the Director’s own name and
22 through the Director’s own attorney, in any court, State
23 or Federal.

24 (i) FUNDING THROUGH ASSESSMENTS.—The com-
25 pensation of the Director and employees of the Office and

1 all other expenses of the Office may be paid from assess-
2 ments levied under section 204.

3 (j) GAO AUDIT.—The Director shall make available
4 to the Comptroller General of the United States all books
5 and records necessary to audit all of the activities of the
6 Office of National Insurers.

7 (k) AUTHORITY TO ESTABLISH DISTRICT OF-
8 FICES.—The Director shall have the authority to estab-
9 lish, in his discretion, such district offices of the Office,
10 at such locations, as the Director deems necessary to per-
11 form the Office’s duties.

12 (l) DIVISION OF CONSUMER AFFAIRS.—The Director
13 shall establish a Division of Consumer Affairs within the
14 Office.

15 **SEC. 202. SUPERVISION OF NATIONAL INSURERS.**

16 (a) EXAMINATIONS.—

17 (1) IN GENERAL.—The Director shall provide
18 for the examination of national insurers. The Direc-
19 tor shall, not less than once during each 12-month
20 period, conduct an on-site financial examination and
21 an onsite market conduct examination of each na-
22 tional insurer.

23 (2) EXEMPTION.—The Director may exempt a
24 national insurer from the requirement under para-
25 graph (1) of an annual on-site financial examination

1 if the Director determines that the financial condi-
2 tion of the national insurer warrants such an exemp-
3 tion. The Director may not exempt any national in-
4 surer from such requirement for 2 successive years.

5 (b) REPORTS.—

6 (1) IN GENERAL.—The Director may require
7 national insurers to make such reports, containing
8 such information and in such form, as the Director
9 may prescribe by regulation. Every national insurer
10 that holds a Federal license shall file with the Direc-
11 tor annual and quarterly financial statements at
12 such times and in such form as the Director may re-
13 quire by regulation. Financial statements shall fol-
14 low the accounting principles specified pursuant to
15 section 331. The Director shall by regulation require
16 that annual financial statements be audited and ac-
17 companied by a report thereon of independent ac-
18 countants. The regulations shall specify the informa-
19 tion that must be disclosed in the financial state-
20 ments and accompanying notes and may specify ad-
21 ditional schedules that need not be filed with the fi-
22 nancial statements but must be available for exam-
23 ination by the Director upon request for a period of
24 time specified in the regulations.

25 (2) PUBLIC DISCLOSURE.—

1 (A) The Director shall, by regulation, pre-
2 scribe the extent to which the following shall, in
3 whole or in part, be made available to the pub-
4 lic upon request—

5 (i) reports of examinations conducted
6 pursuant to subsection (a), and the infor-
7 mation contained in such reports;

8 (ii) reports by national insurers pur-
9 suant to paragraph (1), and the informa-
10 tion contained in such reports;

11 (iii) information reported pursuant to
12 section 602 or 603 (or regulations there-
13 under); and

14 (iv) any workpapers or other materials
15 of a national insurer that the Director ob-
16 tains in connection with an examination
17 conducted pursuant to subsection (a), a re-
18 port pursuant to paragraph (1), a submis-
19 sion pursuant to section 602 or 603 (or
20 regulations thereunder) or otherwise and
21 that are in the Director's possession at the
22 time of the request, and the information
23 contained in such workpapers or other ma-
24 terials, except that neither the provision of
25 such workpapers or other materials of a

1 national insurer to the Director nor any-
2 thing in this Act or in any regulations
3 issued under this Act shall constitute a
4 waiver of, or otherwise affect, any privilege
5 or other form of legal protection or exemp-
6 tion from public disclosure to which such
7 workpapers or other materials, and the in-
8 formation contained in such workpapers or
9 other materials, are otherwise subject.

10 (B) Except to the extent prescribed in reg-
11 ulations issued by the Director in accordance
12 with subparagraph (A) and subject to clause
13 (iv) of subparagraph (A), reports of examina-
14 tion conducted pursuant to subsection (a), re-
15 ports by national insurers pursuant to para-
16 graph (1), information reported pursuant to
17 section 602 or 603 (or regulations thereunder),
18 and any workpapers or other materials of a na-
19 tional insurer that the Director obtains in con-
20 nection with an examination conducted pursu-
21 ant to subsection (a), a report pursuant to
22 paragraph (1), a submission pursuant to section
23 602 or 603 (or regulations thereunder) or oth-
24 erwise and that are in the Director's possession
25 at the time of the request, and all information

1 contained in such reports, workpapers or other
2 materials, shall be made available to the public
3 upon request unless the Director determines—

4 (i) that a particular item or classifica-
5 tion of information should not be made
6 public in order to protect the insurer or in-
7 surers concerned, or the policyholders of
8 such insurer or insurers; or

9 (ii) that public disclosure would other-
10 wise not be in the public interest.

11 (C) Any determination made by the Direc-
12 tor under subparagraph (B) not to permit the
13 public disclosure of information shall be made
14 in writing, and if the Director restricts any
15 item of information for national insurers gen-
16 erally, the Director shall disclose the reason in
17 detail in the Federal Register.

18 (3) ACCESS BY CERTAIN PARTIES.—

19 (A) Notwithstanding paragraph (2), the
20 persons described in subparagraph (B) shall not
21 be denied access to any information contained
22 in a report required under paragraph (1), sub-
23 ject to reasonable requirements of confiden-
24 tiality. Those requirements shall not prevent
25 such information from being transmitted to the

1 Comptroller General of the United States for
2 analysis.

3 (B) The following persons are described in
4 this subparagraph for purposes of subpara-
5 graph (A)—

6 (i) the Chairman or ranking minority
7 member of the Committee on Commerce,
8 Science and Transportation of the Senate
9 and their designees; and

10 (ii) the Chairman or ranking minority
11 member of the Committee on Financial
12 Services of the House of Representatives
13 and their designees.

14 (c) COMPLIANCE WITH MONETARY TRANSACTION
15 RECORDKEEPING AND REPORT REQUIREMENTS.—

16 (1) COMPLIANCE PROCEDURES REQUIRED.—

17 The Secretary of the Treasury shall prescribe regu-
18 lations requiring national insurers to establish and
19 maintain procedures reasonably designed to ensure
20 and monitor the compliance of such national insur-
21 ers with the requirements of subchapter II of chap-
22 ter 53 of title 31, United States Code.

23 (2) EXAMINATIONS OF NATIONAL INSURERS TO
24 INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

1 (A) IN GENERAL.—Each examination of a
2 national insurer by the Director shall include a
3 review of the procedures required to be estab-
4 lished and maintained under paragraph (1).

5 (B) EXAMINATION REPORT REQUIRE-
6 MENT.—The report of examination shall de-
7 scribe any problem with the procedures main-
8 tained by the national insurer.

9 (3) ORDER TO COMPLY WITH REQUIRE-
10 MENTS.—If the Director determines that a national
11 insurer—

12 (A) has failed to establish and maintain
13 the procedures described in paragraph (1); or

14 (B) has failed to correct any problem with
15 the procedures maintained by such national in-
16 surer that was previously reported to the na-
17 tional insurer by the Director, the Director
18 shall issue an order in the manner prescribed in
19 section 205 requiring such national insurer to
20 cease and desist from its violation of this sub-
21 section or regulations implementing this sub-
22 section.

23 (d) ANCILLARY PROVISIONS.—

1 (1) In making examinations of national insur-
2 ers, examiners appointed by the Director shall have
3 power—

4 (A) to require an affiliate of a national in-
5 surer to make such reports and provide such
6 material as the examiners may direct, but only
7 to the extent necessary to disclose information
8 concerning activities of the affiliate that may
9 affect the operations, management or financial
10 condition of the national insurer; and

11 (B) to make examinations of the affairs of
12 an affiliate of a national insurer, but—

13 (i) only if the examiners have reason-
14 able cause to believe that the activities of
15 the affiliate may affect the operations,
16 management or financial condition of the
17 national insurer;

18 (ii) only if the examiners are unable
19 to obtain the necessary information from
20 the national insurer; and

21 (iii) only to the extent necessary to
22 disclose information concerning the activi-
23 ties of the affiliate that may affect the op-
24 erations, management or financial condi-
25 tion of the national insurer.

1 (2) In the course of any examination of any na-
2 tional insurer, prompt and complete access shall be
3 given to national insurer officers, directors, employ-
4 ees, and agents, and to relevant books, records, or
5 documents of any type.

6 (3) Upon request made in the course of super-
7 vision or oversight of any national insurer, for the
8 purpose of acting on any application or determining
9 the condition of any national insurer, including
10 whether operations are being conducted in a manner
11 that does not involve undue risk of loss to the na-
12 tional insurer's policyholders as a whole, or in com-
13 pliance with charters, laws, regulations, directives,
14 written agreements, or conditions imposed in writing
15 in connection with the granting of an application or
16 other request, the Director shall be given prompt
17 and complete access to national insurer officers, di-
18 rectors, employees, and agents, and to relevant
19 books, records, or documents of any type.

20 (4) If prompt and complete access upon request
21 is not given as required in this subsection, the Direc-
22 tor may apply to the United States district court for
23 the judicial district (or the United States court in
24 any territory) in which the main office of the na-
25 tional insurer is located, or in which the person de-

1 nying such access resides or carries on business, or
2 in the United States District Court for the District
3 of Columbia, for an order requiring that such infor-
4 mation be promptly provided.

5 (5) In connection with examinations of national
6 insurers and affiliates thereof, the Director may—

7 (A) administer oaths and affirmations and
8 examine and take and preserve testimony under
9 oath as to any matter in respect of the affairs
10 or ownership of any such national insurer or af-
11 filiate; and

12 (B) issue subpoenas and, for the enforce-
13 ment thereof, apply to the United States dis-
14 trict court for the judicial district (or the
15 United States court in any territory) in which
16 the main office of the national insurer or affil-
17 iate is located, or in which the witness resides
18 or carries on business, or in the United States
19 District Court for the District of Columbia.
20 Such courts shall have jurisdiction and power to
21 order and require compliance with any such
22 subpoena.

23 (6) Any national insurer and any affiliate of
24 any national insurer shall provide the Director with
25 complete access to any information or report with

1 respect to any examination made by any other State
2 or Federal regulatory authority and furnish any ad-
3 ditional information with respect thereto as the Di-
4 rector may reasonably require.

5 **SEC. 203. AUTHORITY TO PRESCRIBE REGULATIONS.**

6 (a) IN GENERAL.—The Director may prescribe such
7 regulations and issue such orders and interpretations as
8 the Director may determine to be appropriate to carry out
9 this Act and all other laws within the Director’s jurisdic-
10 tion.

11 (b) SCOPE OF AUTHORITY.—The Secretary of the
12 Treasury may not delay or prevent the issuance of any
13 rule or the promulgation of any regulation by the Director.

14 **SEC. 204. EXAMINATION, ASSESSMENTS, AND FEES.**

15 (a) EXAMINATION OF NATIONAL INSURERS.—The
16 cost of conducting examinations of national insurers pur-
17 suant to section 202, implementing this Act, and repaying
18 amounts provided to the Director pursuant to subsection
19 (k) of this section, shall be assessed by the Director
20 against each such national insurer as the Director deems
21 necessary or appropriate.

22 (b) EXAMINATION OF AFFILIATES.—The costs of
23 conducting examinations of affiliates of national insurers
24 pursuant to section 202, implementing this Act, and re-
25 paying amounts provided to the Director pursuant to sub-

1 section (k) of this section, may be assessed by the Director
2 against each affiliate that is examined as the Director
3 deems necessary or appropriate.

4 (c) ASSESSMENT AGAINST NATIONAL INSURER IN
5 CASE OF AFFILIATE'S REFUSAL TO PAY.—

6 (1) IN GENERAL.—Subject to paragraph (2), if
7 any affiliate of a national insurer—

8 (A) refuses to pay any assessment under
9 subsection (b) of this section; or

10 (B) fails to pay any such assessment be-
11 fore the end of the 60-day period beginning on
12 the date of the assessment, the Director may
13 assess such cost against, and collect such cost
14 from, such national insurer.

15 (2) AFFILIATE OF MORE THAN ONE NATIONAL
16 INSURER.—If any affiliate referred to in paragraph
17 (1) is an affiliate of more than one national insurer,
18 the assessment with respect to the affiliate may be
19 assessed against, and collected from, any affiliated
20 national insurer in such proportions as the Director
21 may prescribe.

22 (d) CIVIL MONEY PENALTY FOR AFFILIATE'S RE-
23 FUSAL TO COOPERATE.—

24 (1) PENALTY IMPOSED.—If any affiliate of any
25 national insurer—

1 (A) refuses to permit any examiner ap-
2 pointed by the Director to make an examina-
3 tion; or

4 (B) refuses to provide any information re-
5 quired to be disclosed in the course of any ex-
6 amination, the national insurer shall forfeit and
7 pay a civil penalty of not more than \$25,000
8 for each day that any such refusal continues.

9 (2) ASSESSMENT AND COLLECTION.—Any pen-
10 alty imposed under paragraph (1) shall be assessed
11 and collected by the Director, in the manner pro-
12 vided in subsection (g)(1) of section 205.

13 (e) REGULATIONS.—The Director may prescribe reg-
14 ulations with respect to—

15 (1) the computation of, and the assessment for,
16 the cost of conducting examinations pursuant to this
17 section; and

18 (2) the collection and use of such assessments
19 and any fees under this section.

20 Such regulations may establish formulas to determine a
21 fee or schedule of fees to cover the costs of examinations
22 and also to cover the cost of processing applications, fil-
23 ings, statements, notices, and requests for approvals by
24 the Director or the Director's designee.

25 (f) TREATMENT OF EXAMINATION ASSESSMENTS.—

1 (1) DEPOSITS.—Amounts received by the Direc-
2 tor from assessments under this section (other than
3 an assessment under subsection (d)(2) of this sec-
4 tion) may be deposited in the manner provided in
5 section 5234 of the Revised Statutes of the United
6 States (12 U.S.C. 192), with respect to assessments
7 by the Comptroller of the Currency.

8 (2) ASSESSMENTS ARE NOT SUBJECT TO AP-
9 PORTIONMENT OF FUNDS.—Notwithstanding any
10 other provision of law, the amounts received by the
11 Director from any assessment under this section
12 (other than an assessment under subsection (d)(2)
13 of this section) shall not be subject to apportionment
14 for the purpose of chapter 15 of title 31, United
15 States Code, or under any other authority.

16 (g) PROCESSING FEE.—The Director shall assess
17 against any person that submits to the Office an applica-
18 tion, filing, statement, notice, or request for approval a
19 fee for processing such submission.

20 (h) ADDITIONAL FEES FOR EXPENSES OF THE OF-
21 FICE.—The Director may assess against national insurers
22 such additional fees to fund the direct and indirect ex-
23 penses of the Office as the Director deems necessary or
24 appropriate. Such fees may be imposed more frequently
25 than annually at the discretion of the Director.

1 (i) WORKING CAPITAL.—The Director may impose
2 fees and assessments pursuant to subsections (a), (b), (e)
3 and (h) of this section, in excess of actual expenses for
4 any given year, to permit the Director to maintain a work-
5 ing capital fund. The Director shall remit to the payers
6 of such fees and assessments any funds collected in excess
7 of what he deems necessary to maintain such working cap-
8 ital fund.

9 (j) USE OF FUNDS.—The Director may use the com-
10 bined resources retained through fees and assessments im-
11 posed pursuant to this section to pay all direct and indi-
12 rect salary and administrative expenses of the Office, in-
13 cluding contracts and purchases of property and services,
14 and the direct and indirect expenses of the examinations
15 and supervisory activities of the Office.

16 (k) START-UP FUNDING.—

17 (1) IN GENERAL.—For purposes of carrying out
18 the responsibilities of the Office and the Director
19 under this Act, the Secretary of the Treasury shall
20 pay to the Director a one-time payment of
21 \$10,000,000 on the date of the enactment of this
22 Act. Thereafter, expenses of the Office shall be fund-
23 ed through the collection of fees as provided under
24 this section.

1 (2) ADDITIONAL FUNDS.—Except as provided
2 in this section, funds in addition to the funds pro-
3 vided under paragraph (1) may be made available to
4 the Director only if authorized and appropriated by
5 law.

6 (3) REPAYMENT OF TREASURY LOAN.—Not
7 later than the expiration of the 5-year period begin-
8 ning on the date of the enactment of this act, the
9 Director shall repay to the Secretary of the Treasury
10 the unpaid portion of the \$10,000,000 paid to the
11 Director pursuant to paragraph (1).

12 **SEC. 205. ENFORCEMENT.**

13 (a) FEDERAL LICENSE REVOCATION, SUSPENSION,
14 OR RESTRICTION.—

15 (1) INVOLUNTARY REVOCATION OR RESTRIC-
16 TION.—

17 (A) NOTICE TO THE NATIONAL IN-
18 SURER.—If the Director determines that—

19 (i) a national insurer or its board of
20 directors has engaged or are engaging in
21 conduct involving an undue risk of loss to
22 the national insurer's policyholders as a
23 whole;

24 (ii) a national insurer is in a financial
25 or other condition that is not consistent

1 with the continuation of its operations as
2 presently conducted by the insurer; or

3 (iii) a national insurer or its board of
4 directors has violated any applicable law,
5 regulation, order, condition imposed in
6 writing by the Director in connection with
7 the approval of an application, filing, state-
8 ment, notice or other request by the na-
9 tional insurer, or written agreement en-
10 tered into between the national insurer and
11 the Director, the Director may determine
12 that such conduct, condition, or violation
13 requires revocation or restriction of (in-
14 cluding restrictions on the lines of insur-
15 ance covered by) the national insurer's
16 Federal license.

17 (B) If the Director determines that any
18 conduct, condition, or violation specified in sub-
19 paragraph (A) requires revocation or restriction
20 of a national insurer's Federal license, the Di-
21 rector shall—

22 (i) serve written notice on the national
23 insurer of the Director's intention to re-
24 voke the Federal license of such national
25 insurer;

1 (ii) provide the national insurer with a
2 statement of the basis for the determina-
3 tion to revoke or restrict the insurer's Fed-
4 eral license; and

5 (iii) notify the national insurer of the
6 date (not less than 30 days after notice
7 under this subparagraph) and place for a
8 hearing before the Director (or any person
9 designated by the Director) with respect to
10 the revocation or restriction of the national
11 insurer's Federal license.

12 (2) HEARING; REVOCATION OR RESTRICTION.—

13 If, on the basis of the evidence presented at a hear-
14 ing before the Director (or any person designated by
15 the Director for such purpose), in which all issues
16 shall be determined on the record pursuant to sec-
17 tion 554 of title 5, United States Code, and the
18 written findings of the Director (or such designated
19 person) with respect to such evidence (which shall be
20 conclusive), the Director finds that any conduct,
21 condition, or violation specified in the notice to a na-
22 tional insurer under paragraph (1)(B) has been es-
23 tablished, the Director may issue an order revoking
24 or restricting the Federal license of the national in-

1 surer effective as of a date subsequent to such find-
2 ing.

3 (3) APPEARANCE; CONSENT TO REVOCATION OR
4 RESTRICTION.—Unless the national insurer shall ap-
5 pear at the hearing by a duly authorized representa-
6 tive, it shall be deemed to have consented to the rev-
7 ocation or restriction of its Federal license, and rev-
8 ocation or restriction of its Federal license there-
9 upon may be ordered by the Director.

10 (4) JUDICIAL REVIEW.—Any national insurer
11 whose Federal license has been revoked or restricted
12 by order of the Director under this subsection shall
13 have the right of judicial review of such order only
14 to the same extent as provided for the review of or-
15 ders under subsection (f).

16 (5) PUBLICATION OF NOTICE OF REVOCATION
17 OR RESTRICTION.—The Director may publish notice
18 of such revocation or restriction and the national in-
19 surer shall give notice of such revocation or restric-
20 tion to each of its policyholders at the policyholder's
21 last address of record on the books of the national
22 insurer, in such manner and at such time as the Di-
23 rector may find to be necessary and may order for
24 the protection of policyholders.

1 (6) TEMPORARY SUSPENSION OR RESTRIC-
2 TION.—

3 (A) IN GENERAL.—If the Director initiates
4 a revocation or restriction proceeding under
5 paragraph (1) with respect to a national in-
6 surer, and the Director finds that the national
7 insurer poses an immediate threat to its policy-
8 holders or the public, the Director may issue a
9 temporary order suspending or restricting the
10 national insurer's Federal license.

11 (B) EFFECTIVE PERIOD OF TEMPORARY
12 ORDER.—Any temporary order issued under
13 subparagraph (A) shall become effective not
14 earlier than 10 days from the date of service
15 upon the national insurer and, unless set aside,
16 limited, or suspended by a court in proceedings
17 authorized hereunder, such temporary order
18 shall remain effective and enforceable until an
19 order of the Director under paragraph (2) or
20 (3) becomes final or until the Director dis-
21 misses the proceedings under paragraph (2).

22 (C) JUDICIAL REVIEW.—Before the close
23 of the 10-day period beginning on the date any
24 temporary order has been served upon a na-
25 tional insurer under subparagraph (A), such

1 national insurer may apply to the United States
2 District Court for the District of Columbia, or
3 the United States district court for the judicial
4 district in which the main office of the insurer
5 is located, for an injunction setting aside, lim-
6 iting, or suspending the enforcement, operation,
7 or effectiveness of such order, and such court
8 shall have jurisdiction to issue such injunction.

9 (D) PUBLICATION OF ORDER.—The na-
10 tional insurer shall give notice of a temporary
11 order issued under this paragraph in such man-
12 ner and at such times as the Director may find
13 to be necessary and may order for the protec-
14 tion of policyholders and the public.

15 (7) NOTICE BY THE DIRECTOR.—If the Direc-
16 tor shall determine that a national insurer has not
17 given notice of an order under this subsection sub-
18 stantially in the manner and at the times ordered by
19 the Director, the Director may provide such notice
20 in such manner as the Director may find to be nec-
21 essary and proper.

22 (8) DECISION TO REVOKE, SUSPEND, OR RE-
23 STRICT.—Any decision by the Director to—

1 (A) issue a temporary order suspending or
2 restricting a national insurer's Federal license;
3 or

4 (B) issue a final order revoking or restrict-
5 ing a national insurer's Federal license, shall be
6 made by the Director and may not be dele-
7 gated, except that the Director may, by order,
8 designate an employee of the Office that may
9 make such decision in the event that the Direc-
10 tor is not able to act by reason of recusal or is
11 otherwise disqualified from acting.

12 (b) CEASE-AND-DESIST PROCEEDINGS.—

13 (1) IN GENERAL.—If, in the opinion of the Di-
14 rector, any national insurer, any State licensed in-
15 surance producer, or any insurer-affiliated party is
16 engaging or has engaged, or the Director has rea-
17 sonable cause to believe that any national insurer,
18 any State licensed insurance producer, or any in-
19 surer-affiliated party is about to engage, in conduct
20 involving an undue risk of loss to such national in-
21 surer's policyholders as a whole, or is violating or
22 has violated, or the Director has reasonable cause to
23 believe that any national insurer, any State licensed
24 insurance producer, or any insurer-affiliated party is
25 about to violate, a law, rule, or regulation, or any

1 condition imposed in writing by the Director in con-
2 nection with the granting of any application, filing,
3 statement, notice or other request by the national in-
4 surer or the State licensed insurance producer or
5 any written agreement entered into with the Direc-
6 tor, the Director may issue and serve upon such na-
7 tional insurer, producer or party a notice of charges
8 in respect thereof. The notice shall contain a state-
9 ment of the facts constituting the alleged violation
10 or violations or the conduct, and shall fix a time and
11 place at which a hearing will be held to determine
12 whether an order to cease and desist therefrom
13 should issue against the national insurer, the State
14 licensed insurance producer or the insurer-affiliated
15 party. Such hearing shall be fixed for a date not ear-
16 lier than 30 days nor later than 60 days after serv-
17 ice of such notice unless an earlier or a later date
18 is set by the Director at the request of any party so
19 served. Unless the party or parties so served shall
20 appear at the hearing personally or by a duly au-
21 thorized representative, they shall be deemed to have
22 consented to the issuance of the cease-and-desist
23 order. In the event of such consent, or if upon the
24 record made at any such hearing, the Director shall
25 find that any violation or conduct specified in the

1 notice of charges has been established, the Director
2 may issue and serve upon the national insurer, the
3 State licensed insurance producer or the insurer-af-
4 filiated party, as the case may be, an order to cease
5 and desist from any such violation or conduct. Such
6 order may, by provisions which may be mandatory
7 or otherwise, require the national insurer, the State
8 licensed insurance producer or the insurer-affiliated
9 party to cease and desist from the same, and, fur-
10 ther, to take affirmative action to correct the condi-
11 tions resulting from any such violation or conduct.

12 (2) EFFECTIVE DATE.—A cease-and-desist
13 order shall become effective at the expiration of 30
14 days after the service of such order upon the na-
15 tional insurer, the State licensed insurance producer
16 or the insurer-affiliated party, as the case may be
17 (except in the case of a cease-and-desist order issued
18 upon consent, which shall become effective at the
19 time specified therein), and shall remain effective
20 and enforceable as provided therein, except to such
21 extent as it is stayed, modified, terminated, or set
22 aside by action of the Director or a reviewing court.

23 (3) AFFIRMATIVE ACTION TO CORRECT CONDI-
24 TIONS RESULTING FROM VIOLATIONS OR CON-
25 DUCT.—The authority under this subsection and

1 subsection (c) to issue an order that requires a na-
2 tional insurer, a State licensed insurance producer
3 or an insurer-affiliated party to take affirmative ac-
4 tion to correct or remedy any conditions resulting
5 from any violation or conduct with respect to which
6 such order is issued includes the authority to require
7 such national insurer, producer or such party to—

8 (A) make restitution or provide reimburse-
9 ment, indemnification, or guarantee against
10 loss;

11 (B) restrict the growth of the national in-
12 surer;

13 (C) dispose of any asset or insurance con-
14 tract (including any insurance policy);

15 (D) rescind any other agreements or con-
16 tracts, other than insurance contracts (includ-
17 ing insurance policies) as to which the national
18 insurer is the issuer; and

19 (E) employ qualified officers or employees
20 (who may be subject to approval by the Direc-
21 tor in his direction); and

22 (F) take such other action as the Director
23 determines to be appropriate.

24 (4) AUTHORITY TO LIMIT ACTIVITIES.—The au-
25 thority to issue an order under this subsection or

1 subsection (c) includes the authority to place limita-
2 tions on the activities or functions of a national in-
3 surer, a State licensed insurance producer or an in-
4 surer-affiliated party.

5 (5) STANDARD FOR CERTAIN ORDERS.—No au-
6 thority under this subsection or subsection (c) to
7 prohibit any insurer-affiliated party from with-
8 drawing, transferring, removing, dissipating, or dis-
9 posing of any funds, assets, or other property may
10 be exercised unless the Director meets the standards
11 of Rule 65 of the Federal Rules of Civil Procedure,
12 without regard to the requirement of such rule that
13 the applicant show that the injury, loss, or damage
14 is irreparable and immediate.

15 (c) TEMPORARY CEASE-AND-DESIST ORDERS.—

16 (1) IN GENERAL.—Whenever the Director shall
17 determine that the violation or threatened violation
18 or the conduct specified in the notice of charges
19 served upon a national insurer, a State licensed in-
20 surance producer or an insurer-affiliated party pur-
21 suant to subsection (b)(1), or the continuation there-
22 of, is likely to cause insolvency or significant dissipa-
23 tion of assets or earnings of a national insurer, or
24 is likely to weaken the condition of a national in-
25 surer or otherwise prejudice the interests of the pol-

1 icyholders of a national insurer prior to the comple-
2 tion of the proceedings conducted pursuant to sub-
3 section (b)(1), the Director may issue a temporary
4 order requiring such national insurer, producer or
5 party to cease and desist from any such violation or
6 conduct and to take affirmative action to prevent or
7 remedy such insolvency, dissipation, condition, or
8 prejudice pending completion of such proceedings.
9 Such order may include any requirement authorized
10 under subsection (b)(3)(B). Such order shall become
11 effective upon service upon the national insurer, pro-
12 ducer or party and, unless set aside, limited, or sus-
13 pended by a court in proceedings authorized by
14 paragraph (2), shall remain effective and enforceable
15 pending the completion of the administrative pro-
16 ceedings pursuant to such notice and until such time
17 as the Director shall dismiss the charges specified in
18 such notice or, if a cease-and-desist order is issued
19 against such national insurer, producer or party,
20 until the effective date of such order.

21 (2) INJUNCTION.—Within 10 days after a na-
22 tional insurer, a State licensed insurance producer
23 or an insurer-affiliated party has been served with a
24 temporary cease-and-desist order, the national in-
25 surer, producer or party may apply to the United

1 States district court for the judicial district in which
2 the main office of the national insurer is located or
3 in which the producer of party is located, as the case
4 may be, or to the United States District Court for
5 the District of Columbia, for an injunction setting
6 aside, limiting, or suspending the enforcement, oper-
7 ation, or effectiveness of such order pending the
8 completion of the administrative proceedings pursu-
9 ant to the notice of charges served upon the national
10 insurer or such party under subsection (b)(1), and
11 such court shall have jurisdiction to issue such in-
12 junction.

13 (3) INCOMPLETE OR INACCURATE RECORDS.—

14 (A) TEMPORARY ORDER.—If a notice of
15 charges served under subsection (b)(1) speci-
16 fies, on the basis of particular facts and cir-
17 cumstances, that a national insurer's books and
18 records are so incomplete or inaccurate that the
19 Director is unable, through the normal super-
20 visory process, to determine the financial condi-
21 tion of that national insurer or the details or
22 purpose of any transaction or transactions that
23 may have a material effect on the financial con-
24 dition of that national insurer, the Director
25 may issue a temporary order requiring—

1 (i) the cessation of any activity or
2 practice which gave rise, whether in whole
3 or in part, to the incomplete or inaccurate
4 state of the books or records; or

5 (ii) affirmative action to restore such
6 books or records to a complete and accu-
7 rate state, until the completion of the pro-
8 ceedings under subsection (b)(1).

9 (B) EFFECTIVE PERIOD.—Any temporary
10 order issued under subparagraph (A)—

11 (i) shall become effective upon service;

12 and

13 (ii) unless set aside, limited, or sus-
14 pended by a court in proceedings under
15 paragraph (2), shall remain in effect and
16 enforceable until the earlier of—

17 (I) the completion of the pro-
18 ceeding initiated under subsection
19 (a)(1) in connection with the notice of
20 charges; or

21 (II) the date the Director deter-
22 mines, by examination or otherwise,
23 that the national insurer's books and
24 records are accurate and reflect the fi-

1 nancial condition of the national in-
2 surer.

3 (d) REMOVAL AND PROHIBITION AUTHORITY.—

4 (1) AUTHORITY TO ISSUE ORDER.—Whenever
5 the Director determines that—

6 (A) any insurer-affiliated party has, di-
7 rectly or indirectly—

8 (i) violated—

9 (I) any law or regulation;

10 (II) any cease-and-desist order
11 issued under this section which has
12 become final;

13 (III) any condition imposed in
14 writing by the Director in connection
15 with the grant of any application, fil-
16 ing, statement, notice or other request
17 by such national insurer; or

18 (IV) any written agreement be-
19 tween such national insurer and the
20 Director;

21 (ii) engaged or participated in any
22 conduct involving undue risk of loss to
23 such national insurer's policyholders as a
24 whole; or

1 (iii) committed or engaged in any act,
2 omission, or practice which constitutes a
3 breach of such party's fiduciary duty;

4 (B) by reason of the violation, practice, or
5 breach described in any clause of subparagraph
6 (A)—

7 (i) such national insurer has suffered
8 or will probably suffer financial loss or
9 other damage;

10 (ii) the interests of the national insurer's
11 policyholders have been or could be
12 prejudiced; or

13 (iii) such party has received financial
14 gain or other benefit by reason of such vio-
15 lation, practice, or breach; and

16 (C) such violation, practice, or breach—

17 (i) involves personal dishonesty on the
18 part of such party; or

19 (ii) demonstrates willful or continuing
20 disregard by such party for the condition
21 of such national insurer or the interests of
22 the national insurer's policyholders, the Di-
23 rector may serve upon such party a written
24 notice of the Director's intention to sus-
25 pend or remove such party from office or

1 to prohibit any further participation by
2 such party, in any manner, in the conduct
3 of the affairs of any national insurer.

4 (2) TEMPORARY SUSPENSION ORDER.—

5 (A) SUSPENSION OR PROHIBITION AU-
6 THORIZED.—If the Director serves written no-
7 tice under paragraph (1) on any insurer-affili-
8 ated party of the Director’s intention to issue
9 an order under such paragraph, the Director
10 may issue a temporary order suspending such
11 party from office or prohibiting such party from
12 further participation in any manner in the con-
13 duct of the affairs of the national insurer, if the
14 Director—

15 (i) determines that such action is nec-
16 essary for the protection of the national in-
17 surer or of the interests of the national in-
18 surer’s policyholders; and

19 (ii) serves such party with the tem-
20 porary order of suspension or prohibition.

21 (B) EFFECTIVE PERIOD.—Any temporary
22 order issued under subparagraph (A)—

23 (i) shall become effective upon service;
24 and

1 (ii) unless a court issues a stay of
2 such order under paragraph (5), shall re-
3 main in effect and enforceable until—

4 (I) the date the Director dis-
5 misses the charges contained in the
6 notice served under paragraph (1)
7 with respect to such party; or

8 (II) the effective date of an order
9 issued by the Director to such party
10 under paragraph (1).

11 (C) COPY OF ORDER.—If the Director
12 issues a temporary order under subparagraph
13 (A) to any insurer-affiliated party, the Director
14 shall serve a copy of such order on any national
15 insurer with which such party is associated at
16 the time such order is issued.

17 (3) PROCEDURES.—A notice of intention to re-
18 move an insurer-affiliated party from office or to
19 prohibit such party from participating in the con-
20 duct of the affairs of a national insurer that is
21 served under paragraph (1), shall contain a state-
22 ment of the facts constituting grounds therefor, and
23 shall fix a time and place at which a hearing will be
24 held thereon. Such hearing shall be fixed for a date
25 not earlier than 30 days nor later than 60 days after

1 the date of service of such notice, unless an earlier
2 or a later date is set by the Director at the request
3 of (A) such party, or (B) the Attorney General of
4 the United States. Unless such party shall appear at
5 the hearing in person or by a duly authorized rep-
6 resentative, such party shall be deemed to have con-
7 sented to the issuance of an order of such removal
8 or prohibition. In the event of such consent, or if
9 upon the record made at any such hearing the Di-
10 rector shall find that any of the grounds specified in
11 such notice have been established, the Director may
12 issue such orders of suspension or removal from of-
13 fice, or prohibition from participation in the conduct
14 of the affairs of the national insurer, as the Director
15 may deem appropriate. Any such order shall become
16 effective at the expiration of 30 days after service
17 upon such national insurer and such party (except
18 in the case of an order issued upon consent, which
19 shall become effective at the time specified therein).
20 Such order shall remain effective and enforceable as
21 provided therein, except to such extent as it is
22 stayed, modified, terminated, or set aside by action
23 of the Director or a reviewing court.

24 (4) INDUSTRYWIDE PROHIBITION.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), any person who, pursuant to
3 any order issued under this subsection or sub-
4 section (e), has been removed or suspended
5 from office in a national insurer or prohibited
6 from participating in the conduct of the affairs
7 of a national insurer may not, while such order
8 is in effect—

9 (i) continue or commence to hold any
10 office in, or participate in any manner in
11 the conduct of the affairs of any national
12 insurer;

13 (ii) solicit, procure, transfer, attempt
14 to transfer, vote, or attempt to vote any
15 proxy, consent, or authorization with re-
16 spect to any voting rights in any national
17 insurer;

18 (iii) act as an insurer-affiliated party;

19 or

20 (iv) act as a State licensed insurance
21 producer.

22 (B) EXCEPTION IF DIRECTOR PROVIDES
23 WRITTEN CONSENT.—If, on or after the date an
24 order is issued under this subsection which re-
25 moves or suspends from office any insurer-af-

1 filiated party or prohibits such party from par-
2 ticipating in the conduct of the affairs of a na-
3 tional insurer, such party receives the written
4 consent of the Director, subparagraph (A) shall,
5 to the extent of such consent, cease to apply to
6 such party with respect to the national insurer
7 described in each written consent.

8 (C) VIOLATION OF PARAGRAPH TREATED
9 AS VIOLATION OF ORDER.—Any violation of
10 subparagraph (A) by any person who is subject
11 to an order described in such subparagraph
12 shall be treated as a violation of the order.

13 (5) STAY OF SUSPENSION AND/OR PROHIBITION
14 OF INSURER-AFFILIATED PARTY.—Within 10 days
15 after any insurer-affiliated party has been suspended
16 from office or prohibited from participation in the
17 conduct of the affairs of a national insurer by a tem-
18 porary order issued under subsection (d)(2), such
19 party may apply to the United States district court
20 for the judicial district in which the main office of
21 the national insurer is located, or the United States
22 District Court for the District of Columbia, for a
23 stay of such suspension or prohibition pending the
24 completion of the administrative proceedings pursu-
25 ant to the notice served upon such party under sub-

1 section (d)(1), and such court shall have jurisdiction
2 to stay such suspension or prohibition.

3 (e) SUSPENSION OR REMOVAL OF INSURER-AFFILI-
4 ATED PARTY CHARGED WITH FELONY.—

5 (1) SUSPENSION OR PROHIBITION.—

6 (A) IN GENERAL.—Whenever any insurer-
7 affiliated party is charged in any information,
8 indictment, or complaint, with the commission
9 of or participation in—

10 (i) a crime involving dishonesty or
11 breach of trust which is punishable by im-
12 prisonment for a term exceeding 1 year
13 under State or Federal law, or

14 (ii) a criminal violation of section
15 1956, 1957, or 1960 of title 18, United
16 States Code, or section 5322 or 5324 of
17 title 31, United States Code, the Director
18 may, if continued service or participation
19 by such party may pose a threat to the na-
20 tional insurer or the interests of the na-
21 tional insurer's policyholders, by written
22 notice served upon such party, suspend
23 such party from office or prohibit such
24 party from further participation in any

1 manner in the conduct of the affairs of the
2 national insurer.

3 (B) PROVISIONS APPLICABLE TO NO-
4 TICE.—

5 (i) COPY.—A copy of any notice under
6 subparagraph (A) shall also be served upon
7 the national insurer.

8 (ii) EFFECTIVE PERIOD.—A suspen-
9 sion or prohibition under subparagraph (A)
10 shall remain in effect until the informa-
11 tion, indictment, or complaint referred to
12 in such subparagraph is finally disposed of
13 or until terminated by the Director.

14 (2) REMOVAL OR PROHIBITION.—

15 (A) IN GENERAL.—If a judgment of con-
16 viction or an agreement to enter a pretrial di-
17 version or other similar program is entered
18 against an insurer-affiliated party in connection
19 with a crime described in paragraph (1)(A)(i),
20 at such time as such judgment is not subject to
21 further appellate review, the Director may, if
22 continued service or participation by such party
23 may pose a threat to the national insurer or the
24 interests of the national insurer's policyholders,
25 issue and serve upon such party an order re-

1 moving such party from office or prohibiting
2 such party from further participation in any
3 manner in the conduct of the affairs of the na-
4 tional insurer without the prior written consent
5 of the Director.

6 (B) REQUIRED FOR CERTAIN OFFENSES.—

7 In the case of a judgment of conviction or
8 agreement against an insurer-affiliated party in
9 connection with a violation described in para-
10 graph (1)(A)(ii), the Director shall issue and
11 serve upon such party an order removing such
12 party from office or prohibiting such party from
13 further participation in any manner in the con-
14 duct of the affairs of the national insurer with-
15 out the prior written consent of the Director.

16 (C) COPY.—A copy of any order under this

17 paragraph shall also be served upon the na-
18 tional insurer, whereupon the insurer-affiliated
19 party who is subject to the order (if a director
20 or an officer) shall cease to be a director or of-
21 ficer of such national insurer.

22 (D) EFFECT OF ACQUITTAL.—A finding of

23 not guilty or other disposition of the charge
24 shall not preclude the Director from instituting
25 proceedings after such finding or disposition to

1 remove such party from office or to prohibit
2 further participation in national insurer affairs,
3 pursuant to paragraphs (1) or (2) of subsection
4 (d).

5 (E) EFFECTIVE PERIOD.—Any notice of
6 suspension or order of removal issued under
7 this paragraph or paragraph (1) shall remain
8 effective and outstanding until the completion
9 of any hearing or appeal authorized under para-
10 graph (3) unless terminated by the Director.

11 (3) Within 30 days from service of any notice
12 of suspension or order of removal issued pursuant to
13 paragraph (1) or (2) of this subsection, the insurer-
14 affiliated party concerned may request in writing an
15 opportunity to appear before the Director to show
16 that the continued service to or participation in the
17 conduct of the affairs of the national insurer by such
18 party does not, or is not likely to, pose a threat ei-
19 ther to the national insurer or to the interests of the
20 national insurer's policyholders. Upon receipt of any
21 such request, the Director shall fix a time (not more
22 than 30 days after receipt of such request, unless
23 extended at the request of such party) and place at
24 which such party may appear, personally or through
25 counsel, before one or more designated employees of

1 the Director to submit written materials (or, at the
2 discretion of the Director, oral testimony) and oral
3 argument. Within 60 days of such hearing, the Di-
4 rector shall notify such party whether the notice of
5 suspension or prohibition from participation in any
6 manner in the conduct of the affairs of the national
7 insurer will be continued, terminated, or otherwise
8 modified, or whether the order removing such party
9 from office or prohibiting such party from further
10 participation in any manner in the conduct of the af-
11 fairs of the national insurer will be rescinded or oth-
12 erwise modified. Such notification shall contain a
13 statement of the basis for the Director's decision, if
14 adverse to such party.

15 (f) EFFECT ON BOARD OF DIRECTORS.—If at any
16 time, because of the suspension of one or more directors
17 pursuant to this section, there shall be on the board of
18 directors of a national insurer less than a quorum of direc-
19 tors not so suspended, all powers and functions vested in
20 or exercisable by such board shall vest in and be exer-
21 cisable by the director or directors on the board not so
22 suspended, until such time as there shall be a quorum of
23 the board of directors. In the event all of the directors
24 of a national insurer are suspended pursuant to this sec-
25 tion, the Director shall appoint persons to serve tempo-

1 rarely as directors in their place and stand pending the
2 termination of such suspensions, or until such time as
3 those who have been suspended cease to be directors of
4 the national insurer and their respective successors take
5 office.

6 (g) HEARINGS AND JUDICIAL REVIEW.—

7 (1) Any hearing provided for in this section
8 (other than the hearing provided for in subsection
9 (e)(3) of this section) shall be held in the Federal
10 judicial district in which the main office of the na-
11 tional insurer is located or in which the State li-
12 censed insurance producer or the insurer-affiliated
13 party is located, as the case may be, unless the party
14 afforded the hearing consents to another place, and
15 shall be conducted in accordance with the provisions
16 of chapter 5 of title 5, United States Code. After
17 such hearing, and within 90 days after the Director
18 has notified the parties that the case has been sub-
19 mitted to the Director for final decision, the Direc-
20 tor shall render a decision (which shall include find-
21 ings of fact upon which the Director's decision is
22 predicated) and shall issue and serve upon each
23 party to the proceeding an order or orders consistent
24 with the provisions of this section. Judicial review of
25 any such order shall be exclusively as provided in

1 this subsection. Unless a petition for review is timely
2 filed in a court of appeals of the United States, as
3 hereinafter provided in paragraph (2), and there-
4 after until the record in the proceeding has been
5 filed as so provided, the Director may at any time,
6 upon such notice and in such manner as it shall
7 deem proper, modify, terminate, or set aside any
8 such order. Upon such filing of the record, the Di-
9 rector may modify, terminate, or set aside any such
10 order with permission of the court.

11 (2) Any party to any proceeding under para-
12 graph (1) may obtain a review of any order served
13 pursuant to paragraph (1) of this subsection (other
14 than an order issued with the consent of the na-
15 tional insurer, the State licensed insurance producer
16 or the insurer-affiliated party concerned, or an order
17 issued under paragraph (e)(1) or (e)(2)) by the fil-
18 ing in the court of appeals of the United States for
19 the circuit in which the main office of the national
20 insurer is located or in which the State licensed in-
21 surance producer or the insurer-affiliated party is lo-
22 cated, as the case may be, or in the United States
23 Court of Appeals for the District of Columbia Cir-
24 cuit, within 30 days after the date of service of such
25 order, a written petition praying that the order of

1 the Office be modified, terminated, or set aside. A
2 copy of such petition shall be forthwith transmitted
3 by the clerk of the court to the Director, and there-
4 upon the Director shall file in the court the record
5 in the proceeding, as provided in section 2112 of
6 title 28, United States Code. Upon the filing of such
7 petition, such court shall have jurisdiction, which
8 upon the filing of the record shall except as provided
9 in the last sentence of said paragraph (1) be exclu-
10 sive, to affirm, modify, terminate, or set aside, in
11 whole or in part, the order of the Office. Review of
12 such proceedings shall be had as provided in chapter
13 7 of title 5, United States Code. The judgment and
14 decree of the court shall be final, except that the
15 same shall be subject to review by the Supreme
16 Court upon certiorari, as provided in section 1254
17 of title 28, United States Code.

18 (3) The commencement of proceedings for judi-
19 cial review under paragraph (2) of this subsection
20 shall not, unless specifically ordered by the court,
21 operate as a stay of any order issued by the Direc-
22 tor.

23 (h) JURISDICTION AND ENFORCEMENT.—The Direc-
24 tor may in his discretion apply to the United States dis-
25 trict court for the judicial district in which the main office

1 of the national insurer is located or in which the State
2 licensed insurance producer or the insurer-affiliated party
3 is located, as the case may be, for the enforcement of any
4 effective and outstanding notice or order issued under this
5 section, and such court shall have jurisdiction and power
6 to order and require compliance therewith; but except as
7 otherwise provided in this section no court shall have juris-
8 diction to affect by injunction or otherwise the issuance
9 or enforcement of any notice or order under any such sec-
10 tion, or to review, modify, suspend, terminate, or set aside
11 any such notice or order.

12 (i) PENALTIES.—

13 (1) CIVIL MONEY PENALTY.—

14 (A) FIRST TIER.—Any national insurer,
15 State licensed insurance producer or insurer-af-
16 filiated party that—

17 (i) violates any law or regulation;

18 (ii) violates any final order or tem-
19 porary order issued pursuant to subsection
20 (b), (c), (d) or (e) of this section or sub-
21 section (e) of section 201;

22 (iii) violates any written agreement
23 between such national insurer, producer or
24 party and the Office,

1 shall forfeit and pay a civil penalty of not more
2 than \$5,000 for each day during which such
3 violation continues.

4 (B) SECOND TIER.—Notwithstanding sub-
5 paragraph (A), any national insurer, any State
6 licensed insurance producer or any insurer-af-
7 filiated party that—

8 (i)(I) commits any violation described
9 in any clause of subparagraph (A);

10 (II) recklessly engages in any conduct
11 involving an undue risk of loss to such na-
12 tional insurer’s policyholders as a whole; or

13 (III) breaches any fiduciary duty; and

14 (ii) which violation, practice, or
15 breach—

16 (I) is part of a pattern of mis-
17 conduct;

18 (II) causes or is likely to cause
19 more than a minimal loss to such na-
20 tional insurer; or

21 (III) results in pecuniary gain or
22 other benefit to such party,

23 shall forfeit and pay a civil penalty of not more
24 than \$25,000 for each day during which such
25 violation, practice, or breach continues.

1 (C) THIRD TIER.—Notwithstanding sub-
2 paragraphs (A) and (B), any national insurer,
3 State licensed insurance producer or any in-
4 surer-affiliated party that—

5 (i) knowingly—

6 (I) commits any violation de-
7 scribed in any clause of subparagraph
8 (A);

9 (II) engages in any conduct in-
10 volving an undue risk of loss to such
11 national insurer’s policyholders as a
12 whole; or

13 (III) breaches any fiduciary duty;

14 and

15 (ii) knowingly or recklessly causes a
16 substantial loss to such national insurer or
17 a substantial pecuniary gain or other ben-
18 efit to such party by reason of such viola-
19 tion, practice, or breach,

20 shall forfeit and pay a civil penalty in an
21 amount not to exceed the applicable maximum
22 amount determined under subparagraph (D) for
23 each day during which such violation, practice,
24 or breach continues.

1 (D) MAXIMUM AMOUNTS OF PENALTIES
2 FOR ANY VIOLATION DESCRIBED IN SUBPARA-
3 GRAPH (C).—The maximum daily amount of
4 any civil penalty which may be assessed pursu-
5 ant to subparagraph (C) for any violation, prac-
6 tice, or breach described in such subparagraph
7 is an amount to not exceed \$1,000,000.

8 (E) ASSESSMENT.—

9 (i) WRITTEN NOTICE.—Any penalty
10 imposed under subparagraph (A), (B), or
11 (C) may be assessed and collected by the
12 Director by written notice. Such notice
13 shall contain a statement of the facts con-
14 stituting the basis for assessment of any
15 penalty imposed under subparagraph (A),
16 (B), or (C).

17 (ii) FINALITY OF ASSESSMENT.—If,
18 with respect to any assessment under
19 clause (i), a hearing is not requested pur-
20 suant to subparagraph (H) within the pe-
21 riod of time allowed under such subpara-
22 graph, the assessment shall constitute a
23 final and unappealable order.

24 (F) AUTHORITY TO MODIFY OR REMIT
25 PENALTY.—The Director may compromise,

1 modify, or remit any penalty which the Director
2 may assess or had already assessed under sub-
3 paragraph (A), (B), or (C).

4 (G) HEARING.—The national insurer or
5 other person against whom any penalty is as-
6 sessed under this paragraph shall be afforded a
7 hearing by the Director if such national insurer
8 or person submits a request for such hearing
9 within 20 days after the issuance of the notice
10 of assessment.

11 (H) COLLECTION.—

12 (i) REFERRAL.—If any national in-
13 surer or other person fails to pay an as-
14 sessment after any penalty assessed under
15 this paragraph has become final, the Di-
16 rector shall recover the amount assessed by
17 action in the appropriate United States
18 district court.

19 (ii) APPROPRIATENESS OF PENALTY
20 NOT REVIEWABLE.—In any civil action
21 under clause (i), the validity and appro-
22 priateness of the penalty shall not be sub-
23 ject to review.

24 (I) DISBURSEMENT AND USE.—All pen-
25 alties collected under authority of this para-

1 graph shall be deposited into the Treasury, and
2 shall not be used to fund the compensation of
3 the Director or employees of the Office or the
4 expenses of the Office.

5 (2) NOTICE UNDER THIS SECTION AFTER SEPA-
6 RATION FROM SERVICE.—The resignation, termi-
7 nation of employment or participation, or separation
8 of an insurer-affiliated party (including a separation
9 caused by the closing of a national insurer) shall not
10 affect the jurisdiction and authority of the Director
11 to issue any notice and proceed under this section
12 against any such party, if such notice is served be-
13 fore the end of the 6-year period beginning on the
14 date such party ceased to be an insurer-affiliated
15 party with respect to such national insurer.

16 (3) PREJUDGMENT ATTACHMENT.—

17 (A) IN GENERAL.—In any action brought
18 by the Director pursuant to this section, or in
19 actions brought in aid of, or to enforce an order
20 in, any administrative or other civil action for
21 money damages, restitution, or civil money pen-
22 alties brought by the Director, the court may,
23 upon application of the Director, issue a re-
24 straining order that—

1 (i) prohibits any person subject to the
2 proceeding from withdrawing, transferring,
3 removing, dissipating, or disposing of any
4 funds, assets or other property; and

5 (ii) appoints a temporary receiver to
6 administer the restraining order.

7 (B) STANDARD.—

8 (i) SHOWING.—Rule 65 of the Federal
9 Rules of Civil Procedure shall apply with
10 respect to any proceeding under subpara-
11 graph (A), without regard to the require-
12 ment of such rule that the applicant show
13 that the injury, loss, or damage is irrep-
14 arable and immediate.

15 (ii) STATE PROCEEDING.—If, in the
16 case of any proceeding in a State court,
17 the court determines that rules of civil pro-
18 cedure available under the laws of such
19 State provide substantially similar protec-
20 tions to a party's right to due process as
21 Rule 65 (as modified with respect to such
22 proceeding by clause (i)), the relief sought
23 under subparagraph (A) may be requested
24 under the laws of such State.

1 (j) CRIMINAL PENALTY.—Whoever, being subject to
2 an order in effect under subsection (d) or (e), without the
3 prior written approval of the Director, knowingly partici-
4 pates, directly or indirectly, in any manner (including by
5 engaging in an activity specifically prohibited in such an
6 order) in the conduct of the affairs of any national insurer
7 shall be fined not more than \$1,000,000, imprisoned for
8 not more than 5 years, or both.

9 (k) NOTICE OF SERVICE.—Any service required or
10 authorized to be made by the Director under this section
11 may be made by registered mail, or in such other manner
12 reasonably calculated to give actual notice as the Director
13 may by regulation or otherwise provide.

14 (l) ANCILLARY PROVISIONS; SUBPOENA POWER,
15 ETC.—In the course of or in connection with any pro-
16 ceeding or other action under this section, the Director,
17 or any employee or designated representative thereof, in-
18 cluding any person designated to conduct any hearing
19 under this section, shall have the power to administer
20 oaths and affirmations, to take or cause to be taken depo-
21 sitions, and to issue, revoke, quash, or modify subpoenas
22 and subpoenas duces tecum; and the Director is empow-
23 ered to make rules and regulations with respect to any
24 such proceedings, claims, examinations, investigations, or
25 other actions. The attendance of witnesses and the produc-

1 tion of documents provided for in this subsection may be
2 required from any place in any State or other place subject
3 to the jurisdiction of the United States at any designated
4 place where such proceeding or other action is being con-
5 ducted. The Director or any party to proceedings under
6 this section may apply to the United States District Court
7 for the District of Columbia, or the United States district
8 court for the judicial district in which such proceeding or
9 other action is being conducted, or where the witness re-
10 sides or carries on business, for enforcement of any sub-
11 poena or subpoena duces tecum issued pursuant to this
12 subsection, and such courts shall have jurisdiction and
13 power to order and require compliance therewith. Wit-
14 nesses subpoenaed under this subsection shall be paid the
15 same fees and mileage that are paid witnesses in the dis-
16 trict courts of the United States. Any court having juris-
17 diction of any proceeding or other action instituted under
18 this section by a national insurer, a State licensed insur-
19 ance producer or an insurer-affiliated party thereof, may
20 allow to any such party such reasonable expenses and at-
21 torneys' fees as it deems just and proper; and such ex-
22 penses and fees shall be paid by the national insurer or
23 from its assets. Any person who willfully shall fail or
24 refuse to attend and testify or to answer any lawful in-
25 quiry or to produce books, papers, correspondence, memo-

1 randa, contracts, agreements, or other records, if in such
2 person's power so to do, in obedience to the subpoena of
3 the Director, shall be guilty of a misdemeanor and, upon
4 conviction, shall be subject to a fine of not more than
5 \$1,000 or to imprisonment for a term of not more than
6 1 year or both.

7 (m) NON-U.S. INSURER.—

8 (1) APPLICABILITY.—Except as otherwise spe-
9 cifically provided in this section, the provisions of
10 this section shall be applied to non-U.S. insurers in
11 accordance with this subsection.

12 (2) ACTIONS.—Any conduct or practice outside
13 the United States on the part of a non-U.S. insurer
14 or any officer, director, employee, or agent thereof
15 may not constitute the basis for any action by the
16 Director under this section, unless the Director al-
17 leges a belief that such conduct or practice has been,
18 is, or is likely to be a cause of or carried on in con-
19 nection with or in furtherance of an act or practice
20 within any one or more States which, in and of
21 itself, would constitute an appropriate basis for ac-
22 tion by the Director under this section.

23 (3) TERMINATION OF BUSINESS.—In any case
24 in which any action or proceeding is brought pursu-
25 ant to an allegation under paragraph (2) for the

1 suspension or removal of any officer, director, or
2 other person associated with a non-U.S. insurer, and
3 such person fails to appear promptly as a party to
4 such action or proceeding and to comply with any
5 effective order or judgment therein, any failure by
6 the non-U.S. insurer to secure his removal from any
7 office he holds in such insurer and from any further
8 participation in its affairs shall, in and of itself, con-
9 stitute grounds for ordering the non-U.S. insurer to
10 terminate all underwriting and sale of insurance in
11 the United States and all other insurance operations
12 in the United States.

13 (4) VENUE.—Where the venue of any judicial
14 or administrative proceeding under this section is to
15 be determined by reference to the location of the
16 main office of a national insurer, the venue of such
17 a proceeding with respect to a non-U.S. insurer hav-
18 ing one or more offices in not more than one judicial
19 district or other relevant jurisdiction shall be within
20 such jurisdiction. Where such a national insurer has
21 offices in more than one such jurisdiction, the venue
22 shall be in the jurisdiction within which the office or
23 offices involved in the proceeding are located, and if
24 there is more than one such jurisdiction, the venue
25 shall be proper in any such jurisdiction in which the

1 proceeding is brought or to which it may appro-
2 priately be transferred.

3 (5) SERVICE.—Any service required or author-
4 ized to be made on a non-U.S. insurer may be made
5 on any office located within any State, but if such
6 service is in connection with an action or proceeding
7 involving one or more offices located in any State,
8 service shall be made on at least one office so in-
9 volved.

10 (n) PUBLIC DISCLOSURES OF FINAL ORDERS AND
11 AGREEMENTS.—

12 (1) IN GENERAL.—The Director shall publish
13 and make available to the public on a monthly
14 basis—

15 (A) any written agreement or other written
16 statement for which a violation may be enforced
17 by the Director;

18 (B) any final order issued with respect to
19 any administrative enforcement proceeding ini-
20 tiated by the Director under this section or any
21 other law; and

22 (C) any modification to or termination of
23 any order or agreement made public pursuant
24 to this paragraph, unless the Director, in the
25 Director's discretion, determines that publica-

1 tion of any such agreement, statement, order,
2 modification or termination would be contrary
3 to the public interest.

4 (2) HEARINGS.—All hearings on the record
5 with respect to any notice of charges issued by the
6 Director shall be open to the public, unless the Di-
7 rector, in the Director’s discretion, determines that
8 holding an open hearing would be contrary to the
9 public interest.

10 (3) TRANSCRIPT OF HEARING.—A transcript
11 that includes all testimony and other documentary
12 evidence shall be prepared for all hearings com-
13 menced pursuant to subsection (g) of this section. A
14 transcript of public hearings shall be made available
15 to the public pursuant to section 552 of title 5,
16 United States Code.

17 (4) DOCUMENTS FILED UNDER SEAL IN PUBLIC
18 ENFORCEMENT HEARINGS.—The Director may file
19 any document or part of a document under seal in
20 any administrative hearing commenced by the Direc-
21 tor if the Director, in the Director’s discretion, de-
22 termines that disclosure of the document, in whole
23 or in part, would be contrary to the public interest.
24 A written report shall be made part of any deter-
25 mination to withhold any part of a document from

1 the transcript of the hearing required by paragraph
2 (2).

3 (5) RETENTION OF DOCUMENTS.—The Director
4 shall keep and maintain a record, for a period of at
5 least 6 years, of all documents described in para-
6 graph (1) and all informal enforcement agreements
7 and other supervisory actions and supporting docu-
8 ments issued with respect to or in connection with
9 any administrative enforcement proceeding initiated
10 by the Director under this section or any other laws.

11 (6) DISCLOSURES TO CONGRESS.—No provision
12 of this subsection may be construed to authorize the
13 withholding, or to prohibit the disclosure, of any in-
14 formation to the Congress or any committee or sub-
15 committee of the Congress.

16 (o) FOREIGN INVESTIGATIONS.—

17 (1) REQUESTING ASSISTANCE FROM FOREIGN
18 GOVERNMENTAL AUTHORITIES.—In conducting any
19 investigation, examination, or enforcement action
20 under this Act, the Director may—

21 (A) request the assistance of any foreign
22 governmental authority; and

23 (B) maintain an office outside the United
24 States.

1 (2) PROVIDING ASSISTANCE TO FOREIGN GOV-
2 ERNMENTAL AUTHORITIES.—

3 (A) IN GENERAL.—The Director may, at
4 the request of any foreign governmental author-
5 ity, assist such authority if such authority
6 states that the requesting authority is con-
7 ducting an investigation to determine whether
8 any person has violated, is violating, or is about
9 to violate any law or regulation relating to in-
10 surance matters or currency transactions ad-
11 ministered or enforced by the requesting au-
12 thority.

13 (B) INVESTIGATION BY THE DIRECTOR.—
14 The Director may, in his discretion, investigate
15 and collect information and evidence pertinent
16 to a request for assistance under subparagraph
17 (A). Any such investigation shall comply with
18 the laws of the United States and the policies
19 and procedures of the Director.

20 (C) FACTORS TO CONSIDER.—In deciding
21 whether to provide assistance under this para-
22 graph, the Director shall consider—

23 (i) whether the requesting authority
24 has agreed to provide reciprocal assistance

1 with respect to insurance matters within
2 the jurisdiction of the Director; and

3 (ii) whether compliance with the re-
4 quest would prejudice the public interest of
5 the United States.

6 (3) **RULE OF CONSTRUCTION.**—Paragraphs (1)
7 and (2) shall not be construed to limit the authority
8 of the Director or any other Federal agency to pro-
9 vide or receive assistance or information to or from
10 any foreign governmental authority with respect to
11 any matter.

12 **SEC. 206. INSURANCE FRAUD.**

13 (a) **DEFINITIONS.**—For purposes of this section:

14 (1) **FRAUDULENT INSURANCE ACT.**—The term
15 “fraudulent insurance act” shall have the meaning
16 given such term in section 1036(d) of title 18,
17 United States Code.

18 (2) **INSURANCE PERSON.**—The term “insurance
19 person” shall have the meaning given such term in
20 section 1036(d) of title 18, United States Code.

21 (b) **FRAUD WARNING REQUIRED.**—Claim forms and
22 applications for insurance operations, regardless of the
23 form of transmission, shall contain a fraud warning as
24 prescribed, by regulation, by the Director.

1 (c) INVESTIGATIVE AUTHORITY OF DIRECTOR.—The
2 Director may investigate suspected fraudulent insurance
3 acts and insurance persons engaged in insurance oper-
4 ations.

5 (d) MANDATORY REPORTING OF FRAUDULENT IN-
6 SURANCE ACTS.—A national insurer or an insurance per-
7 son engaged in insurance operations having knowledge or
8 a reasonable belief that a fraudulent insurance act is
9 being, will be, or has been committed, shall provide to the
10 Director the information required by, and in a manner
11 prescribed by, the Director.

12 (e) IMMUNITY FROM LIABILITY.—

13 (1) IN GENERAL.—There shall be no civil liabil-
14 ity imposed on, and no cause of action shall arise
15 from, a person's furnishing information concerning
16 suspected, anticipated, or completed fraudulent in-
17 surance acts, if the information is provided to or re-
18 ceived from—

19 (A) the Director or the Director's employ-
20 ees, agents, or representatives;

21 (B) Federal, State, or local law enforce-
22 ment or regulatory officials or their employees,
23 agents, or representatives;

24 (C) a person involved in the prevention and
25 detection of fraudulent insurance acts or that

1 person's agents, employees, or representatives;
2 or

3 (D) the NAIC or its employees, agents, or
4 representatives.

5 (2) EXCEPTION FOR FALSE STATEMENTS.—

6 Paragraph (1) shall not apply to false statements
7 made with actual malice. In an action brought
8 against a person for filing a report or furnishing
9 other information concerning a fraudulent insurance
10 act, the party bringing the action shall plead specifi-
11 cally any allegation that paragraph (1) does not
12 apply because the person filing the report or fur-
13 nishing the information did so with actual malice.

14 (3) SAVINGS PROVISION.—This subsection does
15 not abrogate or modify common law or statutory
16 privileges or immunities enjoyed by a person de-
17 scribed in paragraph (1).

18 (f) CONFIDENTIALITY.—

19 (1) IN GENERAL.—Documents, materials or
20 other information in the possession or control of the
21 Director that is provided pursuant to subsection (d)
22 or obtained by the Director in an investigation of
23 suspected or actual fraudulent insurance acts shall
24 be confidential by law and privileged, shall not be
25 made available to the public, shall not be subject to

1 subpoena, and shall not be subject to discovery or
2 admissible in evidence in any private civil action.
3 However, the Director may use the documents, ma-
4 terials, or other information in the furtherance of
5 any regulatory or legal action brought as a part of
6 the Director's official duties.

7 (2) RESTRICTIONS ON TESTIMONY.—Neither
8 the Director nor any person who received docu-
9 ments, materials or other information while acting
10 under the authority of the Director shall be per-
11 mitted or required to testify in any private civil ac-
12 tion concerning any documents, materials, or infor-
13 mation that are confidential pursuant to paragraph
14 (1).

15 (3) AUTHORIZED DISCLOSURE.—In order to as-
16 sist in the performance of the Director's duties, the
17 Director may—

18 (A) share documents, materials, or other
19 information, including the confidential and priv-
20 ileged documents, materials, or information
21 subject to paragraph (1) with other State, Fed-
22 eral, and international regulatory agencies, with
23 the NAIC and its affiliates and subsidiaries,
24 and with local, State, Federal, and international
25 law enforcement authorities, but only if the re-

1 recipient agrees to and has the authority to main-
2 tain the confidentiality and privileged status of
3 the document, material, or other information;

4 (B) receive documents, materials, or infor-
5 mation, including otherwise confidential and
6 privileged documents, materials, or information,
7 from the NAIC and its affiliates and subsidi-
8 aries, and from regulatory and law enforcement
9 officials of State or other foreign or domestic
10 jurisdictions, and shall maintain as confidential
11 or privileged any document, material, or infor-
12 mation received with notice or the under-
13 standing that it is confidential or privileged
14 under the laws of the jurisdiction that is the
15 source of the document, material, or informa-
16 tion; and

17 (C) enter into agreements governing shar-
18 ing and use of information, including the fur-
19 therance of any regulatory or legal action
20 brought as part of the recipient's official duties.

21 (4) NO WAIVER.—No waiver of any applicable
22 privilege or claim of confidentiality in the docu-
23 ments, materials, or information shall occur as a re-
24 sult of disclosure to the Director under this sub-

1 section or as a result of sharing as authorized in
2 paragraph (3).

3 (g) DIVISION OF INSURANCE FRAUD.—

4 (1) ESTABLISHMENT.—The Director shall es-
5 tablish a Division of Insurance Fraud within the Of-
6 fice.

7 (2) POWERS.—The Division of Insurance Fraud
8 shall have all powers and authority necessary for the
9 enforcement of this section, except power to execute
10 search warrants and arrest warrants.

11 (h) PENALTIES.—If the person committing an of-
12 fense under subsection (a) or (c) of section 1036(a) of title
13 18, United States Code, is a national insurer, an insurer-
14 affiliated party, or a State licensed insurance producer,
15 the Director may, in addition to the punishment set forth
16 in such section 1036—

17 (1) revoke, suspend or restrict the Federal li-
18 cense of such national insurer pursuant to section
19 204 of this Act; and

20 (2) order such national insurer, insurer-affili-
21 ated party, or State licensed insurance producer to
22 make restitution to persons aggrieved by such of-
23 fenses.

1 **SEC. 207. INTERNATIONAL REGULATORY SUPPORT.**

2 (a) IN GENERAL.—To ensure the effectiveness of the
3 Director’s licensing and supervision of national insurers,
4 the Director may engage in international efforts to secure
5 improved bilateral and multilateral cooperation, as appro-
6 priate, with respect to improved insurance regulation in
7 global markets that promotes competition and allows for-
8 eign participation. Such authority includes provision of ap-
9 propriate technical assistance to and cooperation with in-
10 dividual overseas national regulators and regional and
11 global regulatory organizations in matters, including de-
12 velopment and implementation of international regulatory
13 standards, and development of bilateral and multilateral
14 mutual recognition agreements on licensing, registration,
15 and professional standards with the objective of improving
16 the quality and uniformity of insurance regulation in all
17 countries.

18 (b) COOPERATION WITH STATE INSURANCE REGU-
19 LATORS.—Whenever possible, the provisions of subsection
20 (a) shall be implemented in cooperation with State insur-
21 ance regulators. In matters of representation, the Director
22 and any interested State insurance regulators shall jointly
23 represent the United States market.

24 (c) NEGOTIATION OF INTERNATIONAL TRADE
25 AGREEMENTS.—With respect to bilateral and multilateral
26 trade negotiations related to the provision of insurance

1 services, the United States Trade Representative shall
2 have responsibility for the negotiation of international
3 trade agreements associated with trade in insurance. The
4 United States Trade Representative shall develop relevant
5 negotiating strategies and appropriate concessions in close
6 consultation with the Director and State insurance regu-
7 lators.

8 **TITLE III—NATIONAL INSURERS**

9 **Subtitle A—Organization,**

10 **Licensing, and Operations**

11 **SEC. 301. ORGANIZATION, OPERATION, AND REGULATION**

12 **OF NATIONAL INSURERS.**

13 (a) IN GENERAL.—Subject to the provisions of this
14 Act, the Director may, under such regulations as the Di-
15 rector may prescribe—

16 (1) provide for the organization, incorporation,
17 operation and regulation of national insurers; and

18 (2) issue charters therefor.

19 Such regulations shall permit the organization of national
20 insurers in stock, mutual, or fraternal form.

21 (b) CHARTERING CRITERIA.—In determining wheth-
22 er to issue a charter for a national insurer, the Director
23 shall consider factors which shall include—

24 (1) the character and competency of the parties
25 seeking the charter;

1 (2) and the financial resources and future pros-
2 pects of the proposed national insurer; and

3 (3) whether the chartering of the insurer is
4 likely to be hazardous to the insurance-buying pub-
5 lic.

6 (c) FRATERNAL BENEFIT SOCIETIES.—Any charter
7 granted to a national insurer in fraternal form in connec-
8 tion with a conversion from a State charter shall include
9 provisions that allow the national insurer to operate as
10 a fraternal benefit society in a manner consistent with the
11 requirements of its former State charter.

12 (d) AMENDMENT OF CHARTER.—The Director may,
13 under such regulations as the Director may prescribe, pro-
14 vide for the amendment of charters issued to national in-
15 surers.

16 **SEC. 302. U.S. BRANCHES OF NON-U.S. INSURERS.**

17 (a) AUTHORIZATION OF ENTRY OF NON-U.S. IN-
18 SURER.—A non-U.S. insurer may use this section as a
19 port of entry to transact insurance in the United States
20 through a U.S. branch by qualifying the U.S. branch as
21 a national insurer licensed by the Director to do business
22 under this Act under such regulations as the Director may
23 prescribe.

24 (b) TRUST ACCOUNT.—

1 (1) ESTABLISHMENT.—The Director shall not
2 license the U.S. branch until the non-U.S. insurer
3 establishes a trust account, pursuant to a deed of
4 trust that meets the requirements of this subsection.

5 (2) TRUSTEED ASSETS.—The trustee assets of
6 a U.S. branch shall be held pursuant to a deed of
7 trust with a U.S. bank that meets such requirements
8 as the Director may prescribe, in trust for the exclu-
9 sive benefit, security and protection of the policy-
10 holders, or policyholders and creditors, of the U.S.
11 branch in the United States maintained as long as
12 there is outstanding any liability of the U.S. branch
13 arising out of its insurance transactions in the
14 United States.

15 (3) TRUSTEED SURPLUS.—The trustee surplus
16 of a U.S. branch shall be subject to the same sol-
17 vency standards required of national insurers, in-
18 cluding the risk-based capital standards under sec-
19 tion 337.

20 (4) CERTIFIED STATEMENTS.—The Director
21 may from time to time require a U.S. branch to file
22 a statement, in such form as the Director may pre-
23 scribe, certified by the trustee.

24 (c) APPLICABILITY OF LAWS.—Except as otherwise
25 provided, a U.S. branch established under this section

1 shall be subject to all laws applicable to a national insurer
2 and shall be treated as a national insurer for all purposes
3 of this Act, including subtitle D of this title.

4 **SEC. 303. FEDERAL LICENSING OF NATIONAL INSURERS.**

5 (a) IN GENERAL.—Notwithstanding any provision of
6 State law, a national insurer may underwrite and sell in
7 any State any line of insurance for which it holds a Fed-
8 eral license. A national insurer may not underwrite or sell
9 any line of insurance for which it does not hold a Federal
10 license.

11 (b) ISSUANCE OF FEDERAL LICENSES.—The Direc-
12 tor may, under such regulations as the Director may
13 prescribe—

14 (1) provide for licensing of national insurers to
15 underwrite and sell lines of insurance; and

16 (2) issue to national insurers Federal licenses
17 specifying the lines of insurance they may under-
18 write and sell.

19 (c) DURATION.—A Federal license issued by the Di-
20 rector pursuant to this section shall remain in effect until
21 surrendered by the national insurer or until revoked or
22 suspended by the Director in accordance with the provi-
23 sions of this Act.

24 (d) REINSURANCE.—

1 (1) LIMITATION.—A national insurer may rein-
2 sure only the lines of insurance that it is licensed to
3 underwrite and sell under its Federal license or
4 which it is otherwise permitted to reinsure by the
5 terms of its Federal license.

6 (2) AUTHORITY TO SELL ONLY REINSUR-
7 ANCE.—A national insurer may confine its business
8 to reinsurance.

9 (e) NATIONAL TREATMENT REQUIRED.—

10 (1) FAIR TREATMENT OF SUBSIDIARIES AND
11 BRANCHES.—Except as provided in section 302, the
12 Director may not impose any condition to the grant-
13 ing of a Federal license under this section to a na-
14 tional insurer or the supervision of a national in-
15 surer granted a Federal license under this section
16 solely because the national insurer is a subsidiary of
17 a non-U.S. person, is partially owned by a non-U.S.
18 person, or is a U.S. branch of a non-U.S. insurer.

19 (2) PERMISSIBLE CONDITIONS.—Notwith-
20 standing paragraph (1), the Director may impose
21 conditions to the granting of a Federal license or the
22 supervision of a national insurer that are different
23 from those imposed on other national insurers if—

1 (A) the conditions attached are imposed on
2 the legal form in which the national insurer
3 chooses to operate; or

4 (B) the Director makes a written finding
5 that the conditions are related to the protection
6 of policyholders and are the minimum necessary
7 to achieve the purposes of this Act.

8 **SEC. 304. CORPORATE GOVERNANCE.**

9 (a) IN GENERAL.—With respect to corporate govern-
10 ance procedures, a national insurer shall comply with ap-
11 plicable provisions of this Act and applicable regulations
12 issued by the Director under this Act.

13 (b) OTHER PROCEDURES.—To the extent not incon-
14 sistent with provisions of this Act or regulations issued
15 by the Director under this Act, a national insurer shall
16 adhere to corporate governance procedures of the relevant
17 State law of either the State in which its main office is
18 located or the State in which its holding company is incor-
19 porated, except that the Director may determine that any
20 provision of such State law is discriminatory as applied
21 to national insurers (in which event a national insurer
22 shall not be obligated to follow such a provision of the
23 relevant State law and may follow such other provision
24 of law as the Director deems appropriate). A national in-

1 surer shall designate in its bylaws the body of relevant
2 State law selected for its corporate governance procedures.

3 **SEC. 305. MAIN OFFICE.**

4 (a) IN GENERAL.—The charter of a national insurer
5 shall specify the State in which its main office is located.
6 Subject to the approval of the Director, a national insurer
7 may designate any office at which it conducts insurance
8 operations as its main office.

9 (b) CHANGE IN MAIN OFFICE.—With the approval
10 of the Director, a national insurer may change the des-
11 ignation of its main office, including to another existing
12 office of the national insurer.

13 (c) CITIZENSHIP.—A national insurer shall, for pur-
14 poses of jurisdiction, be deemed a citizen of the State in
15 which its main office is located and of the State in which
16 it has its principal place of business.

17 **SEC. 306. CONVERSION OF STATE INSURER TO NATIONAL**
18 **INSURER.**

19 (a) IN GENERAL.—Notwithstanding any other provi-
20 sion of law, a State insurer may, with the approval of the
21 Director, convert into a national insurer, and in doing so
22 an insurer may retain a corporate form permitted by sec-
23 tion 301(a) or change directly to another corporate form
24 that is so permitted.

25 (b) CONVERSION PROCEDURES.—

1 (1) AUTHORITY.—The Director may, under
2 such regulations as the Director may prescribe, pro-
3 vide for the conversion of State insurers into na-
4 tional insurers and the issuance of charters to such
5 converted insurers. Any such conversion shall be car-
6 ried out solely in accordance with such regulations
7 as the Director may prescribe.

8 (2) TERMS.— The regulations issued by the Di-
9 rector under this section shall—

10 (A) be consistent with the regulations
11 issued by the Director under section 301;

12 (B) in the case of a change of form ef-
13 fected at the time of a conversion of a State in-
14 surer into a national insurer, shall be consistent
15 with the provisions of section 382 and any reg-
16 ulations issued by the Director thereunder and
17 shall require compliance with State laws and
18 procedures regarding the demutualization of
19 State insurers; and

20 (C) prohibit any conversion that, in the de-
21 termination of the Director, would substantially
22 prejudice the interests of policyholders and
23 shareholders of the State insurer.

24 (e) EFFECT OF CONVERSION.—Upon conversion
25 from a State insurer to a national insurer in accordance

1 with this section and the regulations issued by the Direc-
2 tor hereunder, a national insurer shall be subject to the
3 provisions of this Act and to examination and regulation
4 under this Act to the same extent as other national insur-
5 ers incorporated pursuant to this Act, and such national
6 insurer shall be deemed to be a continuation of the cor-
7 porate existence of the State insurer and shall, by oper-
8 ation of law and without further action, hold and be sub-
9 ject to all rights, privileges, liabilities, property interests,
10 and other interests and obligations that the State insurer
11 held or was subject to immediately prior to the conversion,
12 except that the national insurer shall not be subject to
13 any requirement applicable to the State insurer to main-
14 tain deposits with State insurance regulatory authorities,
15 shall not hold any State license to underwrite and sell in-
16 surance that was held by the State insurer, and shall ob-
17 tain, in accordance with section 303 and the regulations
18 issued by the Director thereunder, a Federal license for
19 all lines of insurance that it underwrites and sells.

20 (d) SPECIAL AUTHORITY.—The Director may, in the
21 Director’s discretion and subject to such conditions as the
22 Director may prescribe, permit a national insurer result-
23 ing from the conversion of a State life insurer, upon such
24 conversion, to retain for up to 5 years such assets, liabil-
25 ities, and powers and authorities of the State insurer that

1 do not conform to the legal requirements otherwise appli-
2 cable to national insurers as the Director deems appro-
3 priate.

4 **SEC. 307. CONVERSION OF NATIONAL INSURER TO STATE**
5 **INSURER.**

6 (a) IN GENERAL.—Subject to subsection (b) and
7 such notification procedures as the Director may prescribe
8 by regulation, a national insurer may convert into a State
9 insurer, as permitted by the relevant provisions of applica-
10 ble State law. Nothing in this section or in the conversion
11 of a national insurer into a State insurer shall operate
12 to abrogate any rights, privileges, liabilities, property in-
13 terests, or other interests or obligations that such insurer
14 held or was subject to immediately prior to the conversion.

15 (b) LIMITATION.—The Director shall not permit any
16 conversion of a national insurer into a State insurer that,
17 in the determination of the Director, would substantially
18 prejudice the interests of policyholders and shareholders
19 of the national insurer.

20 **Subtitle B—Powers**

21 **SEC. 321. POWERS OF NATIONAL INSURERS.**

22 Upon issuance of its charter, a national insurer shall
23 have the power, subject to the provisions of this Act and
24 in accordance with such regulations as the Director may
25 prescribe—

1 (1) to have a corporate seal, which may be al-
2 tered at will, and to use it, or a facsimile of it, im-
3 pressing or affixing it or in any other manner repro-
4 ducing it;

5 (2) to have perpetual succession until such time
6 as it is liquidated, dissolved, merged or otherwise
7 wound up in accordance with applicable law and reg-
8 ulation;

9 (3) to sue or be sued, complain and defend, and
10 otherwise litigate in any court and participate, as a
11 party or otherwise, in any judicial, administrative,
12 arbitral or other proceeding, in its corporate name;

13 (4) to make contracts and guarantees, incur li-
14 abilities, borrow money, issue notes, bonds, and
15 other obligations (which may be convertible into or
16 include the option to purchase other securities of the
17 national insurer), and secure any of its obligations
18 by mortgage or pledge of any of its property, fran-
19 chises or income;

20 (5) to purchase, receive, subscribe for or other-
21 wise acquire, own, hold, vote, improve, employ, use,
22 and otherwise deal in and with real and personal
23 property or other assets, or any interest therein, and
24 to sell, convey, mortgage, lease, exchange, transfer
25 or otherwise dispose of, or mortgage or pledge, all

1 or any of its property and assets, or any interest
2 therein;

3 (6) to lend money, invest and reinvest its funds
4 and receive and hold real and personal property as
5 security for repayment;

6 (7) to be a promoter, partner, member, asso-
7 ciate or manager of any partnership, joint venture,
8 trust or other entity;

9 (8) to participate with others in any corpora-
10 tion, partnership, limited partnership, joint venture,
11 or other association of any kind, or in any trans-
12 action, undertaking, or arrangement which the par-
13 ticipating national insurer would have power to con-
14 duct by itself, whether or not such participation in-
15 volves sharing or delegation of control with or to
16 others;

17 (9) to elect or appoint directors, officers, em-
18 ployees, and agents of the national insurer, define
19 their duties, fix their compensation and lend them
20 money and credit;

21 (10) to pay pensions and establish pension
22 plans, pension trusts, profit sharing plans, share
23 bonus plans, share option plans, and other benefit or
24 incentive plans for any or all current or former di-

1 rectors, officers, employees, and agents of the na-
2 tional insurer, its subsidiaries, or its affiliates;

3 (11) to provide insurance for its benefit on the
4 life of any of its directors, officers, or employees, or
5 on the life of any shareholder for the purpose of ac-
6 quiring at such shareholder's death shares of its
7 stock owned by such shareholder;

8 (12) to adopt, amend and repeal bylaws;

9 (13) to engage in the underwriting and sale of
10 insurance; to establish and maintain one or more
11 separate accounts and to allocate amounts to such
12 accounts (including, without limitation, proceeds ap-
13 plied under optional modes of settlement or under
14 dividend options) to provide for insurance; to estab-
15 lish and maintain one or more protected cells in con-
16 nection with an insurance securitization and at-
17 tribute to such cells insurance and reinsurance obli-
18 gations with respect to its general account, obliga-
19 tions relating to the insurance securitization and as-
20 sets to fund such obligations; to hold and accumu-
21 late funds pursuant to funding agreements; to pro-
22 vide investment advice and investment management
23 services; to engage in all other insurance operations;
24 and to exercise all such incidental powers as shall be
25 necessary to carry on insurance operations;

1 (14) to provide benefits or payments to direc-
2 tors, officers, and employees of the national insurer,
3 its subsidiaries, or its affiliates, and to their estates,
4 families, dependents, or beneficiaries, in recognition
5 of the past services of the directors, officers, and
6 employees to the national insurer, its subsidiaries, or
7 its affiliates;

8 (15) to make donations and otherwise devote its
9 resources for the public welfare or for charitable, sci-
10 entific, educational, humanitarian, philanthropic, or
11 religious purposes;

12 (16) to be a promoter, partner, member, asso-
13 ciate, or manager of any business entity;

14 (17) to do all such other things necessary or
15 convenient to further its activities and affairs; and

16 (18) to exercise the powers granted by this Act
17 in any State and in any foreign jurisdiction.

18 **SEC. 322. SEPARATE ACCOUNTS.**

19 Amounts allocated by a national life insurer to a sep-
20 arate account shall be owned by the national life insurer,
21 the assets therein shall be the property of the national life
22 insurer, and no national insurer by reason of such account
23 shall be or hold itself out to be a trustee. If and to the
24 extent so provided in the applicable agreements, the assets
25 in a separate account shall not be chargeable with liabil-

1 ities arising out of any other business of the national in-
2 surer.

3 **SEC. 323. PROTECTED CELLS.**

4 (a) ESTABLISHMENT OF PROTECTED CELLS.—A na-
5 tional insurer may establish one or more protected cells
6 with the approval of the Director. The Director shall by
7 regulation adopt standards for protected cells established
8 by national insurers.

9 (b) PROTECTED CELL ASSETS.—Amounts attributed
10 to a protected cell, including assets transferred to a pro-
11 tected cell account, are owned by the national insurer and
12 the national insurer may not be, nor hold itself out to be,
13 a trustee with respect to those protected cell assets of that
14 protected cell account. The assets of a protected cell may
15 not be charged with liabilities arising out of any other
16 business the national insurer may conduct.

17 (c) SECURITY INTERESTS PERMITTED.—A national
18 insurer may allow for a security interest to attach to pro-
19 tected cell assets or a protected cell account when in favor
20 of a creditor of the protected cell and otherwise allowed
21 under applicable law.

22 (d) REACH OF CREDITORS AND OTHER CLAIM-
23 ANTS.—

24 (1) CLAIMS TO CERTAIN PROTECTED CELLS AS-
25 SETS.—Protected cell assets shall only be available

1 to the creditors of a national insurer that are credi-
2 tors in respect to that protected cell, and such credi-
3 tors shall have recourse only to the protected cell as-
4 sets attributable to that protected cell.

5 (2) NO RECOURSE TO OTHER PROTECTED CELL
6 ASSETS.—Creditors with respect to a protected cell
7 shall have no recourse against the protected cell as-
8 sets of other protected cells or the general account
9 assets of the national insurer.

10 (3) TREATMENT OF PROTECTED CELLS.—The
11 establishment of a protected cell by a national in-
12 surer shall not, in and of itself, constitute or be
13 deemed to be a fraudulent conveyance, an intent by
14 the national insurer to defraud creditors, or the car-
15 rying out of business by a national insurer for any
16 other fraudulent purpose.

17 (e) EFFECT ON STATE LAW.—No State may, by law,
18 regulation, order, interpretation or otherwise, require li-
19 censing or otherwise regulate in any manner—

20 (1) an investor in an insurance securitization,
21 solely by reason of its investment, as an insurer, re-
22 insurer or other person transacting insurance; or

23 (2) an underwriter or selling agent (or its part-
24 ners, directors, officers, members, managers, em-
25 ployees, agents, representatives, and advisors) in an

1 insurance securitization as an insurance or reinsur-
2 ance agent, broker, producer, intermediary, advisor,
3 consultant or similar capacity by virtue of its activi-
4 ties in connection with the insurance securitization.

5 **Subtitle C—Financial Regulation**

6 **SEC. 331. ACCOUNTING PRINCIPLES AND AUDITING STAND-** 7 **ARDS.**

8 (a) REGULATIONS.—

9 (1) IN GENERAL.—The Director shall, by regu-
10 lation, specify the accounting principles and auditing
11 standards to be followed by a national insurer in
12 preparing financial statements to be filed with the
13 Director pursuant to section 202(b)(1).

14 (2) INITIAL REGULATIONS.—The initial regula-
15 tions under paragraph (1) shall be promulgated on
16 or before the transition commencement date and
17 shall require that—

18 (A) except as provided in section 333, na-
19 tional insurers shall follow statutory accounting
20 practices as promulgated by the NAIC in its
21 Accounting Practices and Procedures Manual;
22 and

23 (B) audited financial statements shall be
24 in accordance with guidance prescribed by the

1 NAIC in its Model Regulation Requiring An-
2 nual Audited Financial Reports;
3 each as in effect as of January 1, 2001, and as
4 amended by the NAIC and in effect thereafter from
5 time to time prior to the transition termination date,
6 except that the Director may by regulation specify
7 that any such amendment by the NAIC shall, in
8 whole or in part, be inapplicable to national insurers.

9 (3) AMENDMENT OF NAIC STANDARDS.—The
10 accounting principles and auditing standards for na-
11 tional insurers in effect on the transition termination
12 date pursuant to paragraph (2) may thereafter be
13 amended by regulations promulgated pursuant to
14 paragraph (1).

15 (b) STUDY AND HEARINGS.—The Director shall con-
16 duct a study and hold hearings prior to the transition ter-
17 mination date and shall determine whether modification
18 of the accounting principles and auditing standards for
19 national insurers established pursuant to subsection (a)
20 would be consistent with the public interest and the pro-
21 tection of policyholders.

22 **SEC. 332. INVESTMENTS.**

23 (a) IN GENERAL.—

24 (1) INVESTMENTS.—A national insurer may
25 loan or invest its funds, and may buy, sell, hold title

1 to, possess, occupy, pledge, convey, manage, protect,
2 insure and deal with its investments, property and
3 other assets. Such investments shall be of sufficient
4 value, liquidity, and diversity to ensure the national
5 insurer's ability to meet its outstanding obligations
6 based on reasonable assumptions as to its business.

7 (2) SUBSIDIARIES.—A national insurer may in-
8 vest in, or otherwise acquire, subsidiaries engaged or
9 organized to engage in any business lawful under the
10 laws of the jurisdictions in which such subsidiaries
11 are organized.

12 (b) INVESTMENT POLICY.—In acquiring, investing,
13 exchanging, holding, selling, and managing investments,
14 a national insurer shall establish and follow a written in-
15 vestment policy that shall be reviewed and approved by
16 the national insurer's board of directors at least annually.
17 The content and format of a national insurer's investment
18 policy shall be at the national insurer's discretion, but
19 shall include written guidelines appropriate to the national
20 insurer's business as to the following issues:

21 (1) The general investment policy of the na-
22 tional insurer, with guidelines and specifications in-
23 tended to assure that its investments are appro-
24 priate for the business conducted by the national in-
25 surer, its liquidity needs and its capital and surplus.

1 (2) Goals and objectives regarding the composi-
2 tion of classes of investments, including maximum
3 internal limits.

4 (3) Requirements for periodic evaluation of the
5 investment portfolio as to its risk and reward char-
6 acteristics, and for adoption and oversight of imple-
7 mentation of procedures and controls covering all as-
8 pects of the investment function.

9 (c) STANDARD OF CARE.—In reviewing and approv-
10 ing the investment policy established pursuant to sub-
11 section (b), the directors of a national insurer shall per-
12 form their duties in good faith and with that degree of
13 care that an ordinarily prudent individual in a like position
14 would use under similar circumstances. Among the factors
15 that the board of directors may consider are the following:

16 (1) The national insurer's business.

17 (2) General economic conditions.

18 (3) The possible effect of inflation or deflation.

19 (4) The expected tax consequences of invest-
20 ment decisions or strategies.

21 (5) The fairness and reasonableness of the
22 terms of an investment considering its probable risk
23 and reward characteristics and relationship to the
24 investment portfolio as a whole.

1 (6) The extent of the diversification of the na-
2 tional insurer's investments among—

- 3 (A) individual investments;
- 4 (B) classes of investments;
- 5 (C) industry concentrations; and
- 6 (D) geographic areas.

7 (7) The quality and liquidity of investments in
8 affiliates.

9 (8) The investment exposure to—

- 10 (A) liquidity risk;
- 11 (B) credit and default risk;
- 12 (C) systemic (market) risk;
- 13 (D) interest rate risk;
- 14 (E) call, prepayment, and extension risk;
- 15 (F) currency risk; and
- 16 (G) foreign sovereign risk.

17 (9) The amount of the national insurer's assets,
18 capital and surplus, premium writings, and insur-
19 ance in force.

20 (10) The amount and adequacy of the national
21 insurer's reported and unreported liabilities.

22 (11) The relationship of the expected cash flows
23 of the national insurer's assets and liabilities, and
24 the risk of adverse changes in the national insurer's
25 assets and liabilities.

1 (12) The adequacy of the national insurer's
2 capital and surplus to support the risks and liabil-
3 ities of the national insurer.

4 (13) The amount of investments made in the
5 communities where the national life insurer sells in-
6 surance policies or has offices.

7 (d) INTERNAL CONTROLS.—A national insurer shall
8 establish and implement internal controls and procedures
9 to ensure compliance with its investment policy. In this
10 respect, an evaluation and monitoring process shall occur
11 periodically for assessing the effectiveness of such controls
12 and procedures. Additionally, the national insurer shall as-
13 sess management's success in meeting the stated objec-
14 tives within the investment policy.

15 (e) MINIMUM FINANCIAL SECURITY BENCHMARK.—

16 (1) ESTABLISHMENT.—The Director shall by
17 regulation or order establish what portion of the sur-
18 plus of an individual national insurer or any cat-
19 egory of national insurers shall constitute a min-
20 imum financial security benchmark that will provide
21 reasonable security against contingencies affecting a
22 national insurer's financial position that are not
23 fully covered by reserves or by reinsurance.

24 (2) MINIMUM.—Any such minimum financial
25 security benchmark shall be not less than the au-

1 thorized control level risk-based capital (or, absent
2 an authorized control level risk-based capital, an-
3 other comparable risk-based capital level established
4 by the Director) applicable to the national insurer as
5 established under section 337 less any asset valu-
6 ation reserve and voluntary investment reserves that
7 may be required.

8 (3) FAILURE TO COMPLY.—Notwithstanding
9 the provisions of subsection (c), if a national insurer
10 fails to meet the minimum financial security bench-
11 mark applicable to it, the national insurer shall be
12 subject to such investment standards as the Director
13 shall establish by regulation or order.

14 **SEC. 333. ASSET VALUATION AND RATING.**

15 The Director shall establish such standards and
16 means to recognize risk factors appropriate to the valu-
17 ation and rating of assets held by a national insurer for
18 purposes pertinent to the supervision of national insurers
19 other than risk-based capital. The initial standards and
20 means shall be promulgated on or before the transition
21 commencement date.

22 **SEC. 334. VALUATION OF LIABILITIES.**

23 (a) REGULATIONS.—The Director shall, by regula-
24 tion, establish standards for the valuation of insurer obli-
25 gations and liabilities for national insurers. The regula-

1 tions may prescribe valuation requirements for particular
2 types of insurance policies and, for other types of insur-
3 ance policies, shall require that reserves be established
4 based on a valuation performed by a qualified actuary in
5 accordance with generally accepted actuarial principles.

6 (b) REGULATIONS DURING TRANSITION PERIOD.—

7 The initial regulations under subsection (a) shall be pro-
8 mulgated on or before the transition commencement date
9 and shall provide that the standards be based on relevant
10 NAIC model laws, regulations, and guidelines in the form
11 adopted by the NAIC, including the Standard Valuation
12 Law, Valuation of Life Insurance Policies Model Regula-
13 tion, Universal Life Insurance Model Regulation, Variable
14 Life Insurance Model Regulation, Health Insurance Re-
15 serves Model Regulation, and NAIC actuarial guidelines
16 applicable to insurance policies that may be underwritten
17 and sold by national insurers, each as in effect as of Janu-
18 ary 1, 2001, and as amended by the NAIC and in effect
19 thereafter from time to time prior to the transition termi-
20 nation date, except that the Director may by regulation
21 specify that any such amendment by the NAIC shall, in
22 whole or in part, be inapplicable to national insurers.

23 (c) REGULATIONS AFTER TRANSITION PERIOD.—

24 The standards for the valuation of insurer obligations and
25 liabilities for national insurers in effect on the transition

1 termination date pursuant to subsection (b) may there-
2 after be amended by regulations promulgated pursuant to
3 subsection (a).

4 **SEC. 335. CONTINUING AND ALTERNATE BENEFITS.**

5 (a) REGULATIONS.—The Director shall, by regula-
6 tion, establish standards applicable to national life insur-
7 ers for the determination of continuing and alternate ben-
8 efits available at the election of the policyholder or upon
9 insurance policy termination that are reflective of the ac-
10 cumulated remaining value in the insurance policy.

11 (b) REGULATIONS DURING TRANSITION PERIOD.—
12 The initial regulations under subsection (a) shall be pro-
13 mulgated on or before the transition commencement date
14 and shall provide that the standards be based on relevant
15 NAIC model laws, regulations, and guidelines in the form
16 adopted by the NAIC, including the Standard Nonfor-
17 feiture Law for Life Insurance, Variable Life Insurance
18 Model Regulation, Standard Nonforfeiture Law for Indi-
19 vidual Deferred Annuities, Long-Term Care Insurance
20 Model Act, Long-Term Care Insurance Model Regulation,
21 and NAIC actuarial guidelines applicable to insurance
22 policies that may be underwritten and sold by national in-
23 surers, each as in effect as of January 1, 2001, and as
24 amended by the NAIC and in effect thereafter from time
25 to time prior to the transition termination date, except

1 that the Director may by regulation specify that any such
2 amendment by the NAIC shall, in whole or in part, be
3 inapplicable to national insurers.

4 (c) REGULATIONS AFTER TRANSITION PERIOD.—

5 The standards applicable to national life insurers for the
6 determination of continuing and alternate benefits in ef-
7 fect on the transition termination date pursuant to sub-
8 section (b) may thereafter be amended by regulations pro-
9 mulgated pursuant to subsection (a).

10 **SEC. 336. ACTUARIAL OPINION.**

11 The Director shall, by regulation, require each na-
12 tional insurer to file an annual written opinion from a
13 qualified actuary on the adequacy of the national insurer's
14 assets to meet its reasonably expected obligations and li-
15 abilities. The opinion shall be based on analysis consistent
16 with the nature of the national insurer's obligations and
17 liabilities.

18 **SEC. 337. RISK-BASED CAPITAL STANDARDS.**

19 (a) REGULATIONS.—

20 (1) ESTABLISHMENT.—The Director shall, by
21 regulation, establish risk-based capital standards for
22 national insurers that recognize risk factors appro-
23 priate to the business of national insurers and rem-
24 edies for failure to meet such standards.

1 (2) REGULATIONS DURING TRANSITION PE-
2 RIOD.—The initial regulations under paragraph (1)
3 shall be promulgated on or before the transition
4 commencement date and shall provide that the
5 standards be based on NAIC risk-based capital cal-
6 culations and remedies in the form adopted by the
7 NAIC, each as in effect as of January 1, 2001, and
8 as amended by the NAIC and in effect thereafter
9 from time to time prior to the transition termination
10 date, except that the Director may by regulation
11 specify that any such amendment by the NAIC shall,
12 in whole or in part, be inapplicable to national insur-
13 ers.

14 (3) REGULATIONS AFTER TRANSITION PE-
15 RIOD.—The risk-based capital standards for national
16 insurers and the remedies for failure to meet such
17 standards in effect on the transition termination
18 date pursuant to paragraph (2) may thereafter be
19 amended by regulations promulgated pursuant to
20 paragraph (1).

21 (b) DISCLOSURE.—Except as may be required or per-
22 mitted under the regulations promulgated pursuant to
23 subsection (a), a national insurer shall not disclose its
24 risk-based capital ratio to the general public for any pur-
25 pose.

1 **SEC. 338. DIVIDENDS TO SHAREHOLDERS.**

2 (a) SHAREHOLDER DIVIDENDS PERMITTED.—A na-
3 tional insurer may declare and pay dividends or make
4 other distributions in cash or its bonds or its property on
5 its outstanding shares, except when the national insurer
6 is insolvent or would thereby be made insolvent, or when
7 the declaration, payment or distribution would be contrary
8 to any restrictions contained in its charter or any order
9 issued by the Director.

10 (b) SOURCE OF SHAREHOLDER DIVIDENDS.—Divi-
11 dends may be declared or paid and other distributions may
12 be made out of surplus only, so that the assets of the na-
13 tional insurer remaining after such declaration, payment,
14 or distribution shall at least equal the amount of its cap-
15 ital.

16 **Subtitle D—Reinsurance**

17 **SEC. 351. DEFINITIONS.**

18 For purposes of this subtitle:

19 (1) FEDERALLY QUALIFIED REINSURER.—The
20 term “federally qualified reinsurer” means a State
21 chartered reinsurer or a reinsurer chartered in a for-
22 eign jurisdiction that holds a license issued by the
23 Director pursuant to section 356.

24 (2) FEDERAL REINSURER.—The term “Federal
25 reinsurer” means a reinsurer that—

1 (A) is a national insurer that holds a Fed-
2 eral license under this title;

3 (B) is a federally qualified reinsurer; or

4 (C) maintains a trust fund pursuant to
5 section 352(b).

6 (3) QUALIFIED FINANCIAL INSTITUTION.—The
7 term “qualified financial institution” means an insti-
8 tution that is organized or licensed under the laws
9 of the United States or any State and that is regu-
10 lated, supervised, and examined by United States
11 Federal or State authorities having regulatory au-
12 thority over banks and trust companies. Such term
13 includes a foreign branch of a qualified United
14 States financial institution and any other foreign in-
15 stitution as determined by the Director, consistent
16 with the purposes of this subtitle.

17 (4) REINSURER.—The term “reinsurer” means
18 an insurer that is in or proposes to enter the busi-
19 ness of providing wholesale insurance risk manage-
20 ment and related financial management products
21 and services to insurers or other entities that are in
22 the business of providing insurance risk manage-
23 ment and related financial management products
24 and services in wholesale and retail markets.

1 (5) RISK TRANSFER PRODUCT.—The term “risk
2 transfer product” means any agreement between or
3 among parties in which a party contractually as-
4 sumes a specified financial uncertainty from another
5 party, for consideration.

6 **SEC. 352. RESERVE CREDIT.**

7 (a) IN GENERAL.—Credit for reinsurance shall be al-
8 lowed under this Act solely under the provisions of this
9 subtitle to a national insurer, federally qualified reinsurer,
10 and a State insurer that cedes any risk to a Federal rein-
11 surer.

12 (b) TRUST FUNDS.—

13 (1) REQUIRED ACTIONS.—If the assuming in-
14 surer secures all its liabilities attributable to reinsur-
15 ance ceded by State insurers and U.S. branches en-
16 tered through a State or established pursuant to sec-
17 tion 302 with a trust, the assuming insurer shall—

18 (A) file annually with the Director a copy
19 of its most recent audited financial statement
20 and a copy of its annual financial statement in
21 substantially similar format as those required to
22 be filed by a national insurer under this Act;

23 (B) file with the Director evidence of its
24 submission to the jurisdiction of the Director;

1 (C) submit to examination of its books and
2 records and bear the expense of the examina-
3 tion;

4 (D) file with the Director the form of the
5 trust and any trust amendments;

6 (E) deposit in the trust such reasonable
7 amount in excess of its liabilities for risks resi-
8 dent or located in the United States, net of re-
9 insurance, as shall be determined in rules to be
10 promulgated by the Director; and

11 (F) comply with such other regulations as
12 the Director may issue.

13 (2) AMOUNTS.—Such a trust may be funded
14 only with—

15 (A) cash;

16 (B) securities qualifying as admitted assets
17 of a national insurer;

18 (C) clean, irrevocable, unconditional letters
19 of credit, issued or confirmed by a qualified fi-
20 nancial institution, effective no later than De-
21 cember 31 of the year for which the filing is
22 being made, and in trust for the ceding insurer
23 on or before the filing date of its annual finan-
24 cial statement; except that letters of credit
25 issued or confirmed by institutions that subse-

1 quently fail to meet applicable standards shall
2 continue to be acceptable as security under this
3 subsection until the earliest of their expiration,
4 extension, renewal, modification, or amendment;
5 or

6 (D) any other form of security acceptable
7 to the Director.

8 (c) OTHER ASSET OR REDUCTION FROM LIABIL-
9 ITY.—In addition to the reserve credit permitted under
10 subsections (a) and (b), a national insurer and a federally
11 qualified reinsurer may establish an asset or reduce its
12 liabilities, in an amount not exceeding its liabilities, for
13 reinsurance ceded and secured in accordance with this
14 subsection. The reduction shall be in the amount of funds
15 held by or on behalf of the ceding insurer, including funds
16 held in trust for the ceding insurer, under a reinsurance
17 contract with the assuming insurer as security for the pay-
18 ment of obligations thereunder, if the security is subject
19 to withdrawal solely by, and under the exclusive control
20 of, the ceding insurer; or in the case of a trust, held in
21 a qualified financial institution. This security may be in
22 the form only of—

23 (1) cash;

24 (2) securities qualifying as admitted assets of a
25 national insurer;

1 (3) clean, irrevocable, unconditional letters of
2 credit, issued or confirmed by a qualified financial
3 institution, effective no later than December 31 of
4 the year for which the filing is being made, and in
5 the possession of, or in trust for, the ceding insurer
6 on or before the filing date of its annual financial
7 statement; except that letters of credit issued or con-
8 firmed by institutions that subsequently fail to meet
9 applicable standards shall continue to be acceptable
10 as security under this subsection until the earliest of
11 their expiration, extension, renewal, modification, or
12 amendment; or

13 (4) any other form of security acceptable to the
14 Director.

15 (d) **REQUIRED REINSURANCE.**—Notwithstanding
16 other provisions of this section or any regulation promul-
17 gated pursuant to this section, credit shall be allowed for
18 reinsurance ceded to government-owned or controlled in-
19 surers or reinsurers or to pools or to guaranty associations
20 or to residual market mechanisms, as may be required
21 under applicable law or regulation in any jurisdiction, un-
22 less the Director determines otherwise, after notice and
23 hearing.

24 **SEC. 353. RISK TRANSFER REGULATION.**

25 The Director shall issue regulations that—

1 (1) allow a ceding insurer to establish an asset
2 or to reduce its liability for reinsurance of risk,
3 whether the risk is mortality, morbidity, lapse, cred-
4 it, investment, timing, or expense and whether such
5 risks are proportional or nonproportional;

6 (2) provides that a Federal reinsurer may as-
7 sume any risk described in paragraph (1) from any
8 regulated financial entity, as long as those risks
9 originated in one or more financial undertakings by
10 the entity; and

11 (3) implements the purposes of this subtitle so
12 that functionally equivalent risk-spreading financial
13 arrangements should be treated similarly.

14 **SEC. 354. INTERNATIONAL STANDARDS; HOST COUNTRY**
15 **RESERVES.**

16 (a) INTERNATIONAL STANDARDS AND RECI-
17 PROXITY.—The Director shall have the responsibility, and
18 shall take such actions as may be necessary, to—

19 (1) improve the United States reinsurers' abil-
20 ity to compete internationally;

21 (2) promote the development, by the transition
22 termination date, of international accounting stand-
23 ards for reinsurance and functionally equivalent
24 risk-transfer products;

1 for insurance. Such standards shall give due consideration
2 to the public interest in providing secure and sufficient
3 reinsurance capacity in the United States and to the need
4 for promoting effective, fair competition.

5 (b) DETERMINATION AND FINDING.—Upon submis-
6 sion of an application, the Director shall examine the in-
7 formation submitted and conduct such further examina-
8 tion and investigation, as the Director finds necessary, to
9 determine whether the applicant satisfies the standards
10 for a license to provide reinsurance under this section.
11 Upon conclusion of the examination and investigation, the
12 Director shall publish the findings and determination of
13 the examination. Upon a determination that the applicant
14 has satisfied the applicable requirements of this section,
15 the Director shall issue the license.

16 (c) ANNUAL REPORTS.—The Director shall require
17 each reinsurer that holds a license to provide reinsurance
18 under this section to submit an annual report of its finan-
19 cial condition and an annual report on the condition of
20 any trust fund regulated under this subtitle in a form pre-
21 scribed by the Director.

22 **SEC. 357. TRANSITION.**

23 (a) CONGRESSIONAL INTENT.—The Congress intends
24 to ensure the protection of the American insurance-pur-

1 chasing public and the fair and reciprocal national treat-
2 ment for regulated entities.

3 (b) TRANSITION.—For the period of the transition
4 under subsection (c) of this section, the Director may not,
5 pursuant to section 356, license any entity that is not a
6 State insurer.

7 (c) PERIOD OF TRANSITION.—

8 (1) IN GENERAL.—The period of transition
9 under this subsection shall be the period that—

10 (A) is determined by the Director in con-
11 sultation with the United States Trade Rep-
12 resentative;

13 (B) ends no earlier than the transition ter-
14 mination date; and

15 (C) is terminated on a country-by-country
16 basis, depending on the determination pursuant
17 to subparagraph (A).

18 (2) TERMINATION.—Notwithstanding para-
19 graph (1), the transition period shall not be termi-
20 nated with respect to any country unless the United
21 States Trade Representative advises that such coun-
22 try has a mutual recognition agreement with the
23 United States.

1 **SEC. 358. APPLICABILITY OF OTHER SUBTITLES AND LAWS.**

2 (a) IN GENERAL.—No State law, regulation, or prac-
3 tice relating to any matter addressed in this subtitle or
4 in regulations implementing any provisions of this subtitle
5 shall apply, directly or indirectly, to—

6 (1) any Federal reinsurer; or

7 (2) any State insurer purchasing a risk transfer
8 product from a Federal reinsurer.

9 (b) INAPPLICABILITY OF SUBTITLE E.—A Federal
10 reinsurer shall be exempt from subtitle E of this title with
11 respect to its reinsurance operations.

12 (c) APPLICABILITY OF OTHER LAWS.—No provision
13 of law of any State, political subdivision, or agency there-
14 of, or franchising authority, and no provision of any fran-
15 chise granted by such authority, which is inconsistent with
16 or more restrictive than, any provision of this subtitle shall
17 apply to—

18 (1) any Federal reinsurer; or

19 (2) any State insurer purchasing a risk transfer
20 product from a Federal reinsurer.

21 **Subtitle E—Insurance Business**

22 **SEC. 361. PRODUCT REGULATION.**

23 (a) DEFINITION OF POLICY.—For purposes of this
24 section, the term “policy” means a policy, contract, certifi-
25 cate, or evidence of insurance, or an annuity contract, and
26 a rider or endorsement thereto, but does not include a

1 funding agreement or a reinsurance contract and does not
2 include an agreement, special rider or endorsement relat-
3 ing only to the manner of distributing benefits or to the
4 reservation of rights and benefits used at the request of
5 the individual policyholder.

6 (b) STANDARDS.—The Director shall, by regulation,
7 establish standards for policies as to policy provisions. The
8 standards may include general requirements as to policy
9 provisions generally and requirements as to particular
10 classes of policies. All policies when written by a national
11 insurer shall comply with the applicable standards then
12 in effect.

13 (c) PRODUCT FILINGS.—No national insurer may
14 issue a policy until the form of the policy has been filed
15 with and approved by the Director. Pursuant to regula-
16 tions promulgated by the Director, any filing of a policy
17 form shall be accompanied by a certificate of an officer
18 of the national insurer as to compliance of the policy form
19 for the standards applicable to the policy form.

20 (d) INTERPRETIVE RULINGS.—

21 (1) PROCEDURES.—The Director shall by regu-
22 lation establish procedures by which national insur-
23 ers may obtain interpretive rulings from the Office
24 regarding the interpretation and application of the
25 standards established pursuant to this section.

1 (3) charge a different rate for the same cov-
2 erage,

3 shall be—

4 (A) based on sound actuarial principles; or

5 (B) related to actual or reasonably anticipated
6 experience.

7 **SEC. 363. GROUP, BLANKET, AND FRANCHISE INSURANCE.**

8 (a) **AUTHORITY.**—A national insurer may—

9 (1) underwrite and sell group, blanket, and
10 franchise policies for insurance; and

11 (2) extend group, blanket, or franchise policies
12 for insurance to insure the dependents of employees
13 or members, or any class or classes thereof.

14 (b) **REGULATION.**—The Director shall, by regulation,
15 establish standards for kinds and qualifications of permis-
16 sible groups for group and franchise policies for insurance.

17 (c) **PERMISSIBLE GROUPS.**—The regulations issued
18 under subsection (b) shall provide that the permissible
19 groups shall include the following groups:

20 (1) Employees, including retired employees,
21 former employees, and officers, and directors of an
22 employer.

23 (2) Union members.

24 (3) Creditors or vendors insuring debtors or
25 purchasers.

1 (4) Holders of a credit card, charge card, or
2 payment card that can be used to buy goods or serv-
3 ices issued by a bank, retailer, or other issuer.

4 (5) Depositors, account holders, or members of
5 a bank, savings and loan association, credit union,
6 mutual fund, money market fund, stockbroker, or
7 other similar financial institution regulated under
8 State or Federal law.

9 (6) Multiple employers trusts insuring employ-
10 ees or union members.

11 (7) Employer trade associations insuring em-
12 ployees.

13 (8) Professional or trade association members.

14 (9) Association members.

15 (10) A group for which there is a common en-
16 terprise or economic or social affinity or relationship.

17 (11) A group of individuals or businesses lo-
18 cated in underserved communities.

19 (12) Any other group as the Director may pro-
20 vide.

21 **SEC. 364. INSURABLE INTERESTS UNDER LIFE INSURANCE**

22 **POLICIES.**

23 (a) **DEFINITIONS AND EXCEPTIONS.—**

1 (1) DEFINITIONS.—For purposes of subsections
2 (c)(4), (d)(1)(D), (d)(1)(E), and (d)(1)(F) of this
3 section, the term “employee” shall include—

4 (A) any and all directors, officers, part-
5 ners, employees, retired employees, or the de-
6 pendants of such persons; and

7 (B) any former employee not included in
8 subparagraph (A), but only for the purpose of
9 replacing existing life insurance with new life
10 insurance in an amount not exceeding the in-
11 surance being replaced.

12 (2) EXCEPTIONS.—This section shall not apply
13 to—

14 (A) an annuity contract;

15 (B) a funding agreement; or

16 (C) any other life insurance policy the Di-
17 rector by regulation excepts from the require-
18 ments of this section.

19 (b) INSURABLE INTEREST REQUIRED; VIOLATION.—

20 (1) REQUIREMENT.—No person shall procure
21 or cause to be procured any life insurance policy
22 written by a national life insurer upon the person of
23 another individual unless such person has, at the
24 time when such life insurance policy is made, an in-
25 surable interest in the individual insured, or unless

1 the benefits under such life insurance policy are pay-
2 able to the individual insured or his or her personal
3 representatives, or to a person having, at the time
4 when such life insurance policy is made, an insurable
5 interest in the individual insured, except that an in-
6 surable interest need not exist at the time loss oc-
7 curs under the life insurance policy.

8 (2) VIOLATION.—If the beneficiary, assignee or
9 other payee under any life insurance policy made in
10 violation of this subsection receives from the na-
11 tional life insurer any benefits thereunder accruing
12 upon the death, disablement, or injury of the indi-
13 vidual insured, the individual insured or his executor
14 or administrator may maintain an action to recover
15 such benefits from the person receiving them.

16 (c) DEFINITION OF INSURABLE INTEREST.—

17 (1) IN GENERAL.—For purposes of this section,
18 the term “insurable interest” means an interest
19 based upon a reasonable expectation of pecuniary
20 advantage through the continued life, health, or bod-
21 ily safety of another individual and consequent loss
22 by reason of such individual’s death or disability or
23 a substantial interest engendered by love and affec-
24 tion in the case of individuals closely related by
25 blood or by law.

1 (2) INSURABLE INTEREST OF SELF.—An indi-
2 vidual has an unlimited insurable interest in his or
3 her own life, health, and bodily safety and may law-
4 fully take out an insurance policy on his own life,
5 health, or bodily safety and have the insurance pol-
6 icy made payable to whomsoever such individual
7 pleases, regardless of whether the beneficiary des-
8 ignated has an insurable interest.

9 (3) INSURABLE INTEREST OF PARTY TO CON-
10 TRACT FOR SALE OF A BUSINESS INTEREST.—A
11 party to a contract or option for the purchase or
12 sale, including a redemption, of an interest in a
13 business proprietorship, partnership or firm, or of
14 shares of stock of a business entity or of an interest
15 in these shares, has an insurable interest in the life,
16 body and health of each individual party to that con-
17 tract or option, and for the purposes of that contract
18 or option only, in addition to any insurable interest
19 that may otherwise exist as to that individual.

20 (4) INSURABLE INTEREST OF A BUSINESS EN-
21 TITY OR TRUST ESTABLISHED BY A BUSINESS ENTI-
22 TY.—

23 (A) BUSINESS ENTITY.—A business entity
24 has an insurable interest in the life or physical
25 or mental ability of any of its employees or the

1 employees of any of its affiliates or any other
2 person whose death or physical or mental dis-
3 ability might cause financial loss to the business
4 entity; or, pursuant to any contractual arrange-
5 ment with any shareholder concerning the reac-
6 quisition of shares owned by him or her at the
7 time of his or her death or disability, on the
8 life or physical or mental ability of that share-
9 holder for the purpose of carrying out such con-
10 tractual arrangement; or, pursuant to any con-
11 tract obligating the business entity as part of
12 compensation arrangements or pursuant to a
13 contract obligating the business entity as guar-
14 antor or surety, on the life of the principal obli-
15 gor.

16 (B) TRUST.—

17 (i) The trustee of a trust established
18 by a business entity substantially for the
19 benefit of the business entity has the same
20 insurable interest in the life or physical or
21 mental ability of any person as does the
22 business entity.

23 (ii) The trustee of a trust established
24 by a business entity providing life, health,
25 disability, retirement, or similar benefits to

1 some or all of the employees of the busi-
2 ness entity or its affiliates in which such
3 business entity has an insurable interest or
4 the beneficiaries of such employees, and
5 acting in a fiduciary capacity with respect
6 to such employees or their beneficiaries,
7 has the same insurable interest in the life
8 of such employees as does the business en-
9 tity.

10 (C) CONVEYANCE.—The insurable interest
11 of a business entity or trustee which has been
12 established pursuant to subparagraph (B) shall
13 be conveyed automatically to another business
14 entity or to the trustee of a trust established by
15 such other business entity for its sole benefit
16 which has acquired by purchase, merger, or oth-
17 erwise all or part of the first business entity's
18 business. A business entity or the trustee of a
19 trust established pursuant to subparagraph (B)
20 may exchange any insurance policy issued to
21 itself or to another business entity or the trust-
22 ee of a trust established pursuant to subpara-
23 graph (B) from which the exchanging business
24 entity has acquired by purchase, merger, or
25 otherwise all or part of such other business en-

1 tity's business for a new insurance policy issued
2 to itself without establishing a new insurable in-
3 terest at the time of such exchange.

4 (5) CHARITABLE INSTITUTIONS.—A charitable
5 institution as defined under section 501(c)(3),
6 501(c)(6), 501(c)(8), or 501(c)(9) of the Internal
7 Revenue Code of 1986 shall have an insurable inter-
8 est in the life of any donor.

9 (d) APPLICATION AND CONSENT OF INSURED.—

10 (1) REQUIRED CONSENT.—No life insurance
11 policy upon an individual, except a group insurance
12 policy, shall be made or effectuated unless at the
13 time of the making of the life insurance policy the
14 individual insured, being of competent legal capacity
15 to contract, applies for an insurance policy or con-
16 sents in writing to the contract, except in the fol-
17 lowing cases:

18 (A) A spouse may effectuate life insurance
19 upon the other spouse.

20 (B) Any person having an insurable inter-
21 est in the life of a minor or any person upon
22 whom a minor is dependent for support and
23 maintenance may effectuate life insurance upon
24 the life of or pertaining to the minor.

1 (C) An application for a family life insur-
2 ance policy may be signed by either parent, by
3 a stepparent, or by husband or wife.

4 (D) A business entity may effectuate life
5 insurance upon its employees in whom it has an
6 insurable interest.

7 (E) A trustee of a trust established by a
8 business entity providing life, health, disability,
9 retirement, or similar benefits may effectuate
10 life insurance upon employees for whom such
11 benefits are to be provided. For purposes of this
12 subparagraph, any employee of a group of busi-
13 ness entities consisting of a parent business en-
14 tity and its directly or indirectly owned subsidi-
15 aries shall be considered to be an employee of
16 each business entity within the group.

17 (F) A business entity described in subpara-
18 graph (D) or the trustee of a trust established
19 by such business entity as contemplated by sub-
20 paragraph (E) may exchange any life insurance
21 policy which was sold to itself on the life of an
22 employee or retiree of the business entity, or
23 which was sold to another business entity or the
24 trustee of a trust established by such other
25 business entity as contemplated by subpara-

1 graph (E) on the life of an employee or retiree
2 of such other business entity, and the exchang-
3 ing business entity has acquired by purchase,
4 merger, or otherwise all or part of such other
5 business entity's business for a new life insur-
6 ance policy on such individual's life sold to the
7 exchanging business entity.

8 (2) LIABILITY.—A national life insurer shall be
9 entitled to rely upon all statements, declarations,
10 and representations made by an applicant for insur-
11 ance relative to the insurable interest which such ap-
12 plicant has in the insured. No national life insurer
13 shall incur any legal liability except as set forth in
14 the insurance policy, by virtue of any untrue state-
15 ments, declarations, or representations so relied
16 upon in good faith by the national life insurer.

17 (e) CONDITIONS FOR NEW INSURANCE EXCEEDING
18 INSURANCE BEING REPLACED.—Notwithstanding the
19 provisions of subsections (c)(4), (d)(1)(D), (d)(1)(E), or
20 (d)(1)(F), any new life insurance may exceed the life in-
21 surance being replaced only—

22 (1) when an entity has an insurable interest
23 pursuant to subsection (c)(4) and the authority to
24 effectuate life insurance pursuant to the provisions
25 of subsection (d)(1)(D), (d)(1)(E), or (d)(1)(F); and

1 (2)(A) to the extent application of the cash sur-
2 render value from the old life insurance as a pre-
3 mium under the new life insurance policy requires a
4 larger amount of insurance to qualify as life insur-
5 ance or to be not treated as a modified endowment
6 contract for Federal income tax purposes;

7 (B) to otherwise comply with applicable Federal
8 law; or

9 (C) when, upon cessation of premium payments,
10 a former employee or trustee elects under the life in-
11 surance policy to use the cash value available under
12 the life insurance policy to restructure the term, face
13 amount, or investment options under the life insur-
14 ance policy, even though such restructuring may re-
15 sult in an increase in the amount of the insurance.

16 (f) INSURANCE POLICY TRANSFERS OR ASSIGN-
17 MENTS.—If a life insurance policy has been issued in com-
18 pliance with this section, no transfer or assignment of
19 such insurance policy or any interest thereunder shall be
20 invalid by reason of a lack of insurable interest of the
21 transferee or assignee in the life of the insured or the pay-
22 ment of premiums thereafter by the transferee or assignee.

23 (g) EFFECT OF STATE LAW.—No State may, by law,
24 regulation, order, interpretation or otherwise, impose any
25 standard, relating to any matter addressed in this section,

1 on national life insurers or persons who purchase insur-
2 ance from national life insurers.

3 **SEC. 365. LAW APPLICABLE TO LIFE INSURANCE POLICIES**
4 **OR OTHER PRODUCTS OF NATIONAL LIFE IN-**
5 **SURERS.**

6 (a) IN GENERAL.—Subject to any applicable Federal
7 law, the provisions of any life insurance policy or other
8 product of a national life insurer shall be interpreted in
9 accordance with the law of the jurisdiction, if any, speci-
10 fied by the parties in the life insurance policy or other
11 product, so long as the parties have specified the law of—

12 (1) the jurisdiction in which the national life in-
13 surer has its main office;

14 (2) the jurisdiction in which the national life in-
15 surer has its principal place of business; or

16 (3) the jurisdiction in which the life insurance
17 policy or other product is delivered.

18 (b) DEFAULT LAW.—Subject to any applicable Fed-
19 eral law, if the parties to a life insurance policy or other
20 product of a national life insurer have not specified, as
21 provided in subsection (a), the jurisdiction whose law shall
22 govern the provisions of the insurance policy or other
23 product, such provisions shall be interpreted in accordance
24 with the law of the jurisdiction in which the life insurance
25 policy or other product is delivered.

1 (c) REGULATIONS.—Subsection (b) shall be subject
2 to such choice of law rules and standards as the Director
3 may establish by regulation.

4 **Subtitle F—Market Conduct**

5 **SEC. 371. PURPOSES AND REGULATIONS.**

6 (a) PURPOSE.—The purposes of this subtitle is to en-
7 sure appropriate Federal regulation of sales and mar-
8 keting practices of national insurers and State licensed in-
9 surance producers selling the products of national insurers
10 to prevent—

11 (1) unfair methods of competition and unfair
12 and deceptive acts and practices in the advertising,
13 solicitation, sale, issuance, distribution, and adminis-
14 tration of insurance policies and other products of
15 national insurers;

16 (2) unfair claims practices related to insurance
17 underwritten and sold by such insurers and pro-
18 ducers;

19 (3) discrimination in the underwriting of insur-
20 ance by such insurers and producers; and

21 (4) insurance fraud.

22 (b) RULEMAKING AUTHORITY.—The Director shall
23 promulgate such rules and regulations, applicable to na-
24 tional insurers and State insurance producers that sell

1 products of national insurers, as the Director deems nec-
2 essary to carry out the purposes of this subtitle.

3 (c) ANNUAL EXAMINATIONS.—The Director shall
4 conduct annual examinations of the market conduct of na-
5 tional insurers and State insurance producers that sell
6 products of national insurers.

7 (d) SAFE HARBOR.—An immaterial clerical error or
8 mathematical error made in connection with the adver-
9 tising, solicitation, sale, issuance, distribution, or adminis-
10 tration of insurance policies and other products of national
11 insurers and State insurance producers that sell products
12 of national insurers shall not constitute a violation of this
13 subtitle.

14 **SEC. 372. UNFAIR OR DECEPTIVE PRACTICES.**

15 (a) GENERAL PROHIBITION.—No person shall en-
16 gage in any act or practice in or affecting the advertising,
17 solicitation, sale, issuance, distribution, or administration
18 of insurance or other products of national insurers, includ-
19 ing such products sold by State insurance producers, if
20 such act or practice—

21 (1) constitutes an unfair or deceptive act or
22 practice in or affecting the advertising, solicitation,
23 sale, issuance, distribution, or administration of in-
24 surance or other products of national insurers; and

1 (2)(A) is committed flagrantly and in conscious
2 disregard of this subtitle or any regulations promul-
3 gated under this subtitle; or

4 (B) has been committed with such frequency as
5 to indicate a general business practice to engage in
6 such conduct.

7 (b) UNFAIR OR DECEPTIVE ACTS OR PRACTICES DE-
8 FINED.—For purposes of this subtitle, the following acts
9 or practices constitute unfair or deceptive acts or practices
10 in or affecting the advertising, solicitation, sale, issuance,
11 distribution, or administration of insurance or other prod-
12 ucts of national insurers, including such products sold by
13 State insurance producers:

14 (1) MISREPRESENTATIONS AND FALSE ADVER-
15 TISING OF INSURANCE OR ANNUITY CONTRACTS.—

16 Making, issuing, circulating, or causing to be made,
17 issued or circulated, any estimate, illustration, cir-
18 cular or statement, sales presentation or comparison
19 that—

20 (A) misrepresents the benefits, advantages,
21 conditions or terms of any insurance or annuity
22 contract issued by a national insurer;

23 (B) misrepresents the dividends to be re-
24 ceived on any insurance or annuity contract
25 issued by a national insurer;

1 (C) makes a false or misleading statement
2 as to the dividends previously paid on any in-
3 surance or annuity contract issued by a na-
4 tional insurer;

5 (D) is misleading or is a misrepresentation
6 as to the financial condition of any national in-
7 surer, or as to the reserves required for a na-
8 tional insurer;

9 (E) uses any name or title of any insur-
10 ance or annuity contract issued by a national
11 insurer that misrepresents the true nature of
12 such insurance or annuity contract;

13 (F) is a misrepresentation, including any
14 intentional misquote of a premium rate, for the
15 purpose of inducing or intending to induce the
16 purchase, lapse, forfeiture, exchange, conversion
17 or surrender of any insurance or annuity con-
18 tract issued by a national insurer;

19 (G) is a misrepresentation for the purpose
20 of effecting a pledge or assignment of or effect-
21 ing a loan against any insurance or annuity
22 contract issued by a national insurer; or

23 (H) misrepresents any insurance policy
24 issued by a national insurer as stock.

1 (2) FALSE, DECEPTIVE, OR MISLEADING AD-
2 VERTISING.—Making, publishing, disseminating, cir-
3 culating, or placing before the public, directly or in-
4 directly, in a newspaper, magazine or other publica-
5 tion, or in the form of a notice, circular, pamphlet,
6 letter or poster, or over the Internet or any radio or
7 television station, or in any other way, any advertise-
8 ment, announcement, or statement that contains any
9 assertion or representation with respect to any na-
10 tional insurer or State insurance producer selling
11 products of a national insurer which is untrue, de-
12 ceptive, or misleading.

13 (3) DEFAMATION.—Making, publishing, dis-
14 seminating, or circulating, directly or indirectly, or
15 aiding, abetting, or encouraging the making, pub-
16 lishing, disseminating, or circulating of any oral or
17 written statement or any pamphlet, circular, pam-
18 phlet, letter, or poster, which is false or maliciously
19 critical of the financial condition of a national in-
20 surer or State insurance producer selling products of
21 a national insurer, and which is calculated to injure
22 such insurer or producer.

23 (4) FALSE STATEMENTS.—Filing with the Di-
24 rector, or any other public official, or making, pub-
25 lishing, disseminating, circulating, or delivering to

1 any person, or causing, directly or indirectly, to be
2 made, published, disseminated, circulated, or deliv-
3 ered to any person, or placed before the public, any
4 material statement as to the financial condition of
5 a national insurer or State insurance producer sell-
6 ing products of a national insurer that is false.

7 (5) TWISTING.—Making, issuing, or causing to
8 be made or issued an oral or written statement that
9 misrepresents or makes incomplete comparisons
10 about the terms, conditions or benefits contained in
11 an insurance or annuity contract issued by a na-
12 tional insurer, including such contracts sold by State
13 insurance producers, for the purpose of inducing or
14 attempting to or intending to induce the policyholder
15 to forfeit, surrender, retain, exchange, or convert an
16 insurance or annuity contract or allow an insurance
17 or annuity contract to lapse.

18 (6) OTHER ACTS AND PRACTICES.—Engaging
19 in any other act or practice that the Director deter-
20 mines, by regulation or order, to be an unfair or de-
21 ceptive act or practice in or affecting the advertising,
22 solicitation, sale, issuance, distribution, or adminis-
23 tration of insurance and other products of national
24 insurers, including such products sold by State in-
25 surance producers.

1 (c) TIE-IN TRANSACTIONS.—

2 (1) REAL OR PERSONAL PROPERTY TRANS-
3 ACTION.—No person engaged in the business of fi-
4 nancing the purchase of real or personal property,
5 lending money on the security thereof, or servicing
6 a mortgage thereon, and none of its trustees, direc-
7 tors, officers, agents, or other employees, shall re-
8 quire, as a condition precedent to financing any such
9 purchase or making any such loan or renewing or
10 extending any such loan or mortgage or performing
11 any other act in connection therewith, that the per-
12 son, firm or corporation for whom the transaction is
13 undertaken negotiate any policy of insurance or re-
14 newal thereof covering such property through a par-
15 ticular insurance company, agent, or broker.

16 (2) RIGHT TO APPROVE INSURANCE COMPANY;
17 NON-DISCRIMINATION.—This section shall not pre-
18 vent the exercise of any right to approve or dis-
19 approve the insurer selected to underwrite the insur-
20 ance, except that in exercising such right, whether
21 pursuant to this section or any other law, no person
22 engaged in any such financing, lending or servicing
23 business and none of its trustees, directors, officers,
24 agents, or other employees shall—

1 (A) discriminate against an insurance com-
2 pany which issues a policy of insurance that is
3 non-assessable as to any designated mortgages
4 or any secured creditor designated as a loss
5 payee because of the insurer's type of organiza-
6 tion; or

7 (B) refuse to accept an insurance policy
8 because it was not negotiated through a par-
9 ticular insurance company, agent, or broker.

10 (3) NO FEE TO CHANGE INSURANCE COMPA-
11 NIES.—No person engaged in any such financing,
12 lending, or servicing business, and none of its trust-
13 ees, directors, officers, agents, or other employees
14 shall, in connection with compliance with a covenant
15 to insure, require that the person, firm, or corpora-
16 tion for whom the purchase of the property is fi-
17 nanced or to whom a mortgage loan is made or who
18 owns the property shall pay a fee or other charges
19 as a condition to accepting, during the unexpired
20 term of a policy then held, another policy of insur-
21 ance in substitution therefore.

22 (4) BANKING SERVICES.—A depository institu-
23 tion (as such term is defined in section 3 of the Fed-
24 eral Deposit Insurance Act (12 U.S.C. 1813)) en-
25 gaged, directly or indirectly, in the sale of insurance

1 products shall comply with the anti-coercion, disclo-
2 sure, and other consumer protections provided for in
3 section 47 of the Federal Deposit Insurance Act (12
4 U.S.C. 1831x).

5 **SEC. 373. REPLACEMENT OF LIFE INSURANCE POLICIES.**

6 (a) IN GENERAL.—Any replacement of individual life
7 insurance policies or individual annuity contracts of a na-
8 tional insurer by an agent or representative of such in-
9 surer shall conform to standards set forth in regulations
10 promulgated by the Director.

11 (b) REGULATIONS.—The regulation required by sub-
12 section (a) shall

13 (1) specify what constitutes replacement and
14 the disclosure and notification required in order to
15 replace a policy or contract;

16 (2) require notification to the national insurer
17 whose policies or contracts are intended to be re-
18 placed;

19 (3) require the timely exchange of illustrative
20 and cost information necessary for completion of a
21 comparison of the proposed and replaced coverage;
22 and

23 (4) provide for a period following issuance of
24 the replacement policies or contracts during which

1 the policyholder or contract owner may reinstate the
2 replaced policies or contracts.

3 **SEC. 374. UNFAIR DISCRIMINATION, UNFAIR CLAIMS SET-**
4 **TLEMENT PRACTICES, AND UNLAWFUL IN-**
5 **DUCEMENTS.**

6 (a) UNFAIR DISCRIMINATION.—In underwriting in-
7 surance, no national insurer shall commit any of the fol-
8 lowing acts:

9 (1) RATES, DIVIDENDS AND OTHER BENEFITS
10 ASSOCIATED WITH LIFE INSURANCE AND ANNU-
11 TIES.—Engage in or allow any unfair discrimina-
12 tion between individuals of the same class and equal
13 expectation of life in the rates charged for any life
14 insurance or annuity contract issued by such na-
15 tional insurer or in the dividends or other benefits
16 payable thereon, or in any other terms and condi-
17 tions of such insurance or annuity contract.

18 (2) RATES AND BENEFITS ASSOCIATED WITH
19 ACCIDENT AND HEALTH INSURANCE.—Engage in or
20 allow any unfair discrimination between individuals
21 or risks of the same class and of essentially the
22 same hazard in the rates charged for any accident
23 or health insurance issued by a national insurer or
24 in the benefits payable thereunder, or in any of the

1 terms or conditions of such insurance, or in any
2 other manner.

3 (3) GEOGRAPHIC LOCATION OF PROPERTY OR
4 CASUALTY RISK; AGE OF PROPERTY.—Engage in or
5 allow unfair discrimination between individuals or
6 risks of the same class and essentially the same haz-
7 ard by refusing to insure, refusing to renew, can-
8 celing, or limiting the amount of insurance
9 coverage—

10 (A) on a property or casualty risk solely
11 because of the geographic location of the risk;
12 or

13 (B) on the residential property risk, or the
14 personal property contained therein solely be-
15 cause of the age of the residential property;
16 except that it is not unfairly discriminatory if such
17 action is based on sound actuarial principles or re-
18 lated to actual or reasonably anticipated experience.

19 (4) TERMINATION OF AGENT OR BROKER.—
20 Refuse to appoint, or terminate the appointment of,
21 an agent or broker solely because such agent or
22 broker submitted applications for property or cas-
23 ualty risks located in a particular geographical area.

24 (5) SEX, MARTIAL STATUS, RACE, RELIGION OR
25 NATIONAL ORIGIN.—Refuse to insure, refuse to con-

1 tinue to insure, or limit the amount of coverage
2 available to, an individual because of the sex, marital
3 status, race, religion or national origin of the indi-
4 vidual; except that nothing in this paragraph shall
5 prohibit a national insurer from taking marital sta-
6 tus into account for the purpose of defining persons
7 eligible for dependent benefits.

8 (6) MENTAL OR PHYSICAL IMPAIRMENT.—Ter-
9 minate or modify coverage under, or refuse to issue
10 or refuse to renew, any insurance, or charge a dif-
11 ferent rate for the same coverage, solely because the
12 applicant or insured or any employee of either is
13 mentally or physically impaired; except that—

14 (A) this paragraph shall not apply to acci-
15 dent and health insurance sold by a national in-
16 surer that is chartered to issue property and
17 casualty insurance;

18 (B) this paragraph shall not preclude any
19 such action that is based on sound actuarial
20 principles or is related to actual or reasonable
21 anticipated experience, in which case the na-
22 tional insurer shall, subject to the limitations
23 under section 375(a), notify the insured or ap-
24 plicant of the right to receive, or designate a
25 medical professional to receive, the specific rea-

1 son or reasons for such refusal, limitation or
2 differential; and

3 (C) this paragraph shall not be interpreted
4 to modify any other provision of law related to
5 the termination, modification, issuance, or re-
6 newal of, or rates charged with respect to, any
7 contract issued by a national insurer.

8 (7) REFUSAL BY ANOTHER INSURER.—Refuse
9 to insure solely because another national insurer or
10 State insurer has refused to write an insurance or
11 annuity contract, or has canceled or has refused to
12 renew an existing insurance or annuity contract in
13 which that person was the named insured. Nothing
14 in this paragraph shall prevent the termination of an
15 excess insurance contract on the account of the fail-
16 ure of the insured to maintain any required under-
17 lying insurance.

18 (b) UNFAIR CLAIMS SETTLEMENT PRACTICES.—No
19 national insurer shall engage in any of the following unfair
20 claims settlement practices if such practice is committed
21 without just cause and with such frequency as to indicate
22 a general practice:

23 (1) Knowingly misrepresent material facts or
24 provisions that relate to the claim or coverage at
25 issue.

1 (2) Refuse to pay a claim for an arbitrary or
2 capricious reason based on all available information.

3 (3) Attempt to settle a claim based on an appli-
4 cation that is altered without notice to, or the knowl-
5 edge or consent of, the insured.

6 (4) Fail to include with each claim paid to an
7 insured or beneficiary a statement of the coverage
8 under which payment is being made.

9 (5) Fail to settle a claim promptly whenever li-
10 ability is reasonably clear under one part of an in-
11 surance or annuity contract, in order to influence
12 settlements under other parts of the contract.

13 (6) Fail to provide promptly on request a rea-
14 sonable explanation of the basis for a denial of a
15 claim.

16 (7) Engage in any other practice that the Di-
17 rector determines, pursuant to a rule or order, to be
18 an unfair claims settlement practice.

19 (c) UNLAWFUL INDUCEMENTS.—

20 (1) IN GENERAL.—No national insurer, nor
21 anyone acting on behalf of a national insurer, nor
22 any State insurance producer, shall pay, allow, or
23 give, or offer to pay, allow, or give, directly or indi-
24 rectly, as an inducement to any person to insure, or
25 shall give, sell, or purchase, or offer to give, sell, or

1 purchase, as such inducement, or interdependent
2 with any insurance policy or annuity contract, any
3 stocks, bonds, or other securities, or any dividends
4 or profits accruing or to accrue thereon, any rebate
5 of premium, or any other valuable consideration or
6 inducement whatever having a nominal value in ex-
7 cess of \$20, not specified in such policy or contract.

8 (2) AFFILIATES OF CORPORATE INSUREDS.—

9 Within the meaning of paragraph (1), the sharing of
10 a commission with the insured shall be deemed to in-
11 clude any case in which an insurance agent or
12 broker which is an affiliate of any corporate insured,
13 received commissions for the negotiation or procure-
14 ment of any policy or contract of insurance for the
15 insured.

16 (3) DIVIDENDS PERMITTED.—This subsection

17 shall not prohibit any national insurer from equi-
18 tably distributing to its policyholders, at any time
19 during the term or at the termination of the con-
20 tract of insurance, dividends payable from such in-
21 surer's surplus, nor prohibit any national insurer or
22 insurance agent from paying commissions to a li-
23 censed insurance broker for negotiating a policy or
24 contract of insurance, nor prohibit any licensed in-
25 surance broker from sharing or dividing a commis-

1 sion earned or received by him with any other li-
2 censed insurance broker or brokers who shall have
3 aided him in respect to the insurance for the nego-
4 tiation of which the commission has been earned or
5 paid.

6 (4) TEMPORARY CONTRACTS PERMITTED.—
7 This subsection shall not prohibit the making of
8 temporary contracts of insurance, either by tem-
9 porary binders or other memoranda, if the premium
10 applicable to the insurance shall be due and shall be
11 paid for the time during which the insurance is in
12 force by virtue of the temporary contract.

13 **SEC. 375. HIV WRITTEN INFORMED CONSENT, DISCRIMINA-**
14 **TION AGAINST ABUSE VICTIMS, AND HOLO-**
15 **CAUST VICTIMS CLAIMS.**

16 (a) HIV WRITTEN INFORMED CONSENT.—

17 (1) IN GENERAL.—No national insurer or its
18 designee shall request or require an individual pro-
19 posed for insurance coverage to be the subject of an
20 HIV related test without receiving the written in-
21 formed consent of such individual prior to such test-
22 ing and without providing general information about
23 AIDS and the transmission of HIV infection.

24 (2) WRITTEN CONSENT.—Written informed
25 consent to an HIV related test shall consist of a

1 written authorization that is dated and includes at
2 least the following:

3 (A) A general description of the test.

4 (B) A statement of the purpose of the test.

5 (C) A statement that a positive test result
6 is an indication that the individual may develop
7 AIDS and may wish to consider further inde-
8 pendent testing.

9 (D) A statement that the individual may
10 identify on the authorization form the person to
11 whom the specific test results may be disclosed
12 in the event of an adverse underwriting deci-
13 sion, which person may be the individual or a
14 physician or other designee at the discretion of
15 the individual proposed for insurance.

16 (E) The signature of the applicant or indi-
17 vidual proposed for insurance, or if such indi-
18 vidual lacks capacity to consent, the signature
19 of such other person authorized to consent for
20 such individual.

21 (3) NOTICE TO INDIVIDUAL.—In the event that
22 a national insurer's adverse underwriting decision is
23 based in whole or in part on the result of an HIV
24 related test, the national insurer shall notify the in-
25 dividual of the adverse underwriting decision and

1 ask the individual to elect in writing, unless the indi-
2 vidual has already done so, whether to have the spe-
3 cific HIV related test results disclosed directly to the
4 individual or to such other person as the individual
5 may designate.

6 (4) DEFINITIONS.—For purposes of this sub-
7 section:

8 (A) ADVERSE UNDERWRITING DECISION.—

9 The term “adverse underwriting decision”
10 means—

11 (i) a declination of insurance coverage

12 as applied for; or

13 (ii) an offer to issue insurance cov-

14 erage at a higher than standard rate.

15 (B) AIDS.—The term “AIDS” means ac-
16 quired immune deficiency syndrome, as may be
17 defined from time to time by the Centers for
18 Disease Control of the United States Public
19 Health Service.

20 (C) HIV INFECTION.—The term “HIV in-
21 fection” means infection with the human im-
22 munodeficiency virus or any other related virus
23 identified as a probable causative agent of
24 AIDS.

1 (D) HIV RELATED TEST.—The term
2 “HIV related test” means any laboratory test
3 or series of tests for any virus, antibody, anti-
4 gen, or etiologic agent whatsoever thought to
5 cause or to indicate the presence of AIDS.

6 (5) AUTHORITY OF DIRECTOR.—Nothing in this
7 subsection shall be construed to create, impair, alter,
8 limit, modify, enlarge, abrogate, or restrict the spe-
9 cific authority of the Director to allow or prohibit
10 the use of HIV related tests or the consideration of
11 HIV related test results for insurance coverage pur-
12 poses.

13 (b) DISCRIMINATION BASED ON BEING A VICTIM OF
14 ABUSE.—

15 (1) IN GENERAL.—It is unfairly discriminatory
16 on the part of a national insurer to—

17 (A) deny, refuse to issue, renew or reissue,
18 cancel, or otherwise terminate, restrict, or ex-
19 clude insurance coverage on or add a premium
20 differential to a policy for an applicant or in-
21 sured on the basis of the applicant’s or in-
22 sured’s abuse status; or

23 (B) exclude, limit, or deny benefits on a
24 life insurance policy on the basis of an insured’s

1 abuse status except as otherwise permitted or
2 required by law;
3 except that the prohibitions contained in this para-
4 graph shall not preclude a national insurer from tak-
5 ing any of the actions described in this paragraph so
6 long as the national insurer relies on underwriting
7 criteria reasonably related to the physical or mental
8 condition of a person, their property or claim history
9 and the decision was based on sound underwriting
10 and actuarial principles reasonably related to actual
11 or anticipated loss experience. In such case the selec-
12 tion criteria permitted must be based on such prin-
13 ciples. The national insurer shall notify the insured
14 or applicant of its specific reason or reasons for such
15 decision.

16 (2) DISCLOSURE OF CONFIDENTIAL ABUSE IN-
17 FORMATION.—When a national insurer, agency, or
18 agent has confidential abuse information in its pos-
19 session, the disclosure or transfer of such informa-
20 tion by a person employed by or contracting with a
21 national insurer, agency, or agent for any purpose or
22 to any person is unfairly discriminatory, except—

23 (A) to the subject of abuse or an individual
24 specifically designated in writing by the subject
25 of abuse;

1 (B) to a health care provider for the direct
2 provision of health care services;

3 (C) to a licensed physician identified and
4 designated by the subject of abuse;

5 (D) when ordered by the Director or a
6 court of competent jurisdiction or otherwise re-
7 quired by law;

8 (E) when necessary for a valid business
9 purpose to transfer information that includes
10 confidential abuse information that cannot rea-
11 sonably be segregated without undue hardship;
12 confidential abuse information may be disclosed
13 only if the recipient has executed a written
14 agreement to be bound by the prohibitions of
15 this subsection in all respects and to be subject
16 to the enforcement of this subsection by a court
17 of competent jurisdiction for the benefit of the
18 applicant or the insured, and only to—

19 (i) a reinsurer that seeks to indemnify
20 or indemnifies all or any part of a policy
21 covering a subject of abuse and that can-
22 not underwrite or satisfy its obligations
23 under the reinsurance agreement without
24 that disclosure;

1 (ii) a party to a proposed or con-
2 summed sale, transfer, merger, or con-
3 solidation of all or part of the business of
4 the national insurer, agency, or agent;

5 (iii) medical or claims personnel (in-
6 cluding affiliates of the national insurer,
7 agency, or agent) contracting with the na-
8 tional insurer, agency, or agent, only where
9 necessary to process an application or per-
10 form the duties of such national insurer,
11 agency, or agent under the policy or to
12 protect the safety or privacy of a subject of
13 abuse; or

14 (iv) with respect to address and tele-
15 phone number, to entities with whom the
16 national insurer, agency, or agent trans-
17 acts business when the business cannot be
18 transacted without the address and tele-
19 phone number;

20 (F) to an attorney who needs the informa-
21 tion to represent the national insurer, agency,
22 or agent effectively, *Provided*, That the national
23 insurer, agency, or agent notifies the attorney
24 of its obligations under this subsection and re-
25 quests that the attorney exercise due diligence

1 to protect the confidential abuse information
2 consistent with the attorney's obligation to rep-
3 resent the national insurer, agency, or agent;

4 (G) to the policyholder or assignee, in the
5 course of delivery of the policy, if the policy
6 contains information about abuse status; or

7 (H) to any other entities deemed appro-
8 priate by the Director.

9 (3) REQUESTS PROHIBITED.—It is unfairly dis-
10 criminatory on the part of a national insurer to re-
11 quest information about acts of abuse or abuse sta-
12 tus, or make use of that information, however ob-
13 tained.

14 (4) EXCEPTIONS.—Nothing in this subsection
15 shall—

16 (A) preclude a subject of abuse from ob-
17 taining his or her insurance records;

18 (B) prohibit a national insurer, agency, or
19 agent from declining to issue a life insurance
20 policy if the applicant or prospective owner of
21 the policy is or would be designated as a bene-
22 ficiary of the policy, and if—

23 (i) the applicant or prospective owner
24 of the policy lacks an insurable interest in
25 the insured;

1 (ii) the applicant or prospective owner
2 of the policy is known, on the basis of
3 medical, police, or court records, to have
4 committed an act of abuse against the pro-
5 posed insured; or

6 (iii) the insurance or prospective in-
7 sured is a subject of abuse, and that per-
8 son, or a person who has assumed the care
9 of that person if a minor or incapacitated,
10 has objected to the issuance of the policy
11 on the ground that the policy would be
12 issued to or for the direct or indirect ben-
13 efit of the abuser; or

14 (C) prohibit a national insurer, agency, or
15 agent from asking about a medical condition or
16 from using medical information to underwrite
17 or to carry out its duties under the policy, even
18 if the medical information is related to a med-
19 ical condition that the national insurer, agency,
20 or agent knows or has reason to know is abuse-
21 related, to the extent otherwise permitted under
22 this subsection and other applicable law.

23 (5) ACTIONS TAKEN IN GOOD FAITH.—A na-
24 tional insurer, agency, or agent shall not be held civ-
25 illy or criminally liable for the death of or injury to

1 an insured resulting from any action taken in a good
2 faith effort to comply with the requirements of this
3 subsection; except that this paragraph does not pre-
4 vent an action to investigate or enforce a violation
5 of this subsection or to assert any other claims au-
6 thorized by law.

7 (6) DEFINITIONS.—For purposes of this sub-
8 section:

9 (A) ABUSE.—The term “abuse” means an
10 act that—

11 (i) would constitute a crime in the
12 State in which the insured or applicant re-
13 sides, including acts constituting disorderly
14 conduct, harassment, menacing, reckless
15 endangerment, kidnapping, assault, at-
16 tempted assault, or attempted murder;

17 (ii) has resulted (or multiple acts that
18 have resulted) in actual physical or emo-
19 tional injury or have created a substantial
20 risk of physical or emotional harm to such
21 person or such person’s child; and

22 (iii) is alleged (or multiple acts that
23 are alleged) to have been committed by a
24 family or household member.

1 (B) CONFIDENTIAL ABUSE INFORMA-
2 TION.—The term “confidential abuse informa-
3 tion” means information that clearly indicates
4 that the insured or applicant is a subject of
5 abuse.

6 (c) HOLOCAUST VICTIMS’ CLAIMS.—Any national in-
7 surer in receipt of a claim against it arising from an occur-
8 rence during the period between January 1, 1929, and De-
9 cember 31, 1945, from an individual that such national
10 insurer knows, or reasonably should have known, is a Hol-
11 ocaust victim shall—

12 (1) diligently and expeditiously investigate such
13 claim;

14 (2) allow claimants to provide alternative docu-
15 mentation which does not meet the usual standards
16 of proof required by an insurer to substantiate the
17 particular claim, subject to standards established for
18 such documentation as prescribed by regulations
19 promulgated by the Director; and

20 (3) attempt to resolve, settle and, if appro-
21 priate, make payments on claims irrespective of any
22 statute of limitations or notice requirements imposed
23 by any law or such insurance policy issued to or cov-
24 ering the life of a Holocaust victim, provided that

1 the claim is submitted to the insurer within 10 years
2 from the effective date of this Act.

3 **SEC. 376. MINIMUM NATIONAL STANDARDS.**

4 (a) APPLICABILITY TO INSURERS.—The provisions of
5 this subtitle and any regulations implementing this sub-
6 title shall apply to each insurance company (other than
7 a national insurer) doing business in the United States
8 to the same extent as a national insurer, and shall be en-
9 forceable against each such company by the appropriate
10 State insurance regulator of the State that would other-
11 wise have jurisdiction over the transaction or activity that
12 is alleged to constitute a violation of this subtitle. Each
13 such insurance company shall be subject to the same pen-
14 alties and sanctions that the Director may impose against
15 a national insurer for violations of this subtitle.

16 (b) ENFORCEMENT OF MORE PROTECTIVE STATE
17 LAWS.—Nothing in this section shall be construed to di-
18 minish the authority of any State insurance regulator to
19 enforce a State statute, order, or regulation that provides
20 greater protection to the policyholder, applicant, or claim-
21 ant alleging a violation of this subtitle.

1 **Subtitle G—Acquisitions of Con-**
2 **trol, Mergers, Bulk Transfers,**
3 **and Domestication**

4 **SEC. 381. ACQUISITION OF CONTROL.**

5 (a) DIRECTOR APPROVAL REQUIRED.—

6 (1) IN GENERAL.—No person other than the
7 issuer shall make a tender offer for or a request or
8 invitation for tenders of, or enter into any agree-
9 ment to exchange securities for, or acquire, in the
10 open market or otherwise, any voting security of a
11 national insurer if, after the consummation thereof,
12 such person would, directly or indirectly (or by con-
13 version or by exercise of any right to acquire) be in
14 control of the national insurer, and no person shall
15 enter into an agreement to merge with or otherwise
16 to acquire control of a national insurer or any per-
17 son controlling a national insurer unless, at the time
18 the offer, request or invitation is made or the agree-
19 ment is entered into, or prior to the acquisition of
20 the securities if no offer or agreement is involved—

21 (A) such person has filed with the Director
22 and has sent to the national insurer, a state-
23 ment, the form and content of which is pre-
24 scribed in accordance with subsection (b); and

1 (B) the offer, request, invitation, agree-
2 ment, or acquisition has been approved by the
3 Director.

4 (2) CONDITIONAL OFFERS.—Nothing in para-
5 graph (1) shall prohibit a person from making an
6 offer, request, or invitation or entering into an
7 agreement to acquire control of a national insurer,
8 the completion of which is conditioned upon obtain-
9 ing the approval of the Director as required in para-
10 graph (1).

11 (3) DEFINITIONS.—For purposes of this sec-
12 tion:

13 (A) NATIONAL INSURER.—The term “na-
14 tional insurer” includes any person controlling
15 a national insurer.

16 (B) PERSON.—The term “person” does
17 not include any securities broker holding, in the
18 usual and customary broker’s function, less
19 than 20 percent of the voting securities of a na-
20 tional insurer or of any person which controls
21 a national insurer.

22 (b) CONTENT OF STATEMENT.—The Director shall,
23 by regulation, prescribe the form and content of the state-
24 ment to be filed pursuant to subsection (a).

1 (c) APPROVAL BY DIRECTOR.—The Director shall ap-
2 prove any merger or other acquisition of control referred
3 to in subsection (a) unless the Director finds that—

4 (1) after the acquisition of control, the national
5 insurer referred to in subsection (a) would not be
6 able to satisfy the requirements for the issuance of
7 a Federal license to write the line or lines of insur-
8 ance for which it is presently licensed;

9 (2) the financial condition of any acquiring per-
10 son is such as might jeopardize the financial sta-
11 bility of the national insurer, or be hazardous to pol-
12 icyholders of the national insurer;

13 (3) the plans or proposals which the acquiring
14 person has to liquidate the national insurer, sell its
15 assets, or consolidate or merge it with any person,
16 or to make any other material change in its business
17 or corporate structure or management, are unfair
18 and unreasonable to policyholders of the national in-
19 surer and not in the public interest;

20 (4) the competence, experience, and integrity of
21 those persons who would control the operation of the
22 national insurer are such that it would not be in the
23 interest of policyholders of the national insurer and
24 of the public to permit the merger or other acquisi-
25 tion of control; or

1 (5) the acquisition is likely to be hazardous to
2 the insurance-buying public.

3 (d) **DISCLAIMER OF CONTROL.**—The Director may
4 determine upon application that any person does not or
5 will not upon the taking of some proposed action control
6 another person. Such determination shall be made within
7 30 days of the filing of the application or such further
8 period as the Director may prescribe. The filing of the ap-
9 plication in good faith by any person shall relieve the ap-
10 plicant from any obligation or liability imposed by this sec-
11 tion with respect to the subject of the application until
12 the Director has acted upon the application. The Director
13 may prospectively revoke or modify the Director’s deter-
14 mination, after notice and opportunity to be heard, when-
15 ever in the Director’s judgment revocation or modification
16 is consistent with this section.

17 (e) **HEARING PERMITTED.**—The Director may, in the
18 sole discretion of the Director, hold a hearing on a merger
19 or other acquisition of control that is the subject to this
20 section and for which a statement has been filed under
21 subsection (a)(1)(A). The hearing shall be subject to the
22 procedures contained in section 205(g), except that the
23 hearing shall be held in such location as the Director may,
24 in the sole discretion of the Director, specify.

1 (f) EXEMPTIONS.—The provisions of this section
2 shall not apply to—

3 (1) any offer, request, invitation, agreement, or
4 acquisition that the Director by order shall exempt
5 as not having been made or entered into for the pur-
6 pose and not having the effect of changing or influ-
7 encing the control of a national insurer, or as other-
8 wise not comprehended within the purposes of this
9 section; and

10 (2) a merger, consolidation, or acquisition sub-
11 ject to section 382.

12 (g) VOTING OF SECURITIES.—

13 (1) IN GENERAL.—No security which is the
14 subject of any agreement or arrangement regarding
15 acquisition, or which is acquired or to be acquired,
16 in contravention of the provisions of this section or
17 of any regulation or order issued by the Director
18 hereunder may be voted at any shareholder's meet-
19 ing, or may be counted for quorum purposes, and
20 any action of shareholders requiring the affirmative
21 vote of a percentage of shares may be taken as
22 though the securities were not issued and out-
23 standing; but no action taken at any such meeting
24 shall be invalidated by the voting of the securities,

1 unless the action would affect control of the national
2 insurer or unless ordered by a court.

3 (2) INJUNCTION.—If a national insurer or the
4 Director has reason to believe that any security of
5 the national insurer has been or is about to be ac-
6 quired in contravention of the provisions of this sec-
7 tion or of any regulation or order issued by the Di-
8 rector hereunder, the national insurer or the Direc-
9 tor may apply to the United States district court for
10 the judicial district in which the main office of the
11 national insurer is located or the United States Dis-
12 trict Court for the District of Columbia to enjoin
13 any offer, request, invitation, agreement, or acquisi-
14 tion made in contravention of this section or any
15 regulation or order issued by the Director there-
16 under to enjoin the voting of any security so ac-
17 quired, to void any vote of the security already cast
18 at any meeting of shareholders and for such other
19 equitable relief as the nature of the case and the in-
20 terest of the national insurer's policyholders, credi-
21 tors, and shareholders or the public may require.

22 (h) SEQUESTRATION OF VOTING SECURITIES.—

23 (1) IN GENERAL.—In any case where a person
24 has acquired or is proposing to acquire any voting
25 securities in violation of this section or any regula-

1 tion or order issued by the Director hereunder, the
2 United States district court for the judicial district
3 in which the main office of the national insurer is
4 located or the United States District Court for the
5 District of Columbia may, on such notice as the
6 court deems appropriate, upon the application of the
7 national insurer or the Director, seize or sequester
8 any voting securities of the national insurer owned
9 directly or indirectly by the person, and issue such
10 order as may be appropriate to effectuate the provi-
11 sions of this section.

12 (2) SITUS OF OWNERSHIP.—Notwithstanding
13 any other provisions of law, for the purposes of this
14 section, the situs of the ownership of the securities
15 of national insurers shall be deemed to be the State
16 in which the main office of the national insurer is
17 located.

18 (i) CONFLICT WITH OTHER FEDERAL LAWS.—This
19 section shall be construed and interpreted so as not to con-
20 flict with or supersede the provisions of any other Federal
21 law or regulation governing the regulation of holding com-
22 panies, including financial holding companies as created
23 under section 2 of the Bank Holding Company of 1956.

24 (j) NO DELEGATION PERMITTED.—The Director
25 may not delegate to any insurance self-regulatory organi-

1 zation any authority conferred under this section with re-
2 spect to any merger or other acquisition of control of a
3 national insurer.

4 **SEC. 382. MERGERS, CONSOLIDATIONS, AND ACQUISITIONS.**

5 (a) NATIONAL INSURER RESULTING.—

6 (1) IN GENERAL.—A national insurer may, with
7 the approval of the Director, merge or consolidate
8 into, or acquire all or substantially all the assets of
9 and/or assume all or substantially all the liabilities
10 of, another national insurer or a State insurer in a
11 transaction in which a national insurer is the result-
12 ing insurer or the acquiring and/or assuming insurer
13 and may do so without regard to whether the insur-
14 ers involved in the transaction are stock form, mu-
15 tual form, or fraternal form.

16 (2) MERGER, CONSOLIDATION, AND ACQUI-
17 SITION PROCEDURES.—The Director may, by regula-
18 tion, provide for—

19 (A) the merger or consolidation of a na-
20 tional insurer with another national insurer or
21 a State insurer in a transaction in which a na-
22 tional insurer is the resulting insurer; and

23 (B) the acquisition and/or assumption by a
24 national insurer of all or substantially all the
25 assets and/or all or substantially all the liabil-

1 ities of another national insurer or a State in-
2 surer in a transaction in which the national in-
3 surer is the acquiring and/or assuming insurer.
4 Any such merger or consolidation, or acquisition
5 and/or assumption, shall be carried out solely in ac-
6 cordance with such regulations as the Director may
7 prescribe; except that in the case of a transaction in-
8 volving the demutualization of a State insurer, State
9 laws, regulations, and orders shall govern the
10 demutualization process.

11 (3) EFFECT OF MERGER OR CONSOLIDATION.—
12 Upon the merger or consolidation of a national in-
13 surer with another national insurer or a State in-
14 surer in accordance with this section and regulations
15 issued by the Director hereunder—

16 (A) the corporate existence of each of the
17 merging or consolidating insurers shall be
18 merged or consolidated into the resulting in-
19 surer, and the resulting insurer shall be deemed
20 to be the same corporation as each insurer par-
21 ticipating in the merger or consolidation; and

22 (B) the resulting insurer shall, by oper-
23 ation of law and without further action, hold
24 and be subject to all rights, privileges, liabil-
25 ities, property interests, and other interests and

1 obligations that each insurer participating in
2 the merger or consolidation held or was subject
3 to immediately prior to the merger or consolida-
4 tion, except that the resulting insurer shall not
5 hold, following the merger or consolidation, any
6 State license to underwrite and sell insurance
7 that was held by a State insurer participating
8 in the merger or consolidation and the resulting
9 insurer shall obtain, in accordance with section
10 303 and the regulations issued by the Director
11 thereunder, a Federal license for all lines of in-
12 surance that it underwrites and sells (except in
13 the case of those lines of insurance for which a
14 national insurer participating in the merger or
15 consolidation held a Federal license immediately
16 prior to the merger or consolidation).

17 (4) SPECIAL AUTHORITY.—The Director may,
18 in the Director’s discretion and subject to such con-
19 ditions as the Director may prescribe, permit a na-
20 tional insurer resulting from a merger or consolida-
21 tion under this section to retain upon such merger
22 or consolidation such assets, liabilities, and powers
23 and authorities of any other national insurer or any
24 State insurer participating in the merger or consoli-
25 dation that do not conform to the legal requirements

1 applicable to national insurers as the Director deems
2 appropriate.

3 (b) STATE INSURER RESULTING.—Subject to such
4 notification procedures as the Director may prescribe by
5 regulation, a State insurer may merge or consolidate with,
6 or acquire assets of and/or assume liabilities of, a national
7 insurer in a transaction in which a State insurer is the
8 resulting insurer, as permitted by the relevant provisions
9 of applicable State law. Nothing in this subsection or in
10 a transaction pursuant to this subsection shall operate to
11 abrogate any rights, privileges, liabilities, property inter-
12 ests, or other interests or obligations that the national in-
13 surer held or was subject to immediately prior to the
14 transaction.

15 (c) EFFECT OF ASSUMPTION OF LIABILITIES.—If li-
16 abilities of a national insurer are assumed by another na-
17 tional insurer or a State insurer in accordance with the
18 provisions of this Act, such national insurer shall be re-
19 leased from all liabilities so assumed upon their assump-
20 tion by the other national insurer or a State insurer.

21 (d) NO DELEGATION PERMITTED.—The Director
22 may not delegate to any insurance self-regulatory organi-
23 zation any authority conferred under this section with re-
24 spect to any merger, consolidation, acquisition of assets,
25 or assumption of liabilities involving a national insurer.

1 (e) COORDINATION.—This section shall not apply to
2 any bulk transfer (as defined in section 383(a)) that is
3 subject to approval of the Director in accordance with sub-
4 section (b) of such section.

5 **SEC. 383. BULK TRANSFERS.**

6 (a) DEFINITIONS.—For purposes of this section:

7 (1) ASSUMING INSURER.—The term “assuming
8 insurer” means the insurer that purchases or other-
9 wise acquires existing insurance policies from an-
10 other insurer by bulk transfer.

11 (2) BULK TRANSFER.—The term “bulk trans-
12 fer” means the transfer by an insurer to another in-
13 surer of existing insurance policies constituting all or
14 substantially all of one or more of its lines of busi-
15 ness. Such term does not include—

16 (A) any sale in which the transferring in-
17 surer retains direct or indirect control of the as-
18 sets supporting the transferred insurance poli-
19 cies;

20 (B) any transaction effected by an agree-
21 ment under which the transferring insurer con-
22 tinues to remain directly liable to the policy-
23 holders under the insurance policies;

24 (C) the substitution of one insurer for an-
25 other upon the expiration of insurance coverage

1 pursuant to statutory or contractual require-
2 ments and the issuance of a new policy of in-
3 surance by that insurer;

4 (D) the transfer of policies of insurance
5 pursuant to merger or consolidation of 2 or
6 more insurers to the extent that those trans-
7 actions are regulated by statute;

8 (E) any transaction effected by an insurer
9 subject to a judicial order of receivership, liq-
10 uidation, or rehabilitation;

11 (F) any transaction to which the National
12 Insurance Guaranty Corporation or a State in-
13 surance guaranty association is a party; or

14 (G) any transfer of liabilities from one in-
15 surer to another under a single group insurance
16 policy upon the request of the group policy-
17 holder.

18 (3) PERMITTED NATIONAL INSURER.—The
19 term “permitted national insurer” means—

20 (A) a State insurer that is converting to a
21 national insurer under section 306; or

22 (B) a national insurer that is being newly
23 chartered under section 301 and licensed under
24 section 303.

1 (4) TRANSFERRED INSURANCE POLICIES.—The
2 term “transferred insurance policies” means the in-
3 surance policies that are subject to the bulk transfer.

4 (5) TRANSFERRING INSURER.—The term
5 “transferring insurer” means the insurer in privity
6 of contract with the policyholders under the existing
7 insurance policies that are subject to the bulk trans-
8 fer.

9 (b) BULK TRANSFERS AUTHORIZED.—The following
10 bulk transfers are authorized:

11 (1) A State insurer as the transferring insurer
12 and a permitted national insurer as the assuming in-
13 surer.

14 (2) A permitted national insurer as the trans-
15 ferring insurer and a State insurer as the assuming
16 insurer.

17 (3) A national insurer as the transferring in-
18 surer and a national insurer as the assuming in-
19 surer.

20 (4) A State insurer as the transferring insurer
21 and a national insurer that is not a permitted na-
22 tional insurer as the assuming insurer.

23 (5) A national insurer that is not a permitted
24 national insurer as the transferring insurer and a
25 State insurer as the assuming insurer.

1 (c) DIRECTOR APPROVAL.—

2 (1) REQUIREMENT.—A national insurer, before
3 effecting a bulk transfer as either the transferring
4 insurer or the assuming insurer as authorized under
5 subsection (b)(1), (b)(2), (b)(3), or (b)(5) of this
6 section, shall obtain the prior approval of the Direc-
7 tor in accordance with such regulations as the Direc-
8 tor may prescribe.

9 (2) STANDARD.—The Director shall approve a
10 bulk transfer under paragraph (1), after notice and
11 a hearing, unless the Director finds that the bulk
12 transfer is likely to be hazardous to policyholders of
13 transferred insurance policies, policyholders of the
14 transferring insurer, or policyholders of the assum-
15 ing insurer.

16 (d) POLICYHOLDER CONSENT.—

17 (1) TRANSFER WITHOUT CONSENT.—Notwith-
18 standing any other provision of law, a national in-
19 surer may, following the Director's approval required
20 by subsection (c), effect a bulk transfer as either the
21 transferring insurer or the assuming insurer as au-
22 thorized under subsection (b)(1) or (b)(2) without
23 obtaining policyholder consent to the bulk transfer.

24 (2) CONSENT REQUIRED.—Notwithstanding
25 any other provision of law, a national insurer may,

1 following the Director's approval required by sub-
2 section (c), effect a bulk transfer as either the trans-
3 ferring insurer or the assuming insurer as author-
4 ized under subsection (b)(3) by complying with re-
5 quirements the Director shall prescribe by regulation
6 specifying whether policyholder consent to such a
7 bulk transfer is required and, if policyholder consent
8 is required, the form in which such consent is re-
9 quired to be given.

10 (3) AUTHORITY TO REQUIRE CONSENT.—In ad-
11 dition to any policyholder consent required by any
12 other applicable provision of law, the Director may
13 by regulation prescribe whether policyholder consent
14 is required for a bulk transfer authorized under sub-
15 section (b)(5) and, if policyholder consent is re-
16 quired, the form in which such consent is required
17 to be given.

18 (e) RELEASE FROM LIABILITY.—Upon the effective-
19 ness of a bulk transfer under this section, the transferring
20 insurer shall be released from its obligations under the
21 transferred insurance policies.

22 (f) STATE LAW.—

23 (1) CONSENT REQUIREMENTS PROHIBITED.—
24 Except as provided in paragraph (2), no State may,
25 by law, regulation, interpretation, or otherwise re-

1 quire a national insurer, a permitted national in-
2 surer, or a State insurer to obtain policyholder con-
3 sent to a bulk transfer or to submit the bulk trans-
4 fer to State review or action (including approval and
5 nondisapproval) or prevent or significantly interfere
6 with a bulk transfer effected pursuant to this sec-
7 tion.

8 (2) PERMISSIBLE STATE ACTION.—Paragraph
9 (1) does not prevent any State from—

10 (A) collecting, reviewing, and taking action
11 (including approval or disapproval) on applica-
12 tions and other documents or reports con-
13 cerning a proposed bulk transfer permitted
14 under—

15 (i) subsection (b)(2), (b)(4), or (b)(5)
16 to which a State insurer (other than a per-
17 mitted national insurer) domiciled in that
18 State is a party; or

19 (ii) subsection (b)(4) or (b)(5) to
20 which a State insurer (other than a per-
21 mitted national insurer), other than a
22 State insurer domiciled in that State, is a
23 party,

24 if the review or action meets the standards set
25 forth in paragraph (2); or

1 (B) requiring policyholder consent of a
2 proposed bulk transfer permitted under sub-
3 section (b)(4) or (b)(5).

4 (3) STANDARDS.—The standards applicable to
5 paragraph (1)(A) are that the review or action—

6 (A) is based on standards no more onerous
7 than those imposed by the Director and occurs
8 within a reasonable time frame that advances
9 the purposes of this section;

10 (B) is made in close consultation and co-
11 operation with the Director and is without bias
12 or discrimination toward either the transferring
13 insurer or the assuming insurer; and

14 (C) serves a legitimate State interest and
15 does not frustrate the proposed bulk transfer.

16 (4) FAILURE TO MEET STANDARDS.—If the Di-
17 rector finds that any State review or action under
18 paragraph (2)(A) fails to meet any of the standards
19 set forth in paragraph (3)(A), (3)(B), or (3)(C), the
20 Director may give notice to the applicable State of
21 the reasons for such failure whereupon such State
22 review or action shall be deemed to fail to meet the
23 standards of paragraph (3).

24 (g) DIFFERENTIAL TREATMENT PROHIBITED.—No
25 State may, by law, regulation, interpretation, or otherwise,

1 treat a national insurer, a permitted national insurer, or
2 a State insurer entering into a bulk transfer agreement
3 with a national insurer, a permitted national insurer, or
4 a State insurer, or any affiliate or subsidiary thereof, dif-
5 ferently than any other insurer operating in that State.

6 (h) DELEGATION PROHIBITED.—The Director may
7 not delegate to any insurance self-regulatory organization
8 any authority conferred under this section with respect to
9 any bulk transfer involving a national insurer.

10 **SEC. 384. DOMESTICATION OF U.S. BRANCH OF A NON-U.S.**
11 **INSURER.**

12 (a) DOMESTICATION PERMITTED.—Notwithstanding
13 any other provision of law, upon compliance with the pro-
14 visions of this section and the Directors regulations here-
15 under, any non-U.S. insurer having its U.S. branch en-
16 tered through a State or established pursuant to section
17 302 and owning beneficially, directly or indirectly, all out-
18 standing shares of a national insurer, may, subject to
19 prior written approval of the Director, domesticate its
20 U.S. branch by agreeing in writing with such national in-
21 surer to the acquisition of the business and assets, and
22 the assumption of all liabilities, of the U.S. branch, by
23 the national insurer for no consideration except such as-
24 sumption.

1 (b) APPROVAL BY DIRECTOR.—If satisfied that the
2 domestication is in accordance with the provisions of this
3 section and that the interests of policyholders and credi-
4 tors of the U.S. branch are not materially adversely af-
5 fected, the Director may approve such domestication and
6 authorize its consummation in compliance with the provi-
7 sions of subsection (c).

8 (c) CONSUMMATION OF DOMESTICATION AGREE-
9 MENT; RELEASE OF DEPOSITS; WITHDRAWAL OF
10 TRUSTEED ASSETS.—

11 (1) CONSUMMATION OF DOMESTICATION
12 AGREEMENT.—Upon the filing with the Director of
13 a certified copy of the instrument of transfer and
14 assumption—

15 (A) the domestication of the U.S. branch
16 shall be effective;

17 (B) all rights, franchises and interests of
18 such U.S. branch in and to every species of
19 property, real, personal and mixed, and things
20 in action thereunto belonging, shall be deemed
21 transferred to and vested in the acquiring na-
22 tional insurer and it shall be deemed to have
23 assumed all liabilities of such U.S. branch; and

24 (C) all deposits of the U.S. branch held by
25 State officers or other State regulatory agencies

1 pursuant to State laws shall be released, and
2 the non-U.S. insurer and the U.S. branch shall
3 be released from all liabilities so assumed.

4 (2) RELEASE OF DEPOSITS.—Contempora-
5 neously with the consummation of the domestication
6 of a U.S. branch established under this section, the
7 Director shall transfer to the account of the acquir-
8 ing national insurer the securities deposited by such
9 U.S. branch in compliance with the provisions of this
10 Act, and the Director shall consent that the trustee
11 of the trusted assets deposited by such U.S. branch
12 in compliance with the provisions of this Act shall
13 withdraw from the trust and transfer and deliver to
14 the acquiring national insurer all assets held by such
15 trustee.

16 (3) WITHDRAWAL OF TRUSTEED ASSETS.—
17 Contemporaneously with the consummation of the
18 domestication of a U.S. branch established under
19 State law, the trustee of any trusted assets depos-
20 ited by such U.S. branch in compliance with applica-
21 ble State law shall, with the consent of the Director,
22 withdraw the trusted assets from the trust and
23 transfer and deliver to the acquiring national insurer
24 all assets held by such trustee. No State may, by
25 statute, regulation, order, interpretation, or other-

1 wise prevent, significantly interfere with, or have the
2 authority to review, approve, or disapprove the with-
3 drawal of trusteed assets or other deposits of a U.S.
4 branch established under State law that is domes-
5 ticating pursuant to this section, *Provided*, That
6 such withdrawal is being made contemporaneously
7 with or subsequent to the consummation of a domes-
8 tication of the U.S. branch pursuant to this section.

9 (d) PROHIBITION OF DELEGATION.—The Director
10 may not delegate to any insurance self-regulatory organi-
11 zation any authority under this section with respect to the
12 domestication of a U.S. branch of a non-U.S. insurer.

13 **Subtitle H—Health Insurance**

14 **SEC. 391. RECOMMENDATIONS FOR HEALTH INSURANCE.**

15 Not later than 3 years after the date of the enact-
16 ment of this Act, the Director shall submit a report to
17 the Congress—

18 (1) making recommendations on whether na-
19 tional insurers should be authorized to underwrite
20 health insurance; and

21 (2) including proposed legislation to authorize
22 such underwriting.

1 **TITLE IV—STATE TAXATION**

2 **SEC. 401. STATE TAXATION.**

3 (a) **IN GENERAL.**—Except as provided in subsection
4 (b), a national insurer shall be subject to all taxes, includ-
5 ing insurance retaliatory taxes, imposed under the author-
6 ity of any State legislation to the same extent and in the
7 same manner as an insurer chartered in the State where
8 the national insurer is considered domiciled pursuant to
9 subsection (c).

10 (b) **EXCEPTION.**—No State shall have power to im-
11 pose its insurance retaliatory tax on any national insurer
12 unless, for any tax purpose for which State of domicile
13 is relevant, every national insurer is treated by such State
14 as domiciled in the State designated by each national in-
15 surer in accordance with subsection (c) and unless the in-
16 surance retaliatory tax is imposed on insurers chartered
17 by the State to the same extent and in the same manner.

18 (c) **DESIGNATION OF DOMICILE.**—For purposes of
19 this section, a national insurer may designate one of the
20 following States as its State of domicile, by filing such
21 designation in writing with the Director:

22 (1) The State in which is located the national
23 insurer's principal place of business in the United
24 States.

1 (2) In the case of an insurer that has converted
2 from being a State insurer to being a national in-
3 surer under this Act, the State in which such insurer
4 was domiciled immediately prior to such conversion.
5 If a national insurer makes no designation of a State of
6 domicile pursuant to this subsection, it shall be deemed
7 to have designated as its State of domicile that State in
8 which is located its principal place of business in the
9 United States.

10 (d) CHANGE IN DOMICILE.—With the approval of the
11 Director, a national insurer may change its State of domi-
12 cile to any other State meeting the requirements of sub-
13 section (c).

14 (e) STATUS OF NATIONAL INSURER.—For purposes
15 of State taxation, a national insurer shall not be consid-
16 ered to be a department, agency, or instrumentality of the
17 Federal Government, nor, except as provided in this sec-
18 tion, shall a national insurer be exempt from any State
19 tax or subject to a lesser burden of any State tax, solely
20 by reason of its status as a national insurer under this
21 Act.

1 **TITLE V—TREATMENT OF**
2 **MCCARRAN-FERGUSON ACT**

3 **SEC. 501. REPEAL OF ANTITRUST EXEMPTION FOR BUSI-**
4 **NESS OF INSURANCE.**

5 The antitrust laws of the United States shall apply
6 to national insurers, State insurers, and all reinsurers
7 doing business in the United States (regardless of the
8 domicile of such reinsurers), to the same extent as other
9 business are subject to such laws, except that the antitrust
10 laws shall not apply to—

11 (1) the sharing of historical loss data among in-
12 surers, *Provided*, That this paragraph shall not be
13 construed to permit the sharing of trending data;
14 and

15 (2) the activities of insurers required to partici-
16 pate in State mandatory residual market mecha-
17 nisms designed to make insurance available to those
18 unable to obtain insurance in the voluntary market
19 and to the activities of insurers required to partici-
20 pate in a worker’s compensation administration
21 mechanism.

22 **TITLE VI—HOLDING COMPANIES**

23 **SEC. 601. DEFINITIONS.**

24 For purposes of this title:

1 (1) AFFILIATE.—The term “affiliate” means
2 any person that controls, is controlled by, or is
3 under common control with another person.

4 (2) EXTRAORDINARY DIVIDEND OR DISTRIBUTION.—Except as may otherwise be specified by the
5 Director by regulation, the term “extraordinary dividend or distribution” means a dividend or distribu-
6 tion of cash or other property by a national insurer,
7 whose fair market value together with that of other
8 dividends or distributions made within the preceding
9 12 months exceeds the greater of—
10 12 months exceeds the greater of—

12 (A) 10 percent of the national insurer’s
13 surplus as regards policyholders as of the next
14 preceding December 31; or

15 (B) the net income of the national insurer
16 for the 12-month period ending the December
17 31 next preceding, but does not include pro
18 rata distributions of any class of the national
19 insurer’s own securities.

20 (3) INSURANCE HOLDING COMPANY SYSTEM.—
21 The term “insurance holding company system”
22 means two or more affiliated persons, one or more
23 of which is a national insurer.

1 (4) SUBSIDIARY.—The term “subsidiary”
2 means, with respect to a person, an affiliate con-
3 trolled, directly or indirectly, by such person.

4 **SEC. 602. REGISTRATION.**

5 (a) REGISTRATION.—Each national insurer that is a
6 member of an insurance holding company system shall
7 register with the Director.

8 (b) REGISTRATION STATEMENT.—The Director shall,
9 by regulation, prescribe—

10 (1) the form and content of the registration
11 statement to be filed pursuant to subsection (a); and

12 (2) the time by which the registration state-
13 ment is required to be filed with the Director.

14 (c) INFORMATION OF NATIONAL INSURERS.—Any
15 person within an insurance holding company system sub-
16 ject to registration under subsection (a) shall be required
17 to provide complete and accurate information to a national
18 insurer, in any case in which the information is reasonably
19 necessary to enable the insurer to comply with the provi-
20 sions of this title.

21 (d) TERMINATION OF REGISTRATION.—The Director
22 shall terminate the registration of any national insurer
23 that demonstrates that it no longer is a member of an
24 insurance holding company system.

1 (e) EXEMPTIONS.—The provisions of this section
2 shall not apply to any national insurer, information, or
3 transaction if and to the extent that the Director by regu-
4 lation or order provides for such inapplicability.

5 (f) DISCLAIMER.—Any person may file with the Di-
6 rector a disclaimer of affiliation with any national insurer
7 or a disclaimer may be filed by the national insurer or
8 any member of an insurance holding company system. The
9 disclaimer shall fully disclose all material relationships and
10 bases for affiliation between the person and the national
11 insurer as well as the basis for disclaiming the affiliation.
12 After a disclaimer has been filed, the national insurer shall
13 be relieved of any duty to register or report under this
14 section which may arise out of the national insurer's rela-
15 tionship with the person unless and until the Director dis-
16 allows the disclaimer. The Director shall disallow a dis-
17 claimer only after furnishing all parties in interest with
18 notice and opportunity to be heard and after making spe-
19 cific findings of fact to support the disallowance.

20 **SEC. 603. STANDARDS AND MANAGEMENT OF NATIONAL IN-**
21 **SURER WITHIN AN INSURANCE HOLDING**
22 **COMPANY SYSTEM.**

23 (a) TRANSACTIONS WITHIN INSURANCE HOLDING
24 COMPANY SYSTEM.—

1 (1) STANDARDS.—Transactions within an in-
2 surance holding company system to which a national
3 insurer subject to registration is a party shall be
4 subject to the following standards:

5 (A) The terms shall be fair, reasonable and
6 at least as favorable to the national insurer as
7 those that would be offered to, or would apply
8 to, a non-affiliate.

9 (B) Charges or fees for services performed
10 shall be reasonable and at least as favorable to
11 the national insurer as those that would be of-
12 fered to, or would apply to, a non-affiliate.

13 (C) Expenses incurred and payment re-
14 ceived shall be allocated to the national insurer
15 in conformity with customary insurance ac-
16 counting practices consistently applied.

17 (D) The books, accounts and records of
18 each party to all such transactions shall be so
19 maintained as to clearly and accurately disclose
20 the nature and details of the transactions, in-
21 cluding such accounting information as is nec-
22 essary to support the reasonableness of the
23 charges or fees to the parties.

24 (E) The national insurer's surplus as re-
25 gards policyholders following any dividends or

1 distributions to shareholders shall be reasonable
2 in relation to the national insurer's outstanding
3 liabilities and adequate to meet its financial
4 needs.

5 (2) AUTHORITY TO REQUIRE APPROVAL IN AD-
6 VANCE OF TRANSACTIONS.—The Director may, by
7 regulation, prescribe certain transactions involving a
8 national insurer and any person in its insurance
9 holding company system that may not be entered
10 into unless the national insurer has notified the Di-
11 rector in writing of its intention to enter into the
12 transaction and the Director either has approved or
13 not disapproved the transaction within a specified
14 time period.

15 (3) REVIEW BY DIRECTOR.—The Director, in
16 reviewing any transactions for which notice is re-
17 quired pursuant to paragraph (2), shall consider
18 whether the transactions comply with the standards
19 set forth in paragraph (1) and whether they may ad-
20 versely affect the interests of policyholders.

21 (b) EXTRAORDINARY DIVIDENDS.—

22 (1) NOTICE OF DECLARATION.—No national in-
23 surer that is a member of an insurance holding com-
24 pany system shall pay any extraordinary dividend or
25 distribution to its shareholders until 30 days after

1 the Director has received notice of the declaration in
2 a form prescribed by the Director.

3 (2) **CONDITIONAL DECLARATION.**—A national
4 insurer that is a member of an insurance holding
5 company system may declare an extraordinary divi-
6 dend or distribution which is conditional upon the
7 Director’s approval, and the declaration shall confer
8 no rights upon shareholders until—

9 (A) the Director has approved the payment
10 of the dividend or distribution; or

11 (B) the Director has not disapproved pay-
12 ment within the 30-day period referred to in
13 paragraph (1).

14 **SEC. 604. CONFLICT WITH OTHER FEDERAL LAWS.**

15 This title shall be construed and interpreted so as not
16 to conflict with or supersede the provisions of any other
17 Federal law or regulation governing the regulation of hold-
18 ing companies, including financial holding companies as
19 created under Section 2 of the Bank Holding Company
20 Act of 1956 (12 U.S.C. 1841).

21 **TITLE VII—RELATIONSHIPS**
22 **WITH STATE LAW**

23 **SEC. 701. DEFINITIONS.**

24 For purposes of this title:

1 (1) COVERED PARTY.—The term “covered
2 party” means a national insurer, including any offi-
3 cer, director, or employee of such national insurer.

4 (2) STATE LAW.—The term “State law” means
5 any law, rule, regulation, interpretation, or order
6 adopted by a State legislature or promulgated by a
7 State regulatory or enforcement agency, and any
8 provision of a State constitution.

9 **SEC. 702. GENERAL PROHIBITION.**

10 No State may prevent or interfere with the ability
11 of a covered party to engage in any activity authorized
12 under this Act.

13 **SEC. 703. STATE LICENSE NOT REQUIRED.**

14 No covered person shall be required to obtain any
15 State license or similar authorization in order to engage
16 in any State in any business or activity authorized by this
17 Act.

18 **SEC. 704. STATE INSURANCE LAW.**

19 Except as otherwise provided in this Act, no State
20 law that relates to the formation, chartering, supervision,
21 regulation, or business practices of an insurer, or any
22 other matter related to the business of insurance, includ-
23 ing issuance or revocation of a license to conduct the busi-
24 ness of insurance, regulation of solvency and financial con-
25 dition, mergers and acquisitions, any policy form and en-

1 dorsement, marketing and sales practice, underwriting,
2 damage appraisal and claims adjustment, any claims han-
3 dling and settlement practice, and unfair insurance trade
4 practices and market conduct activity (including any re-
5 quirement related to nonrenewal, cancellation, and change
6 in policy terms, including rates) shall apply to a covered
7 party, except to the extent consistent with the provisions
8 of this Act.

9 **SEC. 705. PROHIBITION OF DISCRIMINATION.**

10 (a) IN GENERAL.—Any State law that is not pre-
11 empted by section 704 may not discriminate against a cov-
12 ered party or a State-licensed insurance producer selling
13 a product of a national insurer or be applied to a covered
14 party in a manner different than it is applied to a State
15 insurer, State-licensed agency, affiliate of any such insurer
16 or agency, or any officer, director, employee, or agent of
17 such insurer, agency, or affiliate.

18 (b) STATE INSURERS.—No State may discriminate
19 against a State insurer that is affiliated with a national
20 insurer on the basis of that affiliation.

21 **SEC. 706. PERMISSIBLE STATE REGULATION.**

22 The following State laws are not preempted by sub-
23 section 704 or any other provision of this Act, and the
24 following activities of a covered party shall be subject to
25 State regulation, to the extent applicable: *Provided*, That

1 such laws shall be subject to the antidiscrimination stand-
2 ard set forth in section 705:

3 (1) RESIDUAL MARKET INSURANCE PRO-
4 GRAMS.—Any State law that requires participation
5 in an assigned risk plan, mandatory joint under-
6 writing association, or any other mandatory residual
7 market mechanism designed to make insurance
8 available to those unable to obtain it in the vol-
9 untary market: *Provided*, That this paragraph shall
10 not apply to any State law governing participation
11 in any voluntary joint underwriting association or
12 similar arrangement: *Provided further*, That the Di-
13 rector may review any State law regulating any ac-
14 tivity described in this subsection and may preempt
15 such law if the Director determines it to be incon-
16 sistent with any provision or purpose of this Act.

17 (2) TAXES.—Any State law that imposes liabil-
18 ity for State and local taxes and assessments on in-
19 surers, including premium taxes, retaliatory taxes,
20 tax credits, deductions, and offsets related thereto,
21 as provided in section 401.

22 (3) CORPORATE GOVERNANCE.—Except to the
23 extent inconsistent with any provision or purpose of
24 this Act, any State governing insurance company in-

1 corporation, organization, corporate governance, vot-
2 ing rights, and related matters.

3 (4) REPARATION REQUIREMENTS.—Any State
4 law that prescribes the requirements of the repara-
5 tions that every insurer must provide if it under-
6 writes and sells policies of a particular type in a
7 State.

8 (5) ADVISORY ORGANIZATIONS.—Any State law
9 that mandates the participation of insurers in an ad-
10 visory or statistical organization: *Provided*, That
11 such participation does not require a national in-
12 surer to use any particular rate, rating element,
13 price, or form.

14 (6) WORKERS' COMPENSATION.—Any State law
15 that regulates participation in a workers' compensa-
16 tion administration mechanism, provided such par-
17 ticipation is not inconsistent with any provision of
18 this Act.

19 (7) RATE REGULATION.—Any State law that
20 regulates insurance rates.

21 (8) CONVERSION TO STOCK FORM.—Any State
22 law that regulates the conversion of a mutual State
23 insurer to an insurer in stock form.

1 (9) INSURANCE PRODUCER LICENSING.—Any
2 State law that regulates the licensing of insurance
3 producers.

4 **SEC. 707. SALES ACTIVITIES BY STATE-LICENSED INSUR-**
5 **ANCE PRODUCERS.**

6 No State may—

7 (1) prevent a State-licensed insurance producer
8 from selling, soliciting, or negotiating an insurance
9 policy or annuity contract issued by a national in-
10 surer;

11 (2) impose any condition on a State-licensed
12 producer that significantly interferes with the ability
13 of selling, soliciting, or negotiating an insurance pol-
14 icy or annuity contract issued by a national insurer;
15 or

16 (3) discriminate, in any manner, against a
17 State-licensed producer because it sells, solicits, or
18 negotiates an insurance policy or annuity contract
19 issued by a national insurer.

1 **TITLE** **VIII—CONFORMING**
2 **AMENDMENTS AND OTHER**
3 **PROVISIONS**

4 **SEC. 801. FEDERAL COURT JURISDICTION.**

5 (a) IN GENERAL.—Chapter 85 of title 28, United
6 States Code, is amended by adding at the end the fol-
7 lowing new section:

8 **“§ 1369. National insurer as party**

9 “The district courts shall have original jurisdiction
10 of any civil action—

11 “(1) commenced by the United States, or by di-
12 rection of any officers thereof, against any national
13 insurer;

14 “(2) to wind up the affairs of a national in-
15 surer; and

16 “(3) to enjoin the Director of the Office of Na-
17 tional Insurers of the Department of the Treasury,
18 or any receiver acting under the direction of the Di-
19 rector, as provided in the Insurance Industry Mod-
20 ernization and Consumer Protection Act.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 for chapter 85 of title 18, United States Code, is amended
23 by adding at the end the following new item:

“1369. National insurer as party.”.

1 **SEC. 802. FEDERAL COURT VENUE.**

2 IN GENERAL.—Chapter 87 of title 28, United States
3 Code, is amended by adding at the end the following new
4 section:

5 **“§ 1414. National insurer action against Director of**
6 **National Insurers.**

7 “Any civil action by a national insurer to enjoin the
8 Director of National Insurers of the Department of the
9 Treasury, under the provisions of any Act of Congress re-
10 lating to such insurers, may be prosecuted in the judicial
11 district where such insurer is located.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 for chapter 87 of title 18, United States Code, is amended
14 by adding at the end the following new item:

“1414. National insurer action against Director of National Insurers.”.

15 **SEC. 803. JUDICIAL REVIEW.**

16 Except as otherwise expressly provided in this Act,
17 any party aggrieved by an order or other agency action
18 (as such terms are defined in section 551 of title 5, United
19 States Code) of the Director under this Act may obtain
20 a review of such order or other action in the United States
21 Court of Appeals within any circuit wherein such party
22 has its main office, or in the Court of Appeals for the
23 District of Columbia, by filing in the court, within 30 days
24 after the entry of the Director’s order, a petition praying
25 that the order or other action of the Director be set aside,

1 modified or terminated. A copy of such petition shall be
2 forthwith transmitted to the Director by the clerk of the
3 court, and thereupon the Director shall file in the court
4 the record made before the Director, as provided in section
5 2112 of title 28, United States Code. Upon the filing of
6 such petition, the court shall have jurisdiction to affirm,
7 set aside, modify, or terminate the order or other action
8 of the Director and to require the Director to take such
9 action with regard to the matter under review as the court
10 deems proper. Review of such proceedings shall be had as
11 provided in chapter 7 of title 5, United States Code. The
12 judgment and decree of the court shall be final, except
13 that the same shall be subject to review by the Supreme
14 Court upon certiorari, as provided in section 1254 of title
15 28, United States Code.

16 **SEC. 804. AMENDMENT TO FREEDOM OF INFORMATION**
17 **ACT.**

18 Section 552(b)(8) of title 5, United States Code, is
19 amended by inserting “(including national insurers, as
20 such term is defined in section 101 of the Insurance In-
21 dustry Modernization and Consumer Protection Act)”
22 after “financial institutions”.

1 **SEC. 805. AMENDMENTS TO INTERNAL REVENUE CODE OF**
2 **1986.**

3 (a) 5-YEAR MORATORIUM ON FEDERAL TAX LAW
4 CHANGES APPLICABLE SOLELY TO NATIONAL INSUR-
5 ERS.—For a period of 5 calendar years beginning on Jan-
6 uary 1 of the first full calendar year beginning on or after
7 transition commencement date—

8 (1) an insurer that has converted from being a
9 State insurer into a national insurer under this Act
10 shall compute its liability for all Federal income and
11 excise taxes under the Internal Revenue Code of
12 1986 and the Treasury Regulations promulgated
13 thereunder as if such insurance company had contin-
14 ued to prepare and file an annual statement in ac-
15 cordance with the requirements of the NAIC and of
16 the State in which such insurer was domiciled imme-
17 diately prior to such conversion; and

18 (2) all parties to any contract, including any in-
19 surance, annuity, health, and other contracts, writ-
20 ten by a national insurer, shall be treated for all
21 purposes of the Internal Revenue Code, and for pur-
22 poses of all Treasury regulations promulgated there-
23 under, as if such contract were an insurance, annu-
24 ity, health, or other contract under the applicable
25 law of the State in which such national insurer was
26 domiciled immediately prior to such conversion.

1 For purposes of this section, any national insurer that was
2 not domiciled in any State immediately before it was
3 issued a charter as a national insurer shall be deemed to
4 have been domiciled in the State designated by such na-
5 tional insurer pursuant to section 401 of this Act.

6 (b) CONFORMING AMENDMENTS.—For purposes of
7 computing the tax liability of a national insurer following
8 the 5-year period described in subsection (a) of this sec-
9 tion, the Internal Revenue Code of 1986 is amended as
10 follows:

11 (1) Section 264(f)(3) is amended by inserting
12 “or, in the case of a national insurer, by the Direc-
13 tor of the Office of National Insurers of the Depart-
14 ment of the Treasury” after “National Association
15 of Insurance Commissioners”.

16 (2) Section 807(d)(2)(C) is amended by insert-
17 ing “or, in the case of a national insurer, such
18 standard tables for mortality and morbidity pre-
19 scribed by the Director of the Office of National In-
20 surers of the Department of the Treasury,” after
21 “mortality and morbidity”.

22 (3) Section 807(d)(3)(A) is amended by insert-
23 ing “or, in the case of a national insurer, such re-
24 serve method prescribed by the Director of the Of-

1 fice of National Insurers of the Department of the
2 Treasury”—

3 (A) in clause (i), after “covered by the
4 CVRM”;

5 (B) in clause (ii), after “covered by the
6 CARVM”; and

7 (C) in clause (iv)(I), after “National Asso-
8 ciation of Insurance Commissioners”.

9 (4) Sections 807(d)(3)(A)(iv)(II), 809(g)(4)
10 and 811(a) are amended by inserting “or, in the
11 case of a national insurer, by the Director of the Of-
12 fice of National Insurers of the Department of the
13 Treasury” after “National Association of Insurance
14 Commissioners” each place such term appears.

15 (5) Section 807(d)(4)(B)(i) is amended by in-
16 sserting “or, in the case of a national insurer, such
17 rate determined by the Director of the Office of Na-
18 tional Insurers of the Department of the Treasury”
19 after “at least 26 States”.

20 (6) Section 816(b)(3)(B) is amended by insert-
21 ing “or, in the case of a national insurer, by the Di-
22 rector of the Office of National Insurers of the De-
23 partment of the Treasury” after “State insurance
24 commissioner”.

1 (7) Sections 817(d)(1) and 817A(d)(1) are
2 amended by inserting “or, in the case of a national
3 insurer, by law or regulation of the United States”
4 after “State law or regulation” each place such term
5 appears.

6 (8) Section 818 is amended by adding at the
7 end the following new subsection:

8 “(h) DEFINITIONS RELATING TO NATIONAL INSUR-
9 ERS.—For purposes of this title:

10 “(1) NATIONAL INSURER.—The term ‘national
11 insurer’ means any insurer chartered under the In-
12 surance Industry Modernization and Consumer Pro-
13 tection Act.

14 “(2) NATIONAL LIFE INSURER.—The term ‘na-
15 tional life insurer’ means any national insurer that
16 is a life insurance company within the meaning of
17 section 816(a).”.

18 (9) Section 846(f)(3) is amended by inserting
19 “or, in the case of a national insurer, the annual
20 statement approved by the Director of the Office of
21 National Insurers which the taxpayer is required to
22 file with the Director of the Office of National In-
23 surers of the Department of the Treasury” after
24 “authorities of a State”.

1 (10) Section 7702(c)(3)(B)(i) shall be amended
2 by inserting “or, in the case of a national insurer,
3 in such standard tables prescribed by the Director of
4 National Insurers of the Department of the Treas-
5 ury” after “in section 807(d)(5)”.

6 (11) Section 7702B(g)(4)(B)(ii) is amended by
7 inserting “or, in the case of a national insurer, by
8 the Director of National Insurers of the Department
9 of the Treasury” after “appropriate State regulatory
10 agency”.

11 (12) Section 9832(b)(2) is amended by insert-
12 ing “or, in the case of a national insurer, which is
13 licensed to engage in the business of insurance by
14 the United States and which is subject to regulation
15 by the Director of the Office of National Insurers of
16 the Department of the Treasury and to regulations
17 promulgated under the authority of such Director”
18 after “the enactment of this section”.

19 (c) DEFINITION OF APPLICABLE LAW.—In the case
20 of any national insurer, for purposes of sections 7702(a)
21 and (h) of the Internal Revenue Code of 1986, the term
22 “applicable law” shall include the law of the United
23 States, or, in the case of a national insurer that has con-
24 verted from a State insurer into a national insurer, any
25 State law under which any policy was written by such na-

1 tional insurer either before or after such national insurer
2 was converted from a State insurer into a national insurer.

3 **SEC. 806. AMENDMENTS TO FEDERAL SECURITIES LAWS.**

4 (a) AMENDMENTS TO SECURITIES ACT OF 1933.—

5 (1) Section 2(a)(13) of the Securities Act of
6 1933 (15 U.S.C. 77b(a)(13)) is amended by insert-
7 ing “the Director of the Office of National Insurers
8 of the Department of the Treasury or” after “sub-
9 ject to supervision by”.

10 (2) Section 3(a)(8) of the Securities Act of
11 1933 (15 U.S.C. 77c(a)(8)) is amended by inserting
12 “the Director of the Office of National Insurers of
13 the Department of the Treasury or” after “subject
14 to the supervision of”.

15 (3) Section 4(5)(A)(ii) of the Securities Act of
16 1933 (15 U.S.C. 77d(5)(A)(ii)) is amended by in-
17 sserting “the Director of the Office of National In-
18 surers of the Department of the Treasury or” after
19 “subject to the supervision of”.

20 (b) AMENDMENTS TO SECURITIES EXCHANGE ACT
21 OF 1934.—Section 17(i) of the Securities Exchange Act
22 of 1934 (15 U.S.C. 78q(i)) is amended—

23 (1) in paragraph (3)(C)(iii), by inserting “or by
24 the Director of the Office of National Insurers of the

1 Department of the Treasury” before the period at
2 the end; and

3 (2) in paragraph (4)—

4 (A) in subparagraph (A), by striking
5 “and” after the semicolon;

6 (B) in subparagraph (B), by striking the
7 period at the end and inserting “; and”; and

8 (C) by adding at the end the following new
9 subparagraph:

10 “(C) the Director of the Office of National
11 Insurers of the Department of the Treasury
12 with regard to all interpretations of, and the
13 enforcement of, the Insurance Industry Mod-
14 ernization and Consumer Protection Act relat-
15 ing to the activities, conduct, and operations of
16 national insurers and federally licensed insur-
17 ance producers.”.

18 (c) AMENDMENTS TO INVESTMENT COMPANY ACT OF
19 1940.—

20 (1) Section 2(a)(17) of the Investment Com-
21 pany Act of 1940 (15 U.S.C. 80a-2(a)(17)) is
22 amended by inserting “the Director of the Office of
23 National Insurers of the Department of the Treas-
24 ury or” after “subject to supervision by”.

1 (2) The last sentence of section 12(g) of the In-
2 vestment Company Act of 1940 (15 U.S.C. 80a-
3 12(g)) is amended—

4 (A) by inserting “the Director of the Office
5 of National Insurers of the Department of the
6 Treasury or” after “affect or derogate from the
7 powers of”; and

8 (B) by inserting “Federal or” after “affect
9 the right under”.

10 (3) Section 26(f)(2)(B) of the Investment Com-
11 pany Act of 1940 (15 U.S.C. 80a-14(f)(2)(B)) is
12 amended—

13 (A) in clause (ii), by inserting “or, in the
14 case of a national insurer chartered under the
15 Insurance Industry Modernization and Con-
16 sumer Protection Act, files with the Director of
17 the Office of National Insurers of the Depart-
18 ment of the Treasury,” after the first comma;
19 and

20 (B) in clause (iii), by inserting “or, in the
21 case of a national insurer chartered under the
22 Insurance Industry Modernization and Con-
23 sumer Protection Act, the Director of the Office
24 of National Insurers of the Department of the
25 Treasury” before the period at the end.

1 **SEC. 807. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**
2 **COME SECURITY ACT OF 1974.**

3 The Employee Retirement Income Security Act of
4 1974 is amended as follows:

5 (1) Section 401(b)(2)(A) (29 U.S.C.
6 1101(b)(2)(A)) is amended by inserting “or licensed
7 as a national insurer” before the period at the end.

8 (2) The first sentence of section 733(b)(2) (29
9 U.S.C. 1191b(b)(2)) is amended by inserting “or
10 which is licensed as a national insurer and which is
11 subject to the authority of the Director of the Office
12 of National Insurers of the Department of the
13 Treasury” before the period.

14 **SEC. 608. AMENDMENTS TO GRAMM-LEACH-BLILEY ACT.**

15 (a) INTERAGENCY CONSULTATION.—Section 307 of
16 the Gramm-Leach-Bliley Act (15 U.S.C. 6716) is amend-
17 ed by adding at the end the following new subsection:

18 “(g) OFFICE OF NATIONAL INSURERS.—

19 “(1) REGULATORS.—For purposes of this sec-
20 tion, the terms ‘State insurance regulator’, ‘State in-
21 surance regulators’, and ‘insurance regulator of any
22 State’ shall include the Office of National Insurers
23 of the Department of the Treasury.

24 “(2) PROVISION OF INFORMATION.—The provi-
25 sion of information or material by the Office of Na-
26 tional Insurers of the Department of the Treasury

1 to a Federal banking agency (as such term is de-
2 fined in section 3 of the Federal Deposit Insurance
3 Act) shall not constitute a waiver of, or otherwise af-
4 fect, any privilege or other form of legal protection
5 or exemption from public disclosure to which such
6 information or material is otherwise subject.”.

7 (b) PRIVACY.—The Gramm-Leach-Bliley Act is
8 amended as follows:

9 (1) Section 504 (15 U.S.C. 6804(a)) is
10 amended—

11 (A) in paragraph (1), by inserting “the Di-
12 rector of the Office of National Insurers of the
13 Department of the Treasury,” after “The Fed-
14 eral banking agencies”; and

15 (B) in paragraph (3), by inserting “, ex-
16 cept that, in the case of the Director of the Of-
17 fice of National Insurers of the Department of
18 the Treasury, such regulations shall be issued
19 in final form not later than 12 months after the
20 date of the enactment of the Insurance Indus-
21 try Modernization and Consumer Protection
22 Act” before the period at the end.

23 (3) Section 505 (15 U.S.C. 6805) is amended—

24 (A) in subsection (a)—

1 (i) in paragraph (6) by inserting
2 “(other than a person subject to the juris-
3 diction of the Office of National Insurers
4 of the Department of the Treasury under
5 paragraph (8) of this subsection)” after
6 “providing insurance”; and

7 (ii) by adding at the end the following
8 new paragraph:

9 “(8) Under section 204 of the Insurance Indus-
10 try Modernization and Consumer Protection Act, by
11 the Director of the Office of National Insurers of the
12 Department of the Treasury with respect to any na-
13 tional insurer, any subsidiaries of such an entity,
14 and any federally licensed insurance producer.”; and

15 (B) in subsection (b)(2), by striking “and
16 (7)” and inserting “(7), and (8)”.

17 (3) Section 509 (15 U.S.C. 6809(2)) is
18 amended—

19 (A) by redesignating subparagraphs (E)
20 and (F) as subparagraphs (F) and (G), respec-
21 tively; and

22 (B) by inserting after subparagraph (D)
23 the following new subparagraph:

24 “(E) the Director of the Office of National
25 Insurers of the Department of the Treasury;”.

1 (4) Section 521(e) (15 U.S.C. 6821(e)) is
2 amended by inserting “or Federal” after “such insti-
3 tution under State”.

4 (5) Section 522(b)(1) (15 U.S.C. 6822(b)(1)) is
5 amended—

6 (A) in subparagraph (A), by striking
7 “and” after the semicolon at the end;

8 (B) in subparagraph (B), by striking the
9 period at the end and inserting “; and”; and

10 (C) by adding at the end the following new
11 subparagraph:

12 “(C) section 205 of the Insurance Industry
13 Modernization and Consumer Protection Act,
14 by the Director of the Office of National Insur-
15 ers of the Department of the Treasury with re-
16 spect to any national insurer and any federally
17 licensed insurance producer.”.

18 (6) Section 525 (15 U.S.C. 6825) is amended
19 by inserting “the Director of the Office of National
20 Insurers of the Department of the Treasury,” after
21 “National Credit Union Administration,”.

22 (c) OTHER CONFORMING AMENDMENTS.—The
23 Gramm-Leach-Bliley Act is amended as follows:

24 (1) Section 104(b) (15 U.S.C. 6701(b)) is
25 amended by inserting “, or as required by the Direc-

1 tor of the Office of National Insurers of the Depart-
2 ment of the Treasury in accordance with the Insur-
3 ance Industry Modernization and Consumer Protec-
4 tion Act” before the period at the end.

5 (2) Section 301 (15 U.S.C. 6711) is amended
6 by inserting “; except that the insurance activities of
7 a national insurer and a federally licensed insurance
8 producer shall be functionally regulated by the Of-
9 fice of National Insurers of the Department of the
10 Treasury” before the period at the end.

11 (3) Section 311 (15 U.S.C. 6731) is amended
12 by adding at the end the following new sentence:
13 “‘This subtitle shall not apply to a national insurer
14 in mutual form that is reorganizing into a mutual
15 holding company.’”.

16 **SEC. 809. AMENDMENT TO ACT OF OCTOBER 28, 1974.**

17 Section 111 of the Act of Public Law 93–495 (12
18 U.S.C. 250) is amended by inserting “the Director of the
19 Office of National Insurers of the Department of the
20 Treasury,” after “the Director of the Office of Thrift Su-
21 pervision,”.

22 **SEC. 810. AMENDMENTS TO FEDERAL DEPOSIT INSURANCE**
23 **ACT.**

24 The Federal Deposit Insurance Act is amended as
25 follows:

1 (1) The section heading for section 45 (12
2 U.S.C. 1831v) is amended by inserting “, **DIREC-**
3 **TOR OF OFFICE OF NATIONAL INSURERS**” after
4 “**STATE INSURANCE REGULATOR**”.

5 (2) Section 47(g)(1) (12 U.S.C. 1831x(g)(1) is
6 amended—

7 (A) in subparagraph (A), by striking “or”
8 after the semicolon;

9 (B) in subparagraph (B), by striking the
10 period at the end and inserting “; or”; and

11 (C) by adding at the end the following new
12 subparagraph:

13 “(C) any authority of the Director of the
14 Office of National Insurers of the Department
15 of the Treasury under the Insurance Industry
16 Modernization and Consumer Protection Act.”.

17 **SEC. 811. AMENDMENTS TO BANK HOLDING COMPANY ACT**
18 **OF 1956.**

19 The Bank Holding Company Act of 1956 is amended
20 as follows:

21 (1) Section 4(k)(4)(I)(iii) (12 U.S.C.
22 1843(k)(4)(I)(iii)) is amended by inserting “or Fed-
23 eral” after “relevant State”; and

24 (2) Section 5 (12 U.S.C. 1844) is amended—

25 (A) in subsection (c)—

1 (i) in paragraph (2)(E)(iii), by insert-
2 ing “or by or on behalf of the Director of
3 the Office of National Insurers of the De-
4 partment of the Treasury” before the
5 semicolon;

6 (ii) in paragraph (3)(A)(ii)(I), by in-
7 serting “or the Office of National Insurers
8 of the Department of the Treasury” after
9 “Securities and Exchange Commission”;

10 (iii) in paragraph (4)(B), by inserting
11 “or the Director of the Office of National
12 Insurers of the Department of the Treas-
13 ury” after “a State insurance authority”;
14 and

15 (iv) in paragraph (5)(B)(iv), by in-
16 serting “or by the Director of the Office of
17 National Insurers of the Department of
18 the Treasury” before the semicolon; and

19 (B) in subsection (g)—

20 (i) in the subsection heading, by in-
21 serting “, DIRECTOR OF THE OFFICE OF
22 NATIONAL INSURERS,” after “STATE IN-
23 SURANCE REGULATOR”.

24 (ii) in paragraph (1)(B), by inserting
25 “or the Director of the Office of National

1 Insurers of the Department of the Treas-
2 ury” after “State insurance authority”;

3 (iii) in paragraph (2)—

4 (I) in the paragraph heading, by
5 inserting “, DIRECTOR OF THE OF-
6 FICE OF NATIONAL INSURERS,” after
7 “State Insurance Authority”; and

8 (II) by inserting “or the Director
9 of the Office of National Insurers of
10 the Department of the Treasury”
11 after “the Board shall promptly notify
12 the State insurance authority”; and

13 (iv) in paragraph (3), by inserting “,
14 the Director of the Office of National In-
15 surers of the Department of the Treas-
16 ury,” after “State insurance authority”.

17 **SEC. 812. AMENDMENTS TO TITLE 18, UNITED STATES**
18 **CODE.**

19 (a) SECTION 1033.—Section 1033(b) of title 18,
20 United States Code, is amended—

21 (1) in paragraph (1)—

22 (A) by inserting “removes, conceals, alters,
23 destroys,” after “willfully embezzles, abstracts,
24 purloins,”; and

1 (B) by inserting “assets,” after “moneys,
2 funds, premiums, credits,”; and
3 (2) in paragraph (2)—

4 (A) in the first sentence, by inserting “re-
5 moval, concealment, alteration, destruction,”
6 after “embezzlement, abstraction, purloining,”;
7 and

8 (B) in the second sentence by inserting
9 “removed, concealed, altered, destroyed,” after
10 “embezzled, abstracted, purloined,”.

11 (b) INSURANCE FRAUD.—

12 (1) IN GENERAL.—Chapter 47 of title 18,
13 United States Code, is amended by adding at the
14 end the following new section:

15 **“§ 1037. Insurance fraud.**

16 “(a) Whoever—

17 “(1) commits a fraudulent insurance act; or

18 “(2) knowingly and intentionally interferes with
19 the enforcement of the provisions of section 206 of
20 the Insurance Industry Modernization and Con-
21 sumer Protection Act or investigations of suspected
22 or actual violations of such section,

23 shall be punished as provided in subsection (b).

24 “(b)(1) Except as provided in paragraph (2), the
25 punishment for an offense under subsection (a) is a fine

1 as provided under this title or imprisonment for not more
2 than 10 years, or both.

3 “(2) If the person committing an offense under sub-
4 section (a) is a national insurer, insurer-affiliated party
5 or a federally licensed insurance producer, punishment for
6 an offense under subsection (a) is—

7 “(A) a fine, the maximum of which is the great-
8 er of—

9 “(i) \$1,000,000 per violation, or

10 “(ii) a fine as provided under this title;

11 “(B) imprisonment for not more than 10 years;

12 or

13 “(C) both a fine under subparagraph (A) and
14 imprisonment under subparagraph (B).

15 “(3) If the fraudulent insurance act involved an
16 amount or value not exceeding \$5,000, whoever violates
17 subsection (a) shall be fined as provided in this title or
18 imprisoned not more than one year, or both.

19 “(4) The punishment under this subsection shall be
20 in addition to any other penalties under the Insurance In-
21 dustry Modernization and Consumer Protection Act.

22 “(c)(1) Any individual who has been convicted of any
23 criminal felony involving dishonesty or breach of trust,
24 and who participates in insurance operations, shall be

1 fined as provided in this title or imprisoned not more than
2 5 years, or both.

3 “(2) Any insurance person who is engaged in insur-
4 ance operations who knowingly and intentionally permits
5 the participation described in paragraph (1) shall be fined
6 as provided in this title or imprisoned no more than 5
7 years, or both.

8 “(3) A person described in paragraphs (1) or (2) may
9 participate in insurance operations or permit such partici-
10 pation, as the case may be, if such person has the written
11 consent of the Director.

12 “(d) As used in this section:

13 “(1) The terms ‘Director’, ‘federally licensed in-
14 surance producer’, ‘insurance operations’, ‘insurance
15 policy’, ‘insurance producer’, ‘insurer-affiliated
16 party’, ‘national insurer’, ‘person’, and ‘policy of in-
17 surance’ shall have the meanings given such terms
18 in section 102 of the Insurance Industry Moderniza-
19 tion and Consumer Protection Act.

20 “(2) The term ‘fraudulent insurance act’ means
21 an act or omission committed by a person who,
22 knowingly and with intent to defraud, commits, or
23 conceals any material information concerning, one or
24 more of the following:

1 “(A) Presenting, causing to be presented
2 or preparing with knowledge or belief that it
3 will be presented to or by a national insurer or
4 an insurance producer acting with respect to a
5 policy of insurance written by a national in-
6 surer, false information as part of, in support
7 of or concerning a fact material to one or more
8 of the following:

9 “(i) An application for a new or re-
10 renewal of an insurance policy or reinsurance
11 contract.

12 “(ii) The rating of a national insurer
13 that writes an insurance policy or enters
14 into a reinsurance contract.

15 “(iii) A claim for payment or benefit
16 pursuant to an insurance policy or reinsur-
17 ance contract.

18 “(iv) Premiums paid on an insurance
19 policy or reinsurance contract.

20 “(v) Payments made in accordance
21 with the terms of an insurance policy or
22 reinsurance contract.

23 “(vi) A document filed with the Direc-
24 tor.

1 “(vii) The financial condition of a na-
2 tional insurer.

3 “(viii) The formation, acquisition,
4 merger, consolidation, dissolution or with-
5 drawal from one or more lines of insurance
6 or reinsurance by a national insurer.

7 “(ix) The issuance of evidence of in-
8 surance, whether in writing, electronic
9 form or otherwise.

10 “(x) The reinstatement of an insur-
11 ance policy.

12 “(B) Solicitation or acceptance of new or
13 renewal insurance risks on behalf of a national
14 insurer or other persons engaged in insurance
15 operations by a person who knows or should
16 know that the national insurer or other person
17 responsible for the risk is insolvent at the time
18 of the transaction.

19 “(C) Removal, concealment, alteration or
20 destruction of the records of a national insurer
21 or other person engaged in insurance oper-
22 ations.

23 “(D) Transaction of insurance operations
24 in violation of laws requiring a license therefore

1 under the Insurance Industry Modernization
2 and Consumer Protection Act.

3 “(E) Attempting to commit, aiding or
4 abetting in the commission of, or conspiracy to
5 commit the acts or omissions specified in, this
6 paragraph.

7 “(3) The term ‘insurance person’ means offi-
8 cers, directors, agents, or employees of national in-
9 surers, or other persons authorized to act on behalf
10 of national insurers.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions for chapter 47 of title 18, United States Code,
13 is amended by adding at the end the following new
14 item:

“1037. Insurance fraud.”.

15 **SEC. 813. AMENDMENTS TO AMERICANS WITH DISABIL-**
16 **ITIES ACT OF 1990.**

17 Section 501(c) of the Americans With Disabilities Act
18 of 1990 (42 U.S.C. 12201(c)) is amended—

19 (1) in paragraph (1), by inserting “or Federal”
20 before “law”;

21 (2) in paragraph (2), by inserting “or Federal”
22 before “law”; and

23 (3) in paragraph (3), by inserting “or Federal”
24 before “laws”.

TITLE IX—RECEIVERSHIP

Subtitle A—Definitions

SEC. 901. DEFINITIONS.

For purposes of this title:

(1) ALIEN REPRESENTATIVE.—The term “alien representative” means a trustee, receiver, liquidator, provisional liquidator, administrator or other representative of a non-U.S. insurer in receivership or equivalent proceedings in a foreign country who has been appointed judicially or pursuant to statute.

(2) ASSOCIATION.—The term “association” means an insurance guaranty fund or association or any similar entity created under the laws of the relevant State.

(3) CONTINGENT CLAIM.—The term “contingent claim” means a claim for which the insurer’s obligation to pay has not yet been established.

(4) CORPORATION.—The term “corporation” means the National Life Insurance Guaranty Corporation established pursuant to Title X or the National Property and Casualty Insurance Guaranty Corporation established pursuant to such title (as the case may be).

(5) CREDITOR.—The term “creditor” means a person having a claim against the insurer, whether

1 matured or unmatured, liquidated or unliquidated,
2 secured or unsecured, absolute, fixed, or contingent.

3 (6) COURT.—The term “court” means the
4 court described in section 903(a).

5 (7) ESTATE.—The term “estate” means the as-
6 sets and liabilities of any insurer in receivership.

7 (8) FAIR CONSIDERATION.—The term “fair
8 consideration” is given for property or an
9 obligation—

10 (A) when in exchange for the property or
11 obligation, as a fair equivalent of the property
12 or obligation and in good faith, property is con-
13 veyed or services are rendered or an obligation
14 is incurred or an antecedent debt is satisfied; or

15 (B) when the property or obligation is re-
16 ceived in good faith to secure a present advance
17 or antecedent debt in an amount not dispropor-
18 tionately small as compared to the value of the
19 property or obligation obtained.

20 (9) GENERAL ASSETS.—The term “general as-
21 sets” means all property, real, personal, or other-
22 wise, not specifically mortgaged, pledged, deposited,
23 or otherwise encumbered for the security or benefit
24 of specified persons or a limited class or classes of
25 persons, and as to such specifically encumbered

1 property the term includes all such property or its
2 proceeds in excess of the amount necessary to dis-
3 charge the sum or sums secured thereby. Assets held
4 in trust and assets held on deposit for the security
5 or benefit of all policyholders, or all policyholders
6 and creditors in the United States shall be deemed
7 general assets.

8 (10) GUARANTY ASSOCIATION.—The term
9 “guaranty association” means either corporation or
10 any association.

11 (11) INSOLVENCY.—The terms “insolvency”
12 and “insolvent” mean—

13 (A) for a national insurer issuing only as-
14 sessable policies—

15 (i) the inability to pay an obligation
16 within 30 days after it becomes payable; or

17 (ii) the inability to pay an obligation
18 for an assessment 30 days following the
19 date specified in the first assessment notice
20 issued after the date of loss; and

21 (B) for a national insurer, other than a na-
22 tional insurer under paragraph (1), the inability
23 of an insurer to pay its obligations when they
24 are due or when admitted assets do not exceed

1 liabilities plus the greater of either of the
2 following—

- 3 (i) any capital and surplus required
4 by law for its organization; or
5 (ii) the total par or stated value of its
6 authorized and issued capital stock.

7 For purposes of this paragraph, the term “liabil-
8 ities” shall include reserves required by statute or by
9 rule or specific requirements imposed by the Direc-
10 tor upon an insurer.

11 (12) INSURER.—The term “insurer” includes a
12 State insurer, a national insurer, and all other enti-
13 ties subject to this title under section 910.

14 (13) MULTIPLE BENEFICIARY TRUST.—The
15 term “multiple beneficiary trust” means a trust es-
16 tablished pursuant to this Act for the benefit of
17 more than one beneficiary except trusts established
18 by a U.S. branch.

19 (14) NETTING AGREEMENT.—The term “net-
20 ting agreement” means a contract or agreement (in-
21 cluding terms and conditions incorporated by ref-
22 erence therein), including a master agreement
23 (which master agreement, together with all sched-
24 ules, confirmations, definitions and addenda thereto
25 and transactions under any thereof, shall be treated

1 as one netting agreement), that documents one or
2 more transactions between the parties for or involv-
3 ing one or more qualified financial contracts and
4 that provides for the netting of qualified financial
5 contracts or present or future payment obligations
6 or payment entitlements thereunder (including liq-
7 uidation or close-out values relating to such obliga-
8 tions or entitlements) among the parties to the net-
9 ting agreement.

10 (15) PARTY IN INTEREST.—The term “party in
11 interest” means the Director, an insurer, policy-
12 holder, third-party claimant, creditor, equity security
13 holder, the corporation, any affected guaranty asso-
14 ciation, a State commissioner or other principal reg-
15 ulatory official in a State in which the insurer was
16 doing business, an advisory committee appointed
17 under this title, an insurer that ceded to or assumed
18 business from the insurer, and any person, including
19 any indenture trustee, with a financial or regulatory
20 interest in the receivership proceeding.

21 (16) PLAN.—The term “plan” means a plan
22 provided in subtitle H.

23 (17) QUALIFIED FINANCIAL CONTRACT.—The
24 term “qualified financial contract” means a com-
25 modity contract, forward contract, repurchase agree-

1 ment, securities contract, swap agreement and any
2 similar agreement that the Director determines by
3 regulation, or order to be a qualified financial con-
4 tract for the purposes of this title. For purposes of
5 this subsection:

6 (A) The term “commodity contract”
7 means—

8 (i) a contract for the purchase or sale
9 of a commodity for future delivery on, or
10 subject to the rules of, a board of trade
11 designated as a contract market by the
12 Commodity Futures Trading Commission
13 under the Commodity Exchange Act (7
14 U.S.C. 1 et seq.) or board of trade outside
15 the United States;

16 (ii) an agreement that is subject to
17 regulation under section 19 of the Com-
18modity Exchange Act (7 U.S.C. 23) and
19 that is commonly known to the commod-
20 ities trade as a margin account, margin
21 contract, leverage account or leverage con-
22 tract; or

23 (iii) an agreement or transaction that
24 is subject to regulation under section 4c(b)
25 of the Commodity Exchange Act (7 U.S.C.

1 6c(b)) and that is commonly known to the
2 commodities trade as a commodity option.

3 (B) The term “forward contract” means a
4 contract (other than a commodity contract) for
5 the purchase, sale, or transfer of any com-
6 modity, as defined in section 1 of the Com-
7 modity Exchange Act (7 U.S.C. 1), or any simi-
8 lar good, article, service, right or interest that
9 is presently or in the future becomes the subject
10 of dealing in the forward contract trade, or
11 product or byproduct thereof, with a maturity
12 date more than 2 days after the date the con-
13 tract is entered into, including, but not limited
14 to, a repurchase transaction, reverse repurchase
15 transaction, consignment, lease, swap, hedge
16 transaction, deposit, loan, option, allocated
17 transaction, unallocated transaction or any
18 combination of these or option on any of them.

19 (C) The term “repurchase agreement”
20 (which also applies to a reverse repurchase
21 agreement) means an agreement, including re-
22 lated terms, that provides for the transfer of
23 certificates of deposit, eligible bankers’ accept-
24 ances, or securities that are direct obligations
25 of, or that are fully guaranteed as to principal

1 and interest by, the United States or any agen-
2 cy of the United States against the transfer of
3 funds by the transferee of such certificates of
4 deposit, eligible bankers' acceptances, or securi-
5 ties with a simultaneous agreement by the
6 transferee to transfer to the transferor certifi-
7 cates of deposit, eligible bankers' acceptances or
8 securities as described above, at a date certain
9 not later than 1 year after the transfers or on
10 demand, against the transfer of funds. For the
11 purposes of this definition, the items that may
12 be subject to an agreement include mortgage-
13 related securities, a mortgage loan, and an in-
14 terest in a mortgage loan, and shall not include
15 any participation in a commercial mortgage
16 loan, unless the Director determines by regula-
17 tion, resolution or order to include the partici-
18 pation within the meaning of the term.

19 (D) The term "securities contract" means
20 a contract for the purchase, sale or loan of a
21 security, including an option for the repurchase
22 or sale of a security, certificate of deposit, or
23 group or index of securities (including an inter-
24 est therein or based on the value thereof), or an
25 option entered into on a national securities ex-

1 change relating to foreign currencies, or the
2 guarantee of any settlement of cash or securi-
3 ties by or to a securities clearing agency. For
4 the purposes of this paragraph (4), the term
5 “security” includes a mortgage loan, mortgage-
6 related securities, and an interest in any mort-
7 gage loan or mortgage-related security.

8 (E) The term “swap agreement” means an
9 agreement, including the terms and conditions
10 incorporated by reference in an agreement, that
11 is a rate swap agreement, basis swap, com-
12 modity swap, forward rate agreement, interest
13 rate future, interest rate option, forward for-
14 eign exchange agreement, spot foreign exchange
15 agreement, rate cap agreement, rate floor
16 agreement, rate collar agreement, currency
17 swap agreement, cross-currency rate swap
18 agreement, currency future, or currency option
19 or any other similar agreement, and includes
20 any combination of agreements and an option
21 to enter into an agreement.

22 (18) RECEIVER.—The term “receiver” means
23 receiver, liquidator, rehabilitator, or conservator as
24 the context requires.

1 (19) RECEIVERSHIP PROCEEDING.—The term
2 “receivership proceeding” means any liquidation, re-
3 habilitation or conservation as the context requires.

4 (20) SECURED CLAIM.—The term “secured
5 claim” means a claim secured by mortgage, trust
6 deed, pledge, deposit as security, escrow, or other-
7 wise, but not including a special deposit claim or
8 claim against general assets. The term also includes
9 claims that have become liens upon specific assets by
10 reason of judicial process.

11 (21) SEPARATE ACCOUNT.—The term “separate
12 account” means an account authorized under section
13 321 and established in accordance with the terms of
14 a written agreement or a contract on a variable
15 basis.

16 (22) SINGLE BENEFICIARY TRUST.—The term
17 “single beneficiary trust” means a trust established
18 pursuant to this title for the benefit of a single bene-
19 ficiary.

20 (23) SPECIAL DEPOSIT CLAIM.—The term “spe-
21 cial deposit claim” means a claim secured by a de-
22 posit made pursuant to a statute for the security or
23 benefit of a limited class or classes of persons, but
24 not including a class secured by general assets.

1 (b) EXCLUSIVE JURISDICTION.—The court shall, as
2 of the commencement of a receivership proceeding under
3 this title, have exclusive jurisdiction of all property of the
4 national insurer, wherever located.

5 (c) ARBITRATION.—Except as provided at section
6 914, and except as to claims filed against the estate pursu-
7 ant to section 964, nothing in this title shall deprive a
8 party in interest of any contractual right to pursue arbi-
9 tration of any dispute under any law.

10 (d) PERSONS SUBJECT TO PERSONAL JURISDIC-
11 TION.—In addition to grounds otherwise provided by law,
12 the following persons are subject to the personal jurisdic-
13 tion of the court:

14 (1) Current and former insurance producers of
15 the national insurer.

16 (2) Policyholders and reinsurers of the national
17 insurer.

18 (3) Current and former officers, directors, man-
19 agers, trustees, organizers, promoters and persons in
20 control of the national insurer.

21 (4) Any third party administrator for a national
22 insurer and any person (such as a data processing
23 firm) that maintains information for a national in-
24 surer.

1 (e) ASSOCIATIONS.—The foregoing provisions of this
2 section notwithstanding, the provisions of this title do not
3 confer jurisdiction on the court to resolve coverage dis-
4 putes between guaranty associations and those asserting
5 claims against them resulting from the initiation of a re-
6 ceivership proceeding under this title, except to the extent
7 that the guaranty association has otherwise expressly con-
8 sented pursuant to a plan of rehabilitation or liquidation
9 that resolves its obligations to covered policyholders.

10 (f) DETERMINATION.—The determination of any dis-
11 pute with respect to the statutory obligations of any guar-
12 anty association by a court or administrative agency shall
13 be binding and conclusive as to the parties in a receiver-
14 ship proceeding initiated in the court, including, without
15 limitation, the policyholders of the national insurer.

16 **SEC. 904. POWERS.**

17 (a) IN GENERAL.—The court may issue any order,
18 process or judgment, including such injunctions or other
19 orders as are necessary or appropriate to carry out the
20 provisions of this title or an approved plan.

21 (b) ENFORCEMENT.—No provision of this title pro-
22 viding for the raising of an issue by a party in interest
23 shall be construed to preclude the court from, sua sponte,
24 taking any action or making any determination necessary

1 or appropriate to enforce or implement court orders or to
2 prevent an abuse of process.

3 **SEC. 905. APPEALS.**

4 (a) IN GENERAL.—Appeal from orders of the court
5 may be taken—

6 (1) as of right, by any of the following parties
7 in interest who have appeared and participated in
8 the hearing on the matter in question—

9 (A) by the Director or the national insurer
10 from any order of rehabilitation or liquidation
11 or finding of insolvency, or any order refusing
12 rehabilitation, liquidation, or a finding of insol-
13 vency;

14 (B) by the receiver or any such party from
15 any order approving or refusing to approve a
16 plan;

17 (C) by the receiver, the claimant or any re-
18 insurer from any order allowing or disallowing
19 a claim;

20 (D) by the person asserting any interest in
21 an asset from any order finally determining
22 such interest; or

23 (E) by a guaranty association from any
24 order which may substantially affect its rights;
25 or

1 (2) by leave of court, by any interested party
2 whose substantial rights may be affected, from any
3 order of the court, upon a showing that such rights
4 are not amenable to protection by any appeal as of
5 right; or

6 (3) by the receiver, from any order substantially
7 affecting the operations of the receivership which is
8 not otherwise appealable; provided, however, that
9 leave shall be sought in the first instance from the
10 court.

11 (b) PROCEDURE.—Any appeal from the entry or re-
12 fusal of an order of receivership must be taken within 5
13 days of its entry. No request for reconsideration, review
14 or appeal, and no posting of a bond shall dissolve or stay
15 such order. Appeals from such orders shall be expedited
16 by the court of appeals for the circuit in which the court
17 is located.

18 (c) PROCEDURE SAME AS CIVIL APPEALS.—Except
19 as specifically provided in this section and section 906,
20 the procedure on appeal of an order entered under this
21 title shall be as for other civil appeals.

22 **SEC. 906. APPEAL PENDENCY PLANS.**

23 (a) PLAN REQUIRED.—Within 5 days after the filing
24 of a notice of appeal of an order of liquidation, the liqui-
25 dator shall present for the court's approval a plan for the

1 continued performance of the defendant national insurer's
2 insurance policy claims obligations, including the duty to
3 defend insureds under liability insurance policies, during
4 the pendency of an appeal.

5 (b) CONTENT OF PLAN.—Such plan may provide for
6 the continued performance and payment of insurance pol-
7 icy claims obligations in the normal course of events, not-
8 withstanding the grounds alleged in support of the order
9 of liquidation, including the ground of insolvency. In the
10 event the defendant national insurer's financial condition
11 will not, in the judgment of the liquidator, support the
12 full performance of all insurance policy claims obligations
13 during the appeal pendency period, the plan may prefer
14 the claims of certain policyholders and claimants over
15 creditors and parties in interest as well as other policy-
16 holders and claimants (1) if the liquidator finds that such
17 preference is in the interests of policyholders and other
18 creditors as a whole or that such preference is necessary
19 to prevent hardship to particular policyholders and claim-
20 ants; and (2) if the liquidator finds that such preference
21 is fair and equitable considering the relative circumstances
22 of such policyholders and claimants. The court shall exam-
23 ine the plan submitted by the liquidator and if it finds
24 the plan is in the best interests of the parties and that
25 the liquidator's findings are supported by substantial evi-

1 dence, it shall approve the plan. No action shall lie against
 2 the liquidator or any of his deputies, agents, clerks, assist-
 3 ants or attorneys by any party based on preference in an
 4 appeal pendency plan approved by the court.

5 (c) GUARANTY ASSOCIATION OBLIGATIONS.—The
 6 appeal pendency plan shall not supersede or affect the ob-
 7 ligations of the National Life Insurance Guaranty Cor-
 8 poration or the National Property and Casualty Insurance
 9 Guaranty Corporation under title X or any association
 10 which under relevant State law is required to pay covered
 11 claims obligations during the appeal pendency period.

12 **Subtitle C—General Provisions**

13 **SEC. 907. DUTY TO PROVIDE INFORMATION TO CORPORA-** 14 **TION, STATE COMMISSIONERS, AND ASSOCIA-** 15 **TIONS.**

16 (a) IN GENERAL.—The receiver shall provide affected
 17 State commissioners with relevant receivership informa-
 18 tion, including reports and analysis of financial condition
 19 and the status of development of a plan when requested.

20 (b) KIND OF INFORMATION.—The receiver shall pro-
 21 vide the affected guaranty association with all information
 22 necessary to carry out statutory obligations, including
 23 without limitation, any information reasonably necessary
 24 or appropriate to evaluate and participate in the develop-
 25 ment of the plan.

1 (c) LISTING OF POLICYHOLDERS.—The receiver shall
2 also permit a State commissioner, and a guaranty associa-
3 tion to obtain a listing of relevant policyholders and certifi-
4 cate holders, including current addresses and summary in-
5 surance policy information, provided that the requestor
6 agrees to maintain the confidentiality of the records and
7 that the records will be used only for regulatory, or guar-
8 anty association purposes.

9 (d) RESTRICTION ON ACCESS AND DISCLOSURE.—In
10 the event the receiver believes that certain information is
11 sensitive or that disclosure might cause a diminution in
12 recovery, the receiver may apply to the court for a protec-
13 tive order imposing additional restrictions on access and
14 disclosure.

15 (e) OTHER DISCLOSURE PERMITTED.—Except as
16 otherwise provided in section 931, nothing contained in
17 this title shall preclude or prohibit disclosure or discussion
18 of information or documents relevant to proceedings here-
19 under between and among the national insurer, the re-
20 ceiver, guaranty associations and State commissioners. No
21 such disclosure or discussion shall compromise the privi-
22 lege or confidential nature of such information or docu-
23 ments.

1 **SEC. 908. COOPERATION OF OFFICERS, OWNERS, AND EM-**
2 **PLOYEES.**

3 (a) IN GENERAL.—

4 (1) An officer, manager, director, trustee,
5 owner, employee, or agent of a national insurer, or
6 any other persons with authority over or in charge
7 of any segment of the national insurer's affairs,
8 shall cooperate with the receiver in a proceeding
9 under this title.

10 (2) For purposes of this section:

11 (A) The term “person” includes a person
12 who exercises control directly or indirectly over
13 activities of the national insurer through a hold-
14 ing company or other affiliate of the national
15 insurer.

16 (B) The term “to cooperate” includes—

17 (i) to reply promptly in writing to any
18 inquiry from the receiver requesting such a
19 reply; and

20 (ii) to make available to the receiver
21 books, accounts, documents, and other
22 records, information, or property of, or
23 pertaining to, the national insurer and in
24 his or her possession, custody, or control.

1 (b) NO INTERFERENCE.—No person shall obstruct or
2 interfere with the receiver in the conduct of a receivership
3 proceeding.

4 (c) OTHER RIGHTS.—This section shall not be con-
5 strued to abridge otherwise existing legal rights, including
6 the right to resist a petition for receivership proceedings
7 or requests for other orders.

8 **SEC. 909. RIGHT TO APPEAR AND BE HEARD.**

9 (a) PARTY IN INTEREST.—A party in interest may
10 raise and may appear and be heard on any issue in a re-
11 ceivership proceeding under this title, without reimburse-
12 ment of attorneys' fees or expenses unless such reimburse-
13 ment is expressly authorized elsewhere by the laws of the
14 United States. This subsection shall not affect any right
15 of a reinsurer under a reinsurance contract to recover rea-
16 sonable fees and expenses to which it is entitled in connec-
17 tion with the interposing of defenses to a claim against
18 the national insurer.

19 (b) GUARANTY ASSOCIATION.—Any guaranty asso-
20 ciation which is or may become liable to act as a result
21 of the entry of an order of receivership shall have standing
22 to intervene as of right or otherwise appear and partici-
23 pate in a receivership proceeding under this title. Exercise
24 by any guaranty association of the standing rights con-

1 ferred under this subsection shall not constitute a submis-
2 sion to the general jurisdiction of the court.

3 **Subtitle D—Administration**

4 **SEC. 910. ENTITIES SUBJECT TO THIS TITLE.**

5 The receivership proceedings authorized by this title
6 may be initiated against—

7 (1) any national insurer; and

8 (2) any person, if not an insurer, including—

9 (A) insurance producers, managing general
10 agents, premium finance companies, insurance
11 holding companies and all other non risk bear-
12 ing entities engaged in any aspect of the busi-
13 ness of insurance, whether or not such entities
14 are licensed to engage in the business of insur-
15 ance under this Act, if such person is an affil-
16 iate of the national insurer against which a re-
17 ceivership proceeding has been or is being filed
18 under this title; and

19 (B) any other entity which is made subject
20 to this title by statute.

21 **SEC. 911. COMMENCEMENT OF RECEIVERSHIP.**

22 (a) WHO MAY INSTITUTE PROCEEDING.—Only the
23 Director may institute a receivership proceeding under
24 this title by filing a petition with the court.

1 (b) SUBJECT OF PROCEEDING.—The Director may
2 initiate a receivership proceeding against—

3 (1) a national insurer;

4 (2) a United States branch established pursu-
5 ant to this Act; or

6 (3) any other entity under the provisions of sec-
7 tion 910: *Provided*, That as to any non-U.S. insurer
8 that holds a Federal license but does not hold a
9 charter issued pursuant to this Act or is not domi-
10 ciled in any State, such receivership proceeding shall
11 be only as to assets and records of such entity in the
12 United States.

13 (c) CONTENT OF PETITION.—Any petition filed
14 under this title shall state the grounds upon which the
15 relief is sought and the relief requested and may request
16 entry of such injunctive orders as may be appropriate.

17 (d) NO DELEGATION PERMITTED.—The Director
18 may not delegate to any insurance self-regulatory organi-
19 zation any authority under this section with respect to in-
20 stituting a receivership proceeding.

21 **SEC. 912. GROUNDS FOR ENTRY OF A REHABILITATION OR**
22 **LIQUIDATION ORDER.**

23 (a) IN GENERAL.—Upon the filing of a petition, the
24 court shall forthwith issue an order of rehabilitation or
25 liquidation if the national insurer consents thereto, if the

1 national insurer fails to contest such petition or if the
2 court finds—

3 (1) the national insurer is in such condition
4 that the further transaction of business would be
5 hazardous, financially or otherwise, to its policy-
6 holders, its creditors, or the public;

7 (2) there is reasonable cause to believe that
8 there has been embezzlement from the national in-
9 surer, wrongful sequestration or diversion of the na-
10 tional insurer's assets, forgery or fraud affecting the
11 national insurer, or other illegal conduct in, by, or
12 with respect to the national insurer that, if estab-
13 lished, would endanger assets in an amount threat-
14 ening the national insurer's solvency;

15 (3) the national insurer has failed to remove a
16 person who in fact has executive authority with the
17 national insurer, whether an officer, manager, gen-
18 eral agent, employee, or other person, if the person
19 has been found after notice and hearing by the Di-
20 rector to be dishonest or untrustworthy in a way af-
21 fecting the national insurer's business;

22 (4) control of the national insurer, whether by
23 stock ownership or otherwise, and whether direct or
24 indirect, is in a person found after notice and hear-
25 ing by the Director to be untrustworthy;

1 (5) a person who in fact has executive authority
2 with the national insurer, whether an officer, man-
3 ager, general agent, director or trustee, employee, or
4 other person, has refused to be examined under oath
5 by the Director concerning the person's affairs and
6 after reasonable notice of the fact, the national in-
7 surer has failed promptly and effectively to termi-
8 nate the employment and status of the person and
9 all of his or her influence on management;

10 (6) after demand by the Director, the national
11 insurer has failed to promptly make available for ex-
12 amination its property, books, accounts, documents,
13 or other records, or those of a subsidiary or com-
14 pany within the control of the national insurer, or
15 those of a person having executive authority with the
16 company and pertaining to the company;

17 (7) without first obtaining the Director's writ-
18 ten consent, the national insurer has transferred, or
19 attempted to transfer, in a manner contrary to law,
20 substantially its entire property or business, or has
21 entered into a transaction the effect of which is to
22 merge, consolidate, or reinsure substantially its en-
23 tire property or business in or with the property or
24 business of any other person;

1 (8) the national insurer has concealed, removed,
2 altered, destroyed or failed to establish and maintain
3 books, records, documents, accounts, vouchers and
4 other pertinent material adequate for the determina-
5 tion of its financial condition by examination or has
6 failed to properly administer claims and to maintain
7 claims records which are adequate for the deter-
8 mination of its outstanding claims liability;

9 (9) the national insurer or its property has been
10 or is the subject of an application for the appoint-
11 ment of a receiver, trustee, custodian, conservator,
12 or sequestrator or similar fiduciary of the national
13 insurer or its property otherwise than as authorized
14 under this title, and the appointment has been made
15 or is imminent;

16 (10) within the previous 5 years, the national
17 insurer has willfully and continuously violated its
18 charter or articles of incorporation, its bylaws, this
19 Act, or a valid order of the Director;

20 (11) the national insurer has failed to pay a
21 judgment entered against it by a court with personal
22 jurisdiction over the national insurer within 60 days
23 of the date the judgment becomes final;

24 (12) the national insurer has failed to file its
25 annual report or other financial report required by

1 this Act within the time allowed by law and, after
2 written demand by the Director, has failed to give
3 immediately an adequate explanation;

4 (13) the national insurer is found, after exam-
5 ination, to be in a condition so that it could not
6 presently meet the requirements for chartering, in-
7 corporation (if applicable) and licensing to under-
8 write and sell insurance under this Act; or

9 (14) the national insurer is insolvent.

10 (b) ADMINISTRATION OF REINSURANCE TRUST.—In
11 addition to the grounds stated in subsection (a) of this
12 section, if the Director or a court of competent jurisdiction
13 has ordered a trustee to turn over to the Director, assets
14 held in trust pursuant to subsection (b) of section 322
15 requiring security in the form of trustee assets for rein-
16 surance ceded to a non federally-qualified reinsurer, the
17 court may direct the establishment of a receivership for
18 the purpose of administering said assets; provided, how-
19 ever that any such trust assets shall be administered in
20 accordance with section 922.

21 **SEC. 913. SERVICE OF SUMMONS AND RETURN.**

22 (a) IN GENERAL.—Except with respect to a pro-
23 ceeding pursuant to section 925, upon the filing of a peti-
24 tion, a summons shall forthwith issue, returnable in 3 days
25 after its date, and a copy of the summons together with

1 the petition in any receivership proceeding under this title
2 shall be served upon the national insurer named in such
3 petition by delivering the same to its president, vice presi-
4 dent, secretary, treasurer, director, or to its managing
5 agent, or if the national insurer lacks any of the aforesaid
6 officers, or if they cannot be found within the United
7 States, to the officer performing corresponding functions
8 under another name. Upon request of the Director, the
9 court shall appoint a special process server.

10 (b) SERVICE.—When it is satisfactorily proved by the
11 report of an examiner of the Director made in accordance
12 with the provisions of this title, or by affidavit of anyone
13 familiar with the facts, that the officers, directors, trustees
14 or managing agents or members of any national insurer
15 named in said petition upon whom service is required to
16 be made as above provided, have departed from the United
17 States or keep themselves concealed therein, or if such of
18 the persons residing in the United States and upon whom
19 service is required to be made as above provided have re-
20 signed from their offices, or that service cannot be made
21 immediately by the exercise of reasonable diligence, such
22 service may be had by the mailing of a copy of the petition
23 and summons to the last known address of the national
24 insurer, or by publication in such form and in such man-
25 ner as the court shall order.

1 **SEC. 914. AUTOMATIC STAY.**

2 (a) IN GENERAL.—Except as provided in subsections
3 (c) and (d) of this section or as otherwise provided in this
4 title, the commencement of a receivership proceeding
5 under this title operates as a stay, applicable to all enti-
6 ties, of—

7 (1) the commencement or continuation, includ-
8 ing the issuance or employment of process, of a judi-
9 cial, administrative, or other action or proceeding
10 against the national insurer, including an arbitration
11 proceedings, that was or could have been commenced
12 before the commencement of the receivership pro-
13 ceeding under this title, or to recover a claim against
14 the national insurer that arose before the commence-
15 ment of the receivership proceeding under this title;

16 (2) the enforcement, against the national in-
17 surer or against property of the national insurer, of
18 a judgment obtained before the commencement of
19 the receivership proceeding under this title;

20 (3) any act to obtain possession of property of
21 the national insurer or of property from the national
22 insurer or to exercise control over property or
23 records of the national insurer;

24 (4) any act to create, perfect, or enforce any
25 lien against property of the national insurer;

1 (5) any act to collect, assess, or recover a claim
2 against the national insurer that arose before the
3 commencement of a receivership proceeding under
4 this title; and

5 (6) the commencement or continuation of an
6 action or proceeding against a reinsurer of the na-
7 tional insurer, by the holder of a claim against the
8 national insurer, seeking reinsurance recoveries
9 which are contractually due to the national insurer.

10 (b) OTHER STAY.—Except as provided in subsections
11 (c) and (d) of this section or as otherwise provided in this
12 title, the commencement of a receivership proceeding
13 under this title operates as a stay, applicable to all enti-
14 ties, of the commencement or continuation, including the
15 issuance or employment of process, of a judicial, adminis-
16 trative or other action or proceeding, including, without
17 limitation, the enforcement of any judgment against any
18 insured that was or could have been commenced before
19 the commencement of the receivership proceeding under
20 this title or to recover a claim against any insured that
21 arose before or after the commencement of the receiver-
22 ship proceedings under this title and for which the na-
23 tional insurer is or may be liable under a policy of insur-
24 ance or is obligated to defend a party. The stay provided
25 by this subsection shall terminate 90 days after appoint-

1 ment of the receiver unless extended by order of the court,
2 for good cause shown, after notice to any affected parties
3 and such hearing as the court determines is appropriate;
4 provided, however, that any applicable statute of limitation
5 with respect to any claim against an insured shall be tolled
6 during the period of the stay provided by this subsection
7 and any extensions.

8 (c) EXCEPTIONS.—The commencement of a receiver-
9 ship proceeding under this title does not operate as a stay
10 of—

11 (1) criminal actions;

12 (2) any act to perfect, or to maintain or con-
13 tinue the perfection of, an interest in property to the
14 extent such act is accomplished within any relation
15 back period under applicable law;

16 (3) setoff as permitted by section 958;

17 (4) termination of reinsurance contracts cov-
18 ering policies of insurance as provided under sub-
19 section (f) of section 962;

20 (5) pursuit and enforcement of nonmonetary
21 governmental claims, judgments and proceedings;

22 (6) enforcement of a lessor's rights under a
23 lease that expired prior to the filing of the receiver-
24 ship proceeding;

1 (7) presentment of a negotiable instrument and
2 the giving of notice of and protesting dishonor of
3 such an instrument;

4 (8) enforcement of rights against single bene-
5 ficiary trusts;

6 (9) termination, liquidation and netting of obli-
7 gations under qualified financial contracts as pro-
8 vided at section 959;

9 (10) discharge by a guaranty associations of
10 statutory responsibilities or the pursuit of claims
11 against a guaranty associations to the extent per-
12 mitted by law other than this title; or

13 (11) any—

14 (A) audit by a governmental unit to deter-
15 mine tax liability;

16 (B) issuance to the national insurer by a
17 governmental unit of a notice of tax deficiency;

18 (C) demand for tax returns; or

19 (D) making of an assessment for any tax
20 and issuance of a notice and demand for pay-
21 ment of such an assessment.

22 (d) CONSERVATION ORDER.—In the event the Direc-
23 tor seeks an order of conservation under section 925, the
24 provisions of subsections (a) and (b) shall be applicable
25 only to those entities with actual notice or knowledge of

1 the initiation of the receivership proceeding until such
2 time as the record of the receivership proceeding is made
3 public under section 926.

4 (e) LENGTH OF STAY.—Except as provided in sub-
5 section (g)—

6 (1) the stay of an act against property of the
7 national insurer under subsection (a) continues until
8 such property is no longer property of the receiver-
9 ship estate; and

10 (2) the stay of any other act under subsection
11 (a) continues until the earliest of—

12 (A) the time the receivership proceeding is
13 closed; or

14 (B) the time the receivership proceeding is
15 dismissed.

16 (f) OTHER EXCEPTIONS.—Notwithstanding the pro-
17 visions of subsection (a)—

18 (1) claims against the national insurer that
19 arose before the commencement of the receivership
20 proceeding under this title may be asserted as a
21 counterclaim in any judicial, administrative or other
22 action or proceeding initiated by or on behalf of the
23 receiver against the holder of such claims; and

24 (2) a party against whom a judicial, adminis-
25 trative or other action or proceeding is initiated by

1 or on behalf of the receiver may assert and enforce
2 any contractual right the party may have to require
3 arbitration of any dispute under any law.

4 (g) RELIEF FROM STAY.—On request of a party in
5 interest and after notice and such hearing as the court
6 determines appropriate, the court may grant relief from
7 the stay in effect pursuant to subsection (a), such as by
8 terminating, annulling, modifying, or conditioning such
9 stay—

10 (1) for cause; or

11 (2) with respect to a stay of an action against
12 property under subsection (a) if—

13 (A) the national insurer does not have an
14 equity in such property; and

15 (B) such property is not necessary to an
16 effective plan.

17 (h) BURDEN OF PROOF.—In any hearing under sub-
18 section (g), the party seeking relief from the stay shall
19 have the burden of proof on each issue which must be es-
20 tablished by clear and convincing evidence.

21 (i) DAMAGES FOR WILLFUL VIOLATION OF STAY.—
22 The estate of a national insurer which is injured by any
23 willful violation of a stay provided by this section shall
24 be entitled to actual damages, including costs and attor-

1 neys' fees, and, in appropriate circumstances, the court
2 may impose additional sanctions.

3 (j) OTHER.—No statute of limitations or defense of
4 laches shall run with respect to any action by or against
5 a national insurer between the filing of a petition for con-
6 servation, rehabilitation or liquidation against a national
7 insurer and the order granting or denying that petition.
8 Any action against the national insurer that might have
9 been commenced when the petition was filed may be com-
10 menced for at least 60 days after an order is denied.

11 **SEC. 915. ANSWER AND HEARING.**

12 (a) ANSWER.—The respondent national insurer shall
13 file its answer to the Director's petition within 10 days
14 after service of the summons, exclusive of the day of serv-
15 ice. On timely motion of the respondent, the court shall
16 extend the time for answering for a period not to exceed
17 an additional 10 days.

18 (b) HEARING.—The court, on the return day of the
19 summons as originally fixed or extended hereunder, shall
20 set the cause for hearing within 20 days from the return
21 day or the extended return day.

22 (c) NO OTHER MOTIONS AND PLEADINGS.—Except
23 as provided in section 927, no motions or other pleadings,
24 whether to dissolve, modify or continue any injunction or
25 otherwise, shall be filed by, or permitted on behalf of the

1 respondent prior to the filing of an answer to the com-
2 plaint.

3 (d) DOCUMENT TO BE RECEIVED BY COURT.—The
4 court shall receive as self-authenticated any of the fol-
5 lowing when offered by the Director—

6 (1) certified copies of the financial statements
7 made by the national insurer; and

8 (2) certified copies of examination reports of
9 the national insurer made by or on behalf of the Di-
10 rector.

11 (e) PRIMA FACIE EVIDENCE.—At any hearing, the
12 verified petition and any exhibits filed therewith shall be
13 received as prima facie evidence of the facts therein con-
14 tained.

15 (f) ENTERING JUDGMENT.—The court shall enter
16 judgment within 15 days after the conclusion of the evi-
17 dence.

18 **SEC. 916. NOTICE OF ENTRY OF ORDER OF REHABILITA-**
19 **TION OR LIQUIDATION.**

20 Unless the court otherwise directs, the receiver shall
21 give or cause to be given notice of the order of rehabilita-
22 tion or liquidation as soon as possible by—

23 (1) first-class mail to the State commissioner of
24 each jurisdiction in which the national insurer is
25 doing business;

1 (2) first-class mail to each guaranty association
2 which is or may become obligated as a result of the
3 receivership proceeding;

4 (3) first-class mail to all known insurance pro-
5 ducers and reinsurers of the national insurer at their
6 last known address as indicated by the records of
7 the national insurer;

8 (4) first-class mail to all persons known or rea-
9 sonably expected to have claims against the national
10 insurer including all policyholders, at their last
11 known address as indicated by the records of the na-
12 tional insurer; and

13 (5) publication in a newspaper of general cir-
14 culation in the county in which the national insurer
15 has its principal place of business and in other loca-
16 tions as the receiver considers appropriate.

17 **SEC. 917. CONTENTS OF NOTICE OF RECEIVERSHIP.**

18 The notice of the entry of an order of rehabilitation
19 or liquidation shall—

20 (1) contain a statement that the national in-
21 surer has been placed in rehabilitation or liquidation;

22 (2) advise that an automatic stay is in effect to-
23 gether with a reference to section 914 and a state-
24 ment that certain acts against the national insurer
25 and its assets are stayed as well as a description of

1 any additional injunctive relief of general application
2 ordered by the court;

3 (3) state whether and to what extent the na-
4 tional insurer's insurance policies continue in effect;

5 (4) include the deadline for filing claims if one
6 has been established;

7 (5) state the date, time and location of the ini-
8 tial status hearing established pursuant to section
9 918; and

10 (6) include such other information as the re-
11 ceiver or the court deems appropriate.

12 **SEC. 918. INITIAL STATUS HEARING.**

13 An initial status hearing shall be held within 120
14 days of the entry of an order of rehabilitation or liquida-
15 tion. The receiver shall discuss the condition of the estate
16 and may be questioned by parties in interest or their rep-
17 resentatives concerning the matters discussed. The hear-
18 ing shall be conducted informally under the supervision
19 of the court.

20 **SEC. 919. DISMISSAL OF RECEIVERSHIP PROCEEDING.**

21 (a) IN GENERAL.—Except as provided in subsection
22 (c), until all payments of or on account of the national
23 insurer's contractual obligations by all guaranty associa-
24 tions and interest thereon and all reasonable expenses in-
25 curred by them in connection therewith are repaid to the

1 guaranty associations or a plan of repayment by the na-
2 tional insurer is approved by the guaranty associations,
3 an national insurer that is subject to any receivership pro-
4 ceeding shall not—

5 (1) be released from a receivership proceeding;

6 (2) be permitted to solicit or accept new busi-
7 ness or request or accept the restoration of a sus-
8 pended or revoked license or certificate of authority;
9 or

10 (3) be returned to the control of its share-
11 holders or management.

12 (b) FOLLOWING CONSERVATION ORDER.—If the Di-
13 rector, having obtained an ex parte order of conservation,
14 fails to file a motion in the receivership proceeding re-
15 questing entry of an order of rehabilitation or liquidation
16 after having had a reasonable opportunity to do so, the
17 receivership proceeding shall on motion of a party in inter-
18 est or on the court's own motion, be dismissed and va-
19 cated.

20 (c) EXCEPTION.—A receivership proceeding may be
21 dismissed without complying with the requirements of sub-
22 section (a) if the court, on motion of the receiver, deter-
23 mines that the receivership estate has no assets or the es-
24 tate's assets are insufficient to cover the costs of admin-
25 istering the receivership.

1 (d) DISSOLUTION.—In the event a receivership pro-
2 ceeding is dismissed pursuant to subsection (c), the na-
3 tional insurer shall be dissolved as of entry of the order
4 of dismissal.

5 **SEC. 920. RECEIVERSHIP PROCEEDINGS FOR NON-U.S. IN-**
6 **SURERS.**

7 The court, after notice and hearing, may dismiss or
8 suspend a receivership proceeding against a non-U.S. in-
9 surer under this title at any time, taking into consider-
10 ation the following interests of insured claimants, creditors
11 and the public:

12 (1) Whether the order requested, and any gov-
13 erning legislation upon which it is based, is con-
14 sistent with the objectives of this title.

15 (2) The effect the order requested would have
16 or could reasonably be expected to have on the abil-
17 ity of the liquidator to use assets of non-U.S. insur-
18 er's estate under the liquidation order to transfer in-
19 surance policy obligations to a solvent assuming in-
20 surer.

21 (3) Any agreements with a receiver or State
22 commissioner or like official of another State in
23 which the non-U.S. insurer was doing business, or of
24 the country under the laws of which the non-U.S. in-

1 insurer is domiciled, relating to the receivership or dis-
2 solution of the non-U.S. insurer.

3 (4) The adequacy of information available to
4 the court upon which to make a determination.

5 (5) The costs that could reasonably be expected
6 to be incurred as a result of the order.

7 **SEC. 921. TRUSTEED ASSETS OF A UNITED STATES BRANCH**
8 **OF A NON-U.S. INSURER.**

9 (a) MOTION TO TRANSFER.— Any person having an
10 interest in the trusted assets of the United States branch
11 established pursuant to section 302 and subject to a re-
12 ceivership proceeding under this title, may, by motion,
13 seek an order directing that all or part of the trusted
14 assets of such non-U.S. insurer be transferred to such per-
15 son.

16 (b) ACTION ON MOTION.—After providing notice and
17 hearing, the court may grant, deny, or suspend a motion
18 made pursuant to subsection (a) on terms and conditions,
19 or make such other order, as the court considers appro-
20 priate, considering the following:

21 (1) The factors set forth in section 920.

22 (2) Whether the order requested is consistent
23 with the terms, conditions and objectives of the trust
24 agreement or agreements.

1 **SEC. 922. TRUST FUND CLAIMS.**

2 (a) MOTION BY ALIEN REPRESENTATIVE.—An alien
3 representative having an interest in the trusteed assets of
4 a non-U.S. insurer secured by a multiple beneficiary trust
5 may, by motion, seek an order directing that all or part
6 of such trusteed assets of such insurer be transferred to
7 such person.

8 (b) CONDITIONS FOR RELIEF.—Notwithstanding sec-
9 tion 920, the court shall not grant relief under this section
10 unless the Director has determined that—

11 (1) the assets of such a trust exceed the
12 amount necessary to satisfy the claims of United
13 States beneficiaries of the trust; or

14 (2) United States beneficiaries of the trust will
15 receive a greater percentage of their claim if the
16 trust fund assets are returned to the grantor's coun-
17 try of domicile and a receiver has been appointed for
18 the grantor in that domicile.

19 (c) MULTIPLE BENEFICIARY TRUST.—Claims
20 against the assets of a multiple beneficiary trust shall be
21 filed and allowed and shall receive distribution of assets
22 in accordance with the laws of the State in which the trust
23 is organized that are applicable to the receivership of na-
24 tional insurers.

1 **SEC. 923. LIMITED APPEARANCE.**

2 (a) IN GENERAL.—An alien representative may seek
3 dismissal or suspension of a receivership proceeding under
4 section 920.

5 (b) APPEARANCE LIMITED.—An appearance in a
6 court by an alien representative in connection with a mo-
7 tion or request under section 920, 921, or 922 does not
8 submit such alien representative to the jurisdiction of the
9 court for any other purpose, but the court may condition
10 any order under such sections on compliance by such alien
11 representative with the orders of the court.

12 **SEC. 924. ADVISORY COMMITTEES.**

13 The court, on motion of the receiver or for good cause
14 shown, may appoint one or more advisory committees of
15 policyholders, claimants or other creditors. Any advisory
16 committee shall serve without compensation and without
17 reimbursement of expenses.

18 **SEC. 925. EX PARTE ORDERS OF CONSERVATION AND SEI-**
19 **ZURE.**

20 (a) IN GENERAL.—At the time the Director initiates
21 a receivership proceeding under this title, he or she may
22 request entry of an ex parte conservation order by verified
23 petition alleging—

24 (1) that there exist grounds for entry of an
25 order of rehabilitation or liquidation; and

1 (2) that the interests of policyholders, creditors,
2 or the public will be endangered by delay.

3 (b) NO NOTICE OF HEARING.—The court shall issue
4 the ex parte conservation order immediately without prior
5 notice or a hearing.

6 (c) SERVICE ON NATIONAL INSURER.—Upon
7 issuance of an ex parte conservation order, the order, to-
8 gether with a copy of the verified petition and a summons,
9 shall be promptly served on the national insurer as pro-
10 vided in section 913. The conservator may also serve the
11 order upon persons transacting business with the national
12 insurer or dealing with its assets and such others as may
13 be necessary to obtain compliance therewith. All persons
14 served with the order and all persons having actual knowl-
15 edge thereof shall be bound by it.

16 (d) CONTENT OF ORDER.—At the request of the Di-
17 rector, any order entered pursuant to this section shall—

18 (1) appoint the Director as conservator;

19 (2) direct the conservator to take possession
20 and control of all or a part of the property, books,
21 accounts, documents, and other records of a national
22 insurer, and of the premises occupied by the national
23 insurer for the transaction of its business;

24 (3) direct any officer or director or other person
25 or entity that possesses or controls any documents

1 or recorded information of any nature, including
2 books, claims files, records, and papers of the na-
3 tional insurer or of any affiliate of the national in-
4 surer that relate to the national insurer's assets, li-
5 abilities, financial affairs or business, shall imme-
6 diately disclose and, on request of the conservator,
7 turn over such documents and recorded information
8 to the conservator;

9 (4) enjoin the national insurer and its officers,
10 managers, agents, and employees from disposing of
11 its property and from transacting business except
12 with the conservator's written consent;

13 (5) contain such other relief as the Director
14 considers necessary; and

15 (6) specify the duration of the order, which
16 shall be such time as the court considers necessary
17 for the conservator to ascertain the condition of the
18 national insurer.

19 (e) MODIFICATION OF ORDER.—On motion of the na-
20 tional insurer, the conservator or in its own discretion, the
21 court may at any time modify such order on such notice
22 and after such hearing, if any, as the court determines
23 to be appropriate.

24 (f) HEARINGS.—Upon entry of an order under this
25 section, the conservator may hold hearings, subpoena wit-

1 nesses to compel their attendance, administer oaths, exam-
2 ine persons under oath, and compel persons to subscribe
3 to his or her testimony after it has been correctly reduced
4 to writing; and in connection with these powers may re-
5 quire the production of books, papers, records, or other
6 documents that he or she considers relevant to the per-
7 formance of his or her duties.

8 (g) NO ANTICIPATORY BREACH.—Entry of an order
9 under this section shall not constitute an anticipatory
10 breach of any contract to which the national insurer is
11 a party.

12 (h) LAW ENFORCEMENT OFFICER ASSISTANCE.—On
13 request of the conservator, those law enforcement officers
14 with authority to process orders of the court shall provide
15 the conservator such assistance as is required to carry out
16 the terms of the order entered under this section.

17 **SEC. 926. CONFIDENTIALITY OF HEARINGS.**

18 In all proceedings and judicial review of proceedings
19 under section 925, all records of the national insurer,
20 other documents, department of insurance files, and court
21 records and papers, so far as they are a part of the record
22 of the proceedings under this subtitle, are confidential and
23 shall be held by the clerk of the court in a confidential
24 file except as is necessary to obtain compliance therewith,
25 unless the court, after hearing arguments from the parties

1 in chambers, orders otherwise or the insurer requests that
2 the matter be made public. Unless privileged or confiden-
3 tial under law other than this title, all such records shall
4 become public upon filing of a petition for rehabilitation
5 or liquidation under this title.

6 **SEC. 927. MODIFICATION OF ORDERS.**

7 A national insurer against which an order of con-
8 servation has been entered under section 925 may move
9 for modification of the order at any time prior to the entry
10 of an order of rehabilitation or liquidation under this title.
11 The court shall hear such motion not more than 15 days
12 after it is filed. A hearing under this section may be held
13 privately in chambers and shall be held privately in cham-
14 bers if so requested by the national insurer proceeded
15 against.

16 **SEC. 928. AUTHORITY TO OPERATE AND RESTRUCTURE IN-**
17 **SURER'S BUSINESS.**

18 If the court has entered an order of rehabilitation,
19 the rehabilitator—

20 (1) may take such action as he or she considers
21 necessary or appropriate to reform and revitalize the
22 national insurer, subject to any specific limitations
23 of this title;

1 (2) may operate the business of the national in-
2 surer, including the retention or dismissal of the na-
3 tional insurer's employees; and

4 (3) shall propose a plan.

5 **SEC. 929. CONVERSION TO LIQUIDATION.**

6 (a) **GROUNDS FOR CONVERSION.**—If, in the exercise
7 of administrative discretion, the Director determines that
8 further attempts to rehabilitate a national insurer would—

9 (1) substantially increase the risk of loss to
10 creditors, policyholders, other parties in interest or
11 the public,

12 (2) be futile, or

13 (3) not be in the best interests of creditors, pol-
14 icyholders, other parties in interest or the public, the
15 Director may petition the court for an order of liq-
16 uidation and finding of insolvency under section 930.

17 (b) **OTHER GROUNDS FOR CONVERSION.**—If the
18 rehabilitator suspends payment of all or substantially all
19 direct insurance policy obligations for a period of 6 months
20 at any time after the entry of an order for relief and has
21 not filed a plan within that time, unless the court, for good
22 cause shown, extends such period, the Director shall re-
23 quest that the court enter a final order of liquidation with
24 a finding of insolvency.

1 **SEC. 930. ORDER OF LIQUIDATION.**

2 (a) LIQUIDATOR'S DUTIES.—If the court has entered
3 an order of liquidation, the liquidator shall—

4 (1) marshal the assets of the national insurer;

5 and

6 (2) propose a plan.

7 (b) DIRECTOR REQUEST FOR FINAL ORDER.—The
8 Director, as part of an initial petition filed under this title,
9 or the receiver, by motion filed in a pending receivership
10 proceeding, may request that the court enter a final order
11 of liquidation with a finding of insolvency.

12 **SEC. 931. CONTINUATION OF COVERAGE.**

13 (a) GENERAL RULE.—Notwithstanding any insur-
14 ance policy language or any other statute, all reinsurance
15 contracts by which the national insurer has reinsured the
16 insurance obligations of another person are canceled upon
17 entry of an order of liquidation. All policies of insurance
18 (other than reinsurance contracts), surety bonds or surety
19 undertakings, other than life, disability income or long-
20 term care insurance or annuities, in effect at the time of
21 issuance of an order of liquidation shall continue in force
22 as provided in this section until the earliest of—

23 (1) 30 days from the date of entry of the liq-
24 uidation order;

25 (2) the expiration of the insurance policy;

1 (3) the date when the insured has replaced the
2 insurance coverage with equivalent insurance in an-
3 other national insurer or State-insurer or otherwise
4 terminated the insurance policy;

5 (4) the date the liquidator has effected a trans-
6 fer of the insurance policy obligation; or

7 (5) the date proposed by the liquidator and ap-
8 proved by the court to cancel coverage.

9 (b) TERMINATION OF COVERAGES.—An order of liq-
10 uidation shall terminate coverages at the time provided
11 under subsection (a) for purposes of any other statute.

12 (c) POLICIES OF INSURANCE COVERED BY GUAR-
13 ANTY ASSOCIATIONS.—Notwithstanding subsections (a)
14 and (b), policies of life insurance or annuities covered by
15 a guaranty association and any portion of policies of life
16 insurance or annuities covered by a guaranty association
17 shall continue in force to the extent necessary to permit
18 the guaranty association to discharge its statutory obliga-
19 tions.

20 (d) POLICIES OF INSURANCE NOT COVERED BY
21 GUARANTY ASSOCIATIONS.—Policies of life insurance or
22 annuities not covered by a guaranty association, and any
23 portion of policies of life insurance or annuities not cov-
24 ered by a guaranty association, shall terminate as under
25 subsections (a) and (b), except to the extent that the liqui-

1 dator proposes and the court approves the continuation
2 of such contracts or coverage. Those policies of insurance
3 that are not cancelable or nonrenewable by the insolvent
4 national insurer pursuant to their terms, and that are not
5 covered in whole or in part under subtitle A of title X
6 may be continued in force pursuant to a plan approved
7 by the court under section 979.

8 (e) SURETY.—The cancellation of any bond or surety
9 undertaking shall not release any cosurety or guarantor.

10 (f) REINSURANCE CONTRACTS.—Reinsurance con-
11 tracts by which the insurer has reinsured obligations aris-
12 ing under policies of insurance shall continue or terminate
13 as provided in section 962.

14 **Subtitle E—Office of the Receiver**

15 **SEC. 932. APPOINTMENT OF RECEIVER.**

16 An order of conservation, rehabilitation or liquidation
17 shall appoint the Director and his or her successors in of-
18 fice as receiver.

19 **SEC. 933. TITLE TO AND POSSESSION OF ASSETS AND** 20 **RECORDS.**

21 (a) IN GENERAL.—Upon entry of an order of reha-
22 bilitation or liquidation, the rehabilitator or liquidator
23 shall be vested with title to all of the property, books, ac-
24 counts, documents and other records of the national in-
25 surer, wherever located.

1 (b) TIMING.—To the extent reasonable, and in the
2 receiver’s sole discretion, the receiver may immediately
3 take possession and control of all of the property, books,
4 accounts, documents and other records of the national in-
5 surer and of the premises occupied by the national insurer
6 for transaction of its business.

7 **SEC. 934. IMMUNITY AND INDEMNIFICATION OF THE RE-**
8 **CEIVER AND EMPLOYEES.**

9 (a) PERSONS PROTECTED.—For the purposes of this
10 section, the persons entitled to protection under this sec-
11 tion are—

12 (1) all receivers responsible for the conduct of
13 a receivership proceeding under this title including
14 present and former receivers; and

15 (2) their employees, meaning all present and
16 former special deputies and assistant special depu-
17 ties appointed by the Director and all persons whom
18 the Director, special deputies, or assistant special
19 deputies have employed to assist in a receivership
20 proceeding under this title. Attorneys, accountants,
21 auditors, actuaries, investment bankers, financial ad-
22 visors, other consultants and any other persons or
23 firms who are retained by the receiver as inde-
24 pendent contractors and their employees shall not be

1 considered employees of the receiver for purposes of
2 this section.

3 (b) IMMUNITY.—The receiver and his or her employ-
4 ees shall have official immunity and shall be immune from
5 suit and liability, both personally and in their official ca-
6 pacities, for any claim for damage to or loss of property
7 or personal injury or other civil liability caused by or re-
8 sulting from any alleged act, error or omission of the re-
9 ceiver or any employee arising out of or by reason of their
10 duties or employment; provided that nothing in this provi-
11 sion shall be construed to hold the receiver or any em-
12 ployee immune from suit and/or liability for any damage,
13 loss, injury or liability caused by the intentional or willful
14 and wanton misconduct of the receiver or any employee.

15 (c) INDEMNIFICATION.—If any legal action is com-
16 menced against the receiver or any employee, whether
17 against him or her personally or in his or her official ca-
18 pacity, alleging property damage, property loss, personal
19 injury or other civil liability caused by or resulting from
20 any alleged act, error or omission of the receiver or any
21 employee arising out of or by reason of their duties or
22 employment, the receiver and any employee shall be in-
23 demnified from the assets of the national insurer for all
24 expenses, attorneys' fees, judgments, settlements, decrees
25 or amounts due and owing or paid in satisfaction of or

1 incurred in the defense of such legal action unless it is
2 determined upon a final adjudication on the merits that
3 the alleged act, error or omission of the receiver or em-
4 ployee giving rise to the claim did not arise out of or by
5 reason of his or her duties or employment, or was caused
6 by intentional or willful and wanton misconduct.

7 (d) ADVANCEMENT OF ATTORNEYS' FEES.—Attor-
8 neys' fees and any and all related expenses incurred in
9 defending a legal action for which immunity or indemnity
10 is available under this section shall be paid from the assets
11 of the national insurer, as they are incurred, in advance
12 of the final disposition of such action upon receipt of an
13 undertaking by or on behalf of the receiver or employee
14 to repay the attorneys' fees and expenses if it shall ulti-
15 mately be determined upon a final adjudication on the
16 merits that the receiver or employee is not entitled to im-
17 munity or indemnity under this section.

18 (e) ADMINISTRATION EXPENSE.—Any indemnifica-
19 tion for expense payments, judgments, settlements, de-
20 crees, attorneys' fees, surety bond premiums or other
21 amounts paid or to be paid from the national insurer's
22 assets pursuant to this section shall be an administrative
23 expense of the national insurer.

24 (f) SEGREGATION OF FUNDS GENERALLY RE-
25 QUIRED.—In the event of any actual or threatened litiga-

1 tion against a receiver or any employee for which immu-
2 nity or indemnity may be available under this section, a
3 reasonable amount of funds which in the judgment of the
4 Director may be needed to provide immunity or indemnity
5 shall be segregated and reserved from the assets of the
6 national insurer as security for the payment of indemnity
7 until such time as all applicable statutes of limitation shall
8 have run and all actual or threatened actions against the
9 receiver or any employee have been completely and finally
10 resolved, and all obligations of the national insurer and
11 the Director under this section shall have been satisfied.

12 (g) SURETY BOND IN LIEU OF SEGREGATION OF
13 FUNDS.—In lieu of segregation and reserving of funds,
14 the Director may, in his or her discretion, obtain a surety
15 bond or make other arrangements which will enable the
16 Director to fully secure the payment of all obligations
17 under this section.

18 (h) SETTLEMENT.—If any legal action against an
19 employee for which indemnity may be available under this
20 section is settled prior to final adjudication on the merits,
21 the national insurer shall pay the settlement amount on
22 behalf of the employee, or indemnify the employee for the
23 settlement amount, unless the Director determines—

24 (1) that the claim did not arise out of or by
25 reason of the employee's duties or employment; or

1 (2) that the claim was caused by the intentional
2 or willful and wanton misconduct of the employee.

3 (i) APPROVAL OF SETTLEMENT.—In any legal action
4 in which the receiver is a defendant, that portion of any
5 settlement relating to the alleged title, error or omission
6 of the receiver shall be subject to the approval of the court.
7 The court shall not approve that portion of the settlement
8 if it determines—

9 (1) that the claim did not arise out of or by
10 reason of the receiver’s duties or employment; or

11 (2) that the claim was caused by the intentional
12 or willful and wanton misconduct of the receiver.

13 (j) NO DEPRIVATION OF RIGHTS.—Nothing con-
14 tained or implied in this section shall operate, or be con-
15 strued or applied to deprive the receiver or any employee
16 of any immunity, indemnity, benefits of law, rights or any
17 defense otherwise available.

18 (k) OTHER GENERAL RULES.—

19 (1) Subsection (b) shall apply to any suit based
20 in whole or in part on any alleged act, error or omis-
21 sion which takes place on or after the effective date
22 of this title.

23 (2) No legal action shall lie against the receiver
24 or any employee based in whole or in part on any
25 alleged act, error or omission which took place prior

1 to the effective date of this title, unless suit is filed
2 and valid service of process is obtained within 12
3 months after the effective date of this title.

4 (3) Subsections (c) through (i) shall apply to
5 any suit which is pending on or filed after the effec-
6 tive date of this title without regard to when the al-
7 leged act, error or omission took place.

8 **SEC. 935. EMPLOYMENT OF PROFESSIONAL PERSONS.**

9 The receiver may—

10 (1) appoint 1 or more qualified persons to serve
11 as deputy receiver which persons shall have all the
12 powers and responsibilities of the receiver granted
13 under this title and shall serve at the pleasure of the
14 receiver;

15 (2) employ and fix the compensation of employ-
16 ees and agents;

17 (3) retain attorneys, actuaries, accountants, ap-
18 praisers, consultants, and such other personnel as he
19 or she considers necessary to assist in the receiver-
20 ship; and

21 (4) subject to the requirements of section 945,
22 fix the compensation of those whom he or she ap-
23 points or retains under subsection (a) or (b) of this
24 section.

1 **SEC. 936. POWERS OF REHABILITATORS AND LIQUIDATORS.**

2 (a) IN GENERAL.—The rehabilitator or liquidator
3 shall have all the powers of the directors, officers and
4 managers of the national insurer, whose authority shall
5 be suspended, except as they are redelegated by the
6 rehabilitator or liquidator.

7 (b) OTHER SPECIFIC POWERS.—In addition to those
8 powers otherwise provided by this title, the rehabilitator
9 or liquidator shall have the power to—

10 (1) use, sell or lease property of the national in-
11 surer;

12 (2) after notice and a hearing, borrow money
13 on the security of the national insurer's assets, bor-
14 row money without security, and execute and deliver
15 all documents necessary to that transaction for the
16 purpose of facilitating the liquidation;

17 (3) collect all debts and money due and claims
18 belonging to the national insurer, wherever located;

19 (4) institute and pursue legal actions and con-
20 tinue any pending action, in any jurisdiction;

21 (5) suspend, limit or permit insurance policy
22 withdrawals in connection with policies of insurance;

23 (6) do other acts as are necessary or expedient
24 to collect, marshal, or protect the assets or property,
25 including the power to sell, compound, compromise,
26 or assign debts for purposes of collection upon such

1 terms and conditions as he or she considers best and
2 that are consistent with this title;

3 (7) enter into contracts necessary to carry out
4 the order of rehabilitation or liquidation;

5 (8) hold hearings, subpoena witnesses to compel
6 their attendance, to administer oaths, examine a
7 person under oath, and compel a person to subscribe
8 to his or her testimony after it has been correctly re-
9 duced to writing; and, in connection with these pow-
10 ers, require the production of books, papers, records,
11 or other documents that he or she considers relevant
12 to the inquiry; and

13 (9) exercise all powers now held or hereafter
14 conferred upon receivers by the laws of this State
15 not inconsistent with the provisions of this title.

16 (c) ORDER OF DISSOLUTION.—The liquidator may
17 petition the court for an order dissolving the corporate ex-
18 istence of a national insurer or a U.S. branch established
19 pursuant to section 302 of this Act at any time after entry
20 of the order of liquidation.

21 (d) CONSTRUCTION.—The enumeration in this sec-
22 tion of the powers and authority of the rehabilitator or
23 liquidator shall not be construed as a limitation upon him
24 or her, and it shall not exclude in any manner his or her
25 right to do other acts not specifically enumerated in this

1 section or otherwise provided for if necessary or appro-
2 priate for the accomplishment of or in aid of the purpose
3 of rehabilitation or liquidation.

4 **SEC. 937. ADVANCES TO THE RECEIVER.**

5 If the property of the national insurer does not con-
6 tain sufficient cash or liquid assets to defray the costs in-
7 curred, the Director may advance the incurred costs out
8 of an appropriation for the Office. Amounts advanced for
9 expenses of administration shall be repaid to the Director
10 for the use of the Office out of the first available money
11 of the national insurer with priority over all other costs
12 of administration.

13 **SEC. 938. EXECUTORY CONTRACTS.**

14 (a) **POWER TO ASSUME OR REJECT.**—The
15 rehabilitator or liquidator, subject to the court's approval,
16 may assume or reject any executory contract or unexpired
17 lease of the national insurer.

18 (b) **EXCEPTIONS.**—This section shall not apply to an
19 insurance policy or reinsurance contract.

20 (c) **NO ANTICIPATORY BREACH.**—Neither the filing
21 of a petition under this title nor the entry of an order
22 of rehabilitation or liquidation shall constitute an antici-
23 patory breach of any contract or lease of the national in-
24 surer.

1 (d) CONTRACT OR LEASE IN DEFAULT.—If there has
2 been a default in an executory contract or unexpired lease
3 of the national insurer, the receiver may not assume such
4 contract or lease unless, at the time of the assumption
5 of such contract or lease, the receiver—

6 (1) cures or provides adequate assurance that
7 the receiver will promptly cure such default; and

8 (2) provides adequate assurance of future per-
9 formance under such contract or lease.

10 (e) EXCEPTIONS.—Subsection (d) does not apply to
11 a default that is a breach of a provision relating to—

12 (1) the insolvency or financial condition of the
13 national insurer at any time before the closing of the
14 receivership proceeding;

15 (2) the commencement of a receivership pro-
16 ceeding under this title;

17 (3) the appointment of or taking possession by
18 a receiver in a case under this title or a custodian
19 before such commencement; or

20 (4) the satisfaction of any penalty rate or provi-
21 sion relating to a default arising from any failure of
22 the insurer to perform nonmonetary obligations
23 under the executory contract or unexpired lease.

1 **SEC. 939. ABANDONMENT OF PROPERTY AND RECORDS.**

2 The receiver may, at any time, abandon any property
3 or records that are burdensome to the estate or that are
4 of inconsequential value and benefit to the receivership es-
5 tate.

6 **SEC. 940. EXTENSION OF TIME.**

7 (a) IN GENERAL.—The rehabilitator or liquidator
8 may institute any action or proceeding on behalf of the
9 estate of the national insurer while any statute of limita-
10 tion is tolled pursuant to this section. Unless an applicable
11 limitation period has expired before a successful petition
12 for rehabilitation or liquidation was filed, any applicable
13 statute of limitation is tolled for 2 years. Tolling of the
14 running of any applicable statute of limitation shall begin
15 with the entry of an order of rehabilitation or liquidation.
16 The tolling shall be in addition to any other applicable
17 tolling provision.

18 (b) OTHER ACTIONS.—For actions not covered by
19 subsection (a), where any unexpired time period is fixed,
20 by any agreement or in any proceeding, for doing any title
21 for the benefit of the estate, the rehabilitator or liquidator
22 shall have 180 days or such longer period as the court
23 may allow for good cause shown, from the entry of the
24 order of rehabilitation or liquidation to perform the title.

1 **SEC. 941. PERIODIC REPORTS.**

2 (a) **REPORTS BY REHABILITATOR OR LIQUIDATOR.—**

3 A rehabilitator or liquidator shall file periodic reports with
4 the court containing such information as is reasonably
5 available and at such intervals as the court specifies,
6 including—

7 (1) cash receipts and disbursements for the pe-
8 riod; and

9 (2) a balance sheet which includes known and
10 estimated assets and liabilities of the estate.

11 (b) **REPORTS BY CONSERVATOR.—**A conservator
12 shall file with the court a report reflecting the national
13 insurer's—

14 (1) cash receipts and disbursements for the pe-
15 riod; and

16 (2) such other information, reasonably available
17 to the conservator, as the court specifies.

18 (c) **EXCEPTIONS.—**The reports required by sub-
19 sections (a) and (b) need not be filed more than once for
20 each calendar year if the national insurer's cash and in-
21 vested assets are less than \$250,000.

22 **SEC. 942. DOCUMENT DEPOSITORY.**

23 (a) **DOCUMENT DEPOSITORY REQUIRED.—**The
24 rehabilitator or liquidator shall maintain, during the pend-
25 ency of the receivership proceedings, a document deposi-
26 tory containing—

1 (1) copies of the petitions and orders estab-
2 lishing the receivership proceeding, and any amend-
3 ments thereto;

4 (2) copies of all reports filed by the receiver
5 with the court or the Director;

6 (3) copies of all other filings made in the court;

7 (4) copies of all evidentiary material submitted
8 to the court;

9 (5) transcripts of any hearings or trials in the
10 court which are obtained by the receiver; and

11 (6) an index of all items contained in the deposi-
12 tory.

13 (b) DOCUMENTS UNDER SEAL.—Any filing or evi-
14 dentiary submission made in the court under seal shall
15 not be maintained in the depository, subject to the con-
16 trary order of the court, but an index of such filings and
17 submissions, identifying such material with reasonable
18 specificity, but preserving the confidentiality of the con-
19 tents of such material, shall be maintained in the deposi-
20 tory.

21 (c) PROVISIONS OF DOCUMENTS BY OTHER PAR-
22 TIES.—Any party other than the receiver who files plead-
23 ings or documents in the court, or presents evidentiary
24 materials there, shall forthwith furnish the receiver with

1 copies thereof, in addition to service copies, for inclusion
2 in the depository.

3 (d) OTHER.—Nothing in this section shall preclude
4 the receiver from including additional nonprivileged and
5 nonconfidential items in the document depository.

6 (e) DOCUMENTS PUBLIC.—Except as otherwise or-
7 dered by the court, all records contained in the depository
8 are public. The receiver shall make available the materials
9 contained in the depository, during regular business hours
10 at the principal office of the receiver or such other location
11 as the receiver shall specify, and shall provide copies of
12 depository materials at reasonable cost.

13 **SEC. 943. AUDIT OF RECEIVERSHIP RECORDS.**

14 (a) IN GENERAL.—The pendency of any receivership
15 proceeding under this title shall in no way affect the power
16 and authority of the Director to conduct any examination
17 provided for in section 202(a) in connection with the busi-
18 ness, conduct or affairs of a national insurer.

19 (b) AUDIT REQUIRED.—An annual audit of any na-
20 tional insurer which is in rehabilitation or liquidation pur-
21 suant to this title and which has assets of more than
22 \$500,000 shall be performed by an independent outside
23 certified public accountant. The cost of this audit shall
24 be paid by the receiver as an expense of administration.

1 **SEC. 944. GENERAL SERVICE LIST.**

2 (a) SERVICE LIST TO BE MAINTAINED.—The re-
3 ceiver shall maintain a general service list for each receiv-
4 ership proceeding. It shall be the responsibility of the per-
5 son listed to inform the receiver, in writing, of any changes
6 in his or her address, or to request that his or her name
7 be deleted from the general service list. Any person shall
8 be placed on the general service list upon written request
9 to the receiver.

10 (b) CONTINUATION REQUEST FORMS.—The receiver
11 may require that listed persons return continuation re-
12 quest forms which the receiver may serve upon them at
13 intervals, but not more frequently than every 12 months.
14 Any person who fails to return the continuation request
15 may be purged from the service list.

16 (c) NO STANDING CONFERRED.—Inclusion on the
17 general service list does not confer standing in the receiv-
18 ership proceeding to raise, appear or be heard on any
19 issue.

20 **SEC. 945. ROUTINE MATTERS.**

21 (a) NOTICE OF FILING BY RECEIVER.—Notice of the
22 filing of any routine matter in the court shall be provided
23 by the receiver by depositing a copy of the item filed in
24 the depository, including the same in the index and send-
25 ing notice by U.S. mail on the same date that the copy
26 was deposited in the depository to those persons on the

1 general service list and to any other person known to the
2 receiver to be directly affected, that the matter has been
3 filed and the date of its filing and the date that it was
4 deposited in the depository.

5 (b) OBJECTIONS.—Any party in interest may object
6 to any routine matter by filing a motion with the court
7 and serving a copy thereof on the receiver not later than
8 30 days after the copy of the filing was deposited in the
9 depository. If no objection has been received during such
10 time, no court approval of the matter is required. If an
11 objection has been filed within the prescribed time, the
12 court shall set the matter for hearing and, after hearing,
13 enter such orders concerning the matter as it finds appro-
14 priate.

15 (c) ROUTINE MATTERS DEFINED.—For the purpose
16 of the application of this section, the following matters are
17 routine matters, unless the court otherwise orders:

18 (1) Periodic reports of the receiver, as required
19 by section 941.

20 (2) The establishment of a basis of compensa-
21 tion of deputy receivers, attorneys, actuaries, ac-
22 countants, appraisers, consultants, and such other
23 personnel as the receiver retains.

24 (3) The disposition of property or choices in ac-
25 tion of the estate the value of which does not exceed

1 the lesser of \$250,000 or 10 percent of the last re-
2 ported total asset value of the estate.

3 **SEC. 946. MATTERS REQUIRING PRIOR COURT APPROVAL.**

4 (a) NOTICE OF FILING BY RECEIVER.—Except as
5 hereinafter set out, notice of the filing of any nonroutine
6 matter shall be provided by the receiver by depositing a
7 copy of the item filed in the depository, including the same
8 in the index and sending notice to those persons on the
9 general service list and any other person known to the re-
10 ceiver to be directly affected that the matter has been
11 filed, the date of its filing, the deadline for the filing of
12 objections, and the date on which the receiver will present
13 the matter for hearing by the court.

14 (b) ADDITIONAL NOTICE REQUIRED.—In addition to
15 the notice called for in subsection (a), the following mat-
16 ters require additional notice:

17 (1) Notice of the filing of a plan, or of any
18 amendment to such a plan shall be furnished to all
19 known parties in interest.

20 (2) Notice of the entry of an order of liquida-
21 tion or finding of insolvency, other than as part of
22 the initial order of receivership, shall be provided to
23 all persons entitled to notice under section 916.

1 (3) Notice of the proposed allowance or dis-
2 allowance of the claims of any policyholder or other
3 creditor shall be provided pursuant to section 947.

4 (c) NOTICE OF CLOSURE.—Notice of the proposed
5 closure of the estate or final distribution shall be sufficient
6 if mailed to all persons having allowed claims which have
7 not been paid in full, all claimants whose claims have not
8 been adjudicated, all shareholders of the national insurer,
9 if any, and all guaranty associations interested in the es-
10 tate, and the general service list.

11 (d) OBJECTIONS.—Any party in interest may object
12 to any action proposed to be taken by the court in connec-
13 tion with a nonroutine matter by filing a statement show-
14 ing that he or she has an interest in the matter and setting
15 out the grounds of the objection not later than 30 days
16 after the sending of notice under subsection (a), or such
17 other period as the court shall direct for good cause
18 shown.

19 (e) HEARING; ORDER.—Upon the presentation of any
20 nonroutine matter, the court may determine any prelimi-
21 nary issues, and shall set the matter for hearing. Upon
22 hearing the receiver and any party in interest who has
23 filed a timely objection, the court may issue such orders
24 concerning the matter as it finds appropriate.

1 (f) NONROUTINE MATTER DEFINED.—Any action
2 proposed to be taken by the receiver and which requires
3 court approval and which is not defined as a routine mat-
4 ter, is a nonroutine matter, including, without limitation,
5 the following:

6 (1) The disposition of any asset or chose in ac-
7 tion (including the settlement of any suit or tort
8 claim of the estate) which is property of the estate
9 and which exceeds in value the lesser of \$250,000 or
10 10 percent of the last reported total asset value of
11 the estate.

12 (2) The allowance of any claim or disallowance
13 of a claim.

14 (3) Borrowing or lending of any sum, except for
15 debts incurred in the ordinary course of the oper-
16 ations of the receivership and not exceeding \$50,000
17 per obligee.

18 (4) Conversion of a rehabilitation into a liquida-
19 tion, or the issuance of a finding of insolvency or the
20 imposition of a deadline for the filing of claims at
21 any time after the entry of an order of rehabilitation
22 or liquidation.

23 (5) The adoption of any plan.

24 (g) OTHER COURT POWERS.—After notice and a
25 hearing, the court may designate additional categories of

1 routine and nonroutine matters, and may, for good cause
2 shown, provide alternate notice, or require the service of
3 additional notice of any specific matter.

4 **SEC. 947. NOTICE OF PROPOSED CLAIMS DISPOSITION.**

5 Except as otherwise ordered by the court, notice of
6 the proposed allowance or disallowance of any claim is suf-
7 ficient if the receiver serves—

8 (1) each policyholder under whose insurance
9 policy the claim arises, any third party directly in-
10 terested in the insurance policy, each guaranty asso-
11 ciation which is or may be responsible for the claim
12 or any portion thereof, and any reinsurer which is
13 or would be liable to the receiver in respect of the
14 claim if it were allowed, with a description of the
15 claim proposed to be allowed or denied, the rationale
16 for such allowance or denial, and the procedures for
17 objecting; and

18 (2) notice of the filing of the motion on those
19 on the general service list.

20 **Subtitle F—The Estate**

21 **SEC. 948. TURNOVER OF PROPERTY TO RECEIVER.**

22 (a) IN GENERAL.—Except as provided in subsections
23 (c) and (d), any person or entity in possession, custody,
24 or control of property of the national insurer shall deliver
25 such property to the receiver.

1 (b) PAYMENT TO REHABILITATOR OR LIQUI-
2 DATOR.—Any person or entity that owes a debt that is
3 property of the national insurer and that is matured, pay-
4 able on demand, or payable on order, shall pay such debt
5 to, or on the order of, the receiver, except to the extent
6 that such debt may be offset under section 958.

7 (c) DISCLOSURE BY ATTORNEYS, ACCOUNTANTS,
8 ETC.—Subject to any applicable privilege, and unless the
9 court orders otherwise, any attorney, accountant, agent,
10 management company, data processing company, or affil-
11 iate of the national insurer or entity that possesses or con-
12 trols any documents or recorded information of any na-
13 ture, including books, claims files, records, and papers of
14 the national insurer or of any affiliate of the national in-
15 surer that relate to the national insurer’s assets, liabilities,
16 financial affairs, or business, immediately shall disclose
17 and, on request of the receiver, turn over such documents
18 and recorded information, or if the court shall so order,
19 copies thereof, to the receiver.

20 (d) PROHIBITIONS.—As of the date of the order di-
21 recting rehabilitation or liquidation, no possessory lien
22 held by any attorney, including common law retaining
23 liens, may be asserted or enforced against the receiver or
24 the national insurer as a basis for withholding files or oth-
25 erwise. Further, no attorney shall be granted secured sta-

1 tus, security or payment for his or her claim against the
2 national insurer in exchange for the release of files or the
3 extinguishment of any such lien.

4 **SEC. 949. TURNOVER OF PREMIUMS OWED.**

5 (a) IN GENERAL.—Unless otherwise instructed by
6 the receiver in writing, an insurance producer, premium
7 finance company, or any other person, other than the na-
8 tional insurer, who is responsible for the payment of pre-
9 mium who has possession or control of such premium shall
10 immediately turn over to the receiver, and be obligated to
11 pay any unpaid earned premium due the national insurer,
12 whether collected or uncollected, and any collected, un-
13 earned premium and any part of an unearned premium
14 representing commission on or before the date of the entry
15 of a conservation, liquidation, or rehabilitation order.
16 Credits, setoffs, or both, shall not be allowed to an insur-
17 ance producer or premium finance company for an amount
18 advanced to the national insurer by the insurance pro-
19 ducer or premium finance company on behalf of, but in
20 the absence of a payment by, the insured.

21 (b) UNPAID EARNED PREMIUMS.—An insured shall
22 be obligated to pay to the receiver any unpaid earned pre-
23 mium and any retrospectively rated premium due the na-
24 tional insurer.

1 (c) PENALTIES.—Upon satisfactory evidence of a vio-
2 lation of subsection (a), the Director may impose a civil
3 penalty of no more than \$1,000 for each and every act
4 in violation of this section by each offending party.

5 (d) NOTICE AND HEARING.—Before the Director
6 takes action under subsection (c), the Director shall give
7 written notice to the person, national insurer, guaranty
8 association, or exchange accused of violating the law, stat-
9 ing specifically the nature of the alleged violation and fix-
10 ing a time and place, at least 10 days thereafter, for a
11 hearing on the matter. After the hearing, or upon failure
12 of the accused to appear at the hearing, the Director shall
13 upon finding a violation, impose the penalties under sub-
14 section (c) at its his or her discretion.

15 **SEC. 950. LIMITATION ON AVOIDING POWERS.**

16 An action or proceeding under section 951, 952, 953,
17 955, or 956 may not be commenced after the earlier of—

18 (1) 5 years after the entry of the initial order
19 of rehabilitation or liquidation under this title; or

20 (2) the time the receivership proceeding is
21 closed or dismissed.

1 **SEC. 951. RECEIVER AS LIEN CREDITOR AND AS SUC-**
2 **CESSOR TO CERTAIN CREDITORS, PUR-**
3 **CHASERS AND FIDUCIARIES.**

4 (a) IN GENERAL.—The receiver may avoid any trans-
5 fer of or lien upon the property of, or obligation incurred
6 by, a national insurer that the national insurer or a policy-
7 holder, creditor, member, or shareholder of the national
8 insurer may have avoided without regard to any knowledge
9 of the receiver, the Director, the national insurer or any
10 policyholder, creditor, member, or shareholder of the na-
11 tional insurer and whether or not such a creditor, member,
12 or shareholder exists.

13 (b) RECEIVER DEEMED CREDITOR.—The receiver
14 shall be deemed a creditor without knowledge for purposes
15 of pursuing claims under the Uniform Fraudulent Trans-
16 fer Act.

17 **SEC. 952. PREFERENCES.**

18 (a) PREFERENCE DEFINED.—A preference is a
19 transfer of any property of a national insurer or of an
20 interest in property of a national insurer—

21 (1) to or for the benefit of a creditor;

22 (2) for or on account of an antecedent debt;

23 (3) made or suffered within the 2 years pre-
24 ceding the filing of a successful petition for rehabili-
25 tation or liquidation under this title; and

1 (4) that enables such creditor to receive more
2 than such creditor would receive if—

3 (A) the national insurer was liquidated
4 under this title;

5 (B) the transfer had not been made; and

6 (C) such creditor received payment of such
7 debt to the extent provided by this title.

8 (b) PREFERENCE MAY BE AVOIDED.—Any pref-
9 erence may be avoided by the receiver if—

10 (1) the national insurer was insolvent at the
11 time of the transfer; and

12 (2)(A) the transfer was made within 120 days
13 before the filing of the petition;

14 (B) the creditor receiving it or benefited there-
15 by or his agent acting with reference thereto had, at
16 the time when the transfer was made, reasonable
17 cause to believe that the national insurer was insol-
18 vent or was about to become insolvent; or

19 (C) the creditor receiving or benefiting from the
20 transfer was—

21 (i) an officer or director of the national in-
22 surer;

23 (ii) an employee, attorney or other person
24 who was, in fact, in a position to effect a level
25 of control or influence over the actions of the

1 national insurer comparable to that of an offi-
2 cer, whether or not the person held such a posi-
3 tion; or

4 (iii) any shareholder owning or controlling
5 directly or indirectly more than 10 percent of
6 any class of any equity security issued by the
7 national insurer, or any other person, firm, cor-
8 poration, association or aggregation of persons
9 with whom the national insurer did not deal at
10 arm's length.

11 (c) EXCEPTIONS.—The receiver may not avoid a
12 transfer under this section—

13 (1) to the extent that such transfer was—

14 (A) intended by the national insurer and
15 the creditor to or for whose benefit such trans-
16 fer was made to be a contemporaneous ex-
17 change for new value given to the national in-
18 surer; and

19 (B) in fact a substantially contempora-
20 neous exchange;

21 (2) to the extent that such transfer was in pay-
22 ment of a debt incurred by the national insurer in
23 the ordinary course of business or financial affairs
24 of the national insurer and the transferee and such
25 transfer was—

1 (A) made in the ordinary course of busi-
2 ness or financial affairs of the national insurer
3 and the transferee; or

4 (B) made according to ordinary business
5 terms;

6 (3) that creates a security interest in property
7 acquired by the national insurer—

8 (A) to the extent such security interest se-
9 cures new value that was—

10 (i) given at or after the signing of a
11 security agreement that contains a descrip-
12 tion of such property as collateral;

13 (ii) given by or on behalf of the se-
14 cured party under such agreement;

15 (iii) given to enable the national in-
16 surer to acquire such property;

17 (iv) in fact, used by the national in-
18 surer to acquire such property; and

19 (B) that is perfected on or before 21 days
20 or any other period expressly allowed by law,
21 whichever is less, after the national insurer re-
22 ceives possession of such property;

23 (4) to or for the benefit of a creditor, to the ex-
24 tent that, after such transfer, such creditor gave new
25 value to or for the benefit of the national insurer—

1 (A) not secured by an otherwise unavail-
2 able security interest; and

3 (B) on account of which new value the na-
4 tional insurer did not make an otherwise un-
5 avoidable transfer to or for the benefit of such
6 creditor; and

7 (5) that creates a perfected security interest in
8 a receivable or its proceeds, except to the extent that
9 the aggregate of all such transfers to the transferee
10 caused a reduction, as of the date of the filing of the
11 petition and to the prejudice of other creditors hold-
12 ing unsecured claims, of any amount by which the
13 debt secured by such security interest exceeded the
14 value of all security interests for such debt on the
15 later of—

16 (A)(i) with respect to a transfer to which
17 subsection (b)(1) applies, 120 days before the
18 date of the filing of the petition; or

19 (ii) with respect to a transfer to which sub-
20 section (b)(2) or (b)(3) applies, 1 year before
21 the date of the filing of the petition; or

22 (B) the date on which new value was first
23 given under the security agreement creating
24 such security interest.

1 (d) VOIDABLE LIEN DISSOLVED BY FURNISHING
2 BOND.—If a lien which is voidable under this section has
3 been dissolved by the furnishing of a bond or other obliga-
4 tion, the surety on which has been indemnified directly
5 or indirectly by the transfer or the creation of a lien upon
6 the national insurer's property before the filing of a suc-
7 cessful petition for rehabilitation or liquidation, then that
8 indemnifying transfer or lien shall also be considered void-
9 able.

10 (e) LIABILITY OF SURETY.—The liability of the sur-
11 ety under a releasing bond or other like obligation shall
12 be discharged to the extent of the value of the indem-
13 nifying property recovered or the indemnifying lien to the
14 extent of the amount paid to the liquidator.

15 (f) OTHER RULES.—For the purposes of this
16 section—

17 (1) a transfer of property other than real prop-
18 erty shall be deemed to be made or suffered when
19 it becomes so far perfected that no subsequent lien
20 obtainable by legal or equitable proceedings on a
21 simple contract could become superior to the rights
22 of the transferee;

23 (2) a transfer of real property shall be deemed
24 to be made or suffered when it becomes so far per-
25 fected that no subsequent bona fide purchaser from

1 the national insurer could obtain rights superior to
2 the rights of the transferee;

3 (3) a transfer which creates an equitable lien
4 shall not be deemed to be perfected if there are
5 available means by which a legal lien could be cre-
6 ated;

7 (4) a transfer not perfected prior to the filing
8 of a petition for liquidation shall be deemed to be
9 made immediately before the filing of the successful
10 petition; and

11 (5) the provisions of this subsection apply
12 whether or not there are or were creditors who
13 might have obtained liens or persons who might have
14 become bona fide purchasers.

15 (g) BURDEN OF PROOF.—For the purposes of this
16 section, the receiver has the burden of proving the avoid-
17 ability of a transfer under subsection (b), and the person
18 against whom recovery or avoidance is sought has the bur-
19 den of proving the non-avoidability of a transfer under
20 subsection (c). The national insurer is presumed to have
21 been insolvent on and during the 120 day period imme-
22 diately preceding the date of the commencement of the
23 rehabilitation or liquidation proceeding.

24 (h) NEW VALUE DEFINED.—For the purposes of this
25 section, the term “new value” means money or money’s

1 worth in goods, services or new credit, or release by a
2 transferee of property previously transferred to such
3 transferee in a transaction that is neither void nor void-
4 able by the receiver under any applicable law, including
5 proceeds of such property, but does not include an obliga-
6 tion substituted for an existing obligation.

7 **SEC. 953. FRAUDULENT TRANSFERS AND OBLIGATIONS.**

8 (a) **POWER TO AVOID.**—The rehabilitator or liqui-
9 dator may avoid any transfer of an interest of the national
10 insurer in property, or any obligation incurred by the na-
11 tional insurer, that was made or incurred on or within 1
12 year before the date of the filing of the petition for pro-
13 ceedings under this title, if the national insurer voluntarily
14 or involuntarily—

15 (1) made such transfer or incurred such obliga-
16 tion with actual intent to hinder, delay, or defraud
17 any person to which it was or became indebted on
18 or after the date that such transfer was made or
19 such obligation was incurred; or

20 (2)(A) received less than a reasonably equiva-
21 lent value in exchange for such transfer or obliga-
22 tion; and

23 (B)(i) was insolvent on the date that such
24 transfer was made or such obligation was in-

1 curred, or became insolvent as a result of such
2 transfer or obligation;

3 (ii) was engaged in business or a trans-
4 action, or was about to engage in business or
5 a transaction, for which any property remaining
6 with the insurer was an unreasonably small
7 capital; or

8 (iii) intended to incur, or believed that it
9 would incur, debts that would be beyond its
10 ability to pay as such debts matured.

11 (b) PERMITTED LIENS.—Except to the extent that
12 a transfer or obligation voidable under this section is void-
13 able under section 951 or 952, a transferee or obligee of
14 such a transfer or obligation that takes for value and in
15 good faith has a lien on or may retain any interest trans-
16 ferred or may enforce any obligation incurred, as the case
17 may be, to the extent that such transferee or obligee gave
18 value to the national insurer in exchange for such transfer
19 or obligation. a transfer is made when such transfer is
20 so perfected that a bona fide purchaser from the national
21 insurer against whom applicable law permits such transfer
22 to be perfected cannot acquire an interest in the property
23 transferred that is superior to the interest in such prop-
24 erty of the transferee, but if such transfer is not so per-
25 fected before the commencement of the receivership pro-

1 ceeding, such transfer is made immediately before the date
2 of the filing of the petition.

3 (c) VALUE DEFINED.—For purposes of this section,
4 the term “value” means property, or satisfaction or secur-
5 ing of a present or antecedent debt of the national insurer.

6 (d) REINSURANCE SUBJECT TO AVOIDANCE.—A
7 transaction with a reinsurer of the national insurer is sub-
8 ject to avoidance under this section if—

9 (1) the transaction released the reinsurer, in
10 whole or in part, from its obligation to pay to the
11 national insurer the reinsurer’s originally specified
12 share of those losses which had occurred prior to the
13 time of the transaction but which had not been paid
14 by the national insurer unless the reinsurer gives a
15 present fair equivalent value for the release; and

16 (2) any part of the transaction was effected
17 within 1 year prior to the filing of the petition under
18 this title.

19 (e) AVOIDED REINSURANCE.—In the event a reinsur-
20 ance transaction is avoided under subsection (d)—

21 (1) the receiver shall tender to the reinsurer the
22 value of any consideration transferred to the na-
23 tional insurer in connection with such transaction
24 less the amount of matured and liquidated liabilities
25 owing by the reinsurer to the estate; and

1 (2) the parties shall be returned to their rel-
2 ative positions prior to the implementation of the
3 transaction avoided.

4 **SEC. 954. TRANSFER OF NATIONAL INSURER'S PROPERTY**
5 **TO GOOD FAITH PURCHASER.**

6 (a) **IN GENERAL.**—After a petition for receivership
7 has been filed, a transfer of the national insurer's real
8 property made to a person acting in good faith shall be
9 valid against the receiver if made for a present fair equiva-
10 lent value, or if not made for a present fair equivalent
11 value, then to the extent of the present consideration actu-
12 ally paid for the property for which amount the transferee
13 shall have a lien on the transferred property. Constructive
14 notice of the commencement of a receivership proceeding
15 shall be given upon the recording of a copy of the petition
16 initiating a receivership proceeding with the register of
17 deeds in the county where any real property in question
18 is located. The exercise by a court of the United States
19 or any State of jurisdiction to authorize or effect a judicial
20 sale of real property of the insurer within any county in
21 any State shall not be impaired by the pendency of such
22 a proceeding unless the copy is recorded in the county
23 prior to the consummation of the judicial sale.

24 (b) **OTHER RULES.**—After a petition for receivership
25 has been filed and before either the receiver takes posses-

1 sion of the national insurer's property or an order of re-
2 ceivership is granted—

3 (1) a transfer of the national insurer's property,
4 other than real property, made to a person acting in
5 good faith shall be valid against the receiver if made
6 for a present fair equivalent value, or if not made
7 for a present fair equivalent value, then to the ex-
8 tent of the present consideration actually paid for
9 the property for which amount the transferee shall
10 have a lien on the transferred property;

11 (2) a person indebted to the national insurer or
12 holding property of the national insurer, if acting in
13 good faith, may pay all or part of the indebtedness
14 or deliver all or part of the property to the national
15 insurer or upon his or her order, with the same ef-
16 fect as if the petition were not pending;

17 (3) a person having actual knowledge of the
18 pending receivership shall be considered not to act in
19 good faith; and

20 (4) a person asserting the validity of a transfer
21 under this section shall have the burden of proof.
22 Except as elsewhere provided in this section, no
23 transfer by or on behalf of the national insurer after
24 the date of the petition for receivership proceeding

1 by a person other than the receiver shall be valid
2 against the receiver.

3 (c) CURRENCY OR NEGOTIABLE INSTRUMENTS.—

4 Nothing in this title shall impair the negotiability of cur-
5 rency or negotiable instruments.

6 **SEC. 955. RECOUPMENT FROM AFFILIATES.**

7 If an order of liquidation or rehabilitation is entered
8 under this title, the receiver shall have a right to recover
9 from any affiliate that controlled the national insurer the
10 amount of distributions, other than shareholder dividends
11 paid by the national insurer on its capital stock, made at
12 any time during the 5 years preceding the petition for liq-
13 uidation or rehabilitation subject to the following limita-
14 tions:

15 (1) A distribution shall not be recoverable
16 under this section if the recipient or other bene-
17 ficiary of distribution shows that when paid the dis-
18 tribution was lawful and reasonable, and that the
19 national insurer did not know and could not reason-
20 ably have known that the distribution would ad-
21 versely affect the ability of the national insurer to
22 fulfill its contractual obligations.

23 (2) A person who was an affiliate that con-
24 trolled the national insurer at the time the distribu-
25 tions were paid shall be liable up to the amount of

1 distributions he or she received, and a person who
2 was an affiliate that controlled the national insurer
3 at the time the distributions were declared shall be
4 liable up to the amount of distributions he or she
5 would have received if they had been paid imme-
6 diately; *Provided*, That—

7 (A) if two or more persons are liable with
8 respect to the same distributions, they shall be
9 jointly and severally liable; and

10 (B) if a person liable under this subdivi-
11 sion is insolvent, all controlling affiliates at the
12 time the distribution was paid shall be jointly
13 and severally liable for any resulting deficiency
14 in the amount recovered from the insolvent af-
15 filiate.

16 (3) The maximum amount recoverable under
17 this subsection shall be the amount needed in excess
18 of all other available assets of the national insurer
19 to pay its contractual obligations.

20 **SEC. 956. LIABILITY OF TRANSFEREE OF AN AVOIDED**
21 **TRANSFER.**

22 (a) IN GENERAL.—Except as otherwise provided in
23 this section, to the extent that a transfer is avoided under
24 section 951, 952, 953, or 955, the receiver may recover,

1 for the benefit of the estate, the property transferred, or
2 if the court so orders, the value of such property, from—

- 3 (1) the initial transferee of such transfer or the
4 entity for whose benefit such transfer was made; or
5 (2) any immediate or mediate transferee of
6 such initial transferee.

7 (b) PARTICIPATION BY OFFICER, DIRECTOR OR CON-
8 TROL PERSON.—An officer, director or other person in
9 control of the national insurer who knowingly participates
10 in making a transfer voidable under section 951, 952, 953,
11 or 955, if such person knew or should have known the
12 national insurer was or was about to become insolvent at
13 the time of the transfer, shall be personally liable to the
14 receiver for the amount of the transfer. If the transfer
15 was made within 120 days before the date of filing of a
16 successful petition under this title then it shall be pre-
17 sumed that such person knew or should have known the
18 insurer was or was about to become insolvent.

19 (c) EXCEPTIONS.—The receiver may not recover
20 under subsection (a)(2) from—

- 21 (1) a transferee who or that takes for value, in-
22 cluding satisfaction or securing of a present or ante-
23 cedent debt, in good faith, and without knowledge of
24 the voidability of the transfer avoided; or

1 (2) any immediate or mediate good faith trans-
2 feree of such transferee.

3 (d) OTHER EXCEPTIONS.—A transfer that is voidable
4 only under subsection (b)(3) of section 952 may not be
5 recovered under this section from a transferee that is
6 not—

7 (1) an officer or director of the national in-
8 surer;

9 (2) an employee, attorney or other person who
10 was, in fact, in a position to effect a level of control
11 or influence over the actions of the national insurer
12 comparable to that of an officer, whether or not the
13 person held such a position; or

14 (3) any shareholder owning or controlling di-
15 rectly or indirectly more than 10 percent of any
16 class of any equity security issued by the national
17 insurer, or any other person, firm, corporation, asso-
18 ciation, or aggregation of persons with whom the na-
19 tional insurer did not deal at arm's length.

20 (e) VALUE OF LIEN.—

21 (1) A good faith transferee from whom the re-
22 ceiver may recover under subsection (a) has a lien
23 on the property received to secure the lesser of—

24 (A) the cost, to such transferee, of any im-
25 provement made after the transfer, less the

1 amount of any profit realized by or accruing to
2 such transferee from such property; and

3 (B) any increase in the value of such prop-
4 erty as a result of such improvement, of the
5 property transferred.

6 (2) For purposes of this subsection, the term
7 “improvement” includes—

8 (A) physical additions or changes to the
9 property transferred;

10 (B) repairs to such property;

11 (C) payment of any tax on such property;

12 (D) payment of any debt secured by a lien
13 on such property that is superior or equal to
14 the rights of the receiver; and

15 (E) preservation of such property.

16 (f) TIMING OF ACTION.—An action or proceeding
17 under this section may not be commenced after the earlier
18 of—

19 (1) 1 year after the avoidance of the transfer
20 on account of which recovery under this section is
21 sought; or

22 (2) the time the receivership proceeding is
23 closed or dismissed.

1 **SEC. 957. AUTOMATIC PRESERVATION OF AVOIDED TRANS-**
2 **FER.**

3 Any transfer avoided under section 951, 952, 953,
4 955, or section 956 is preserved for the benefit of the re-
5 ceivership but only with respect to property of the national
6 insurer.

7 **SEC. 958. SETOFF.**

8 (a) SETOFF PERMITTED.—Mutual debts or mutual
9 credits whether arising out of one or more contracts be-
10 tween a national insurer that is subject to a receivership
11 proceeding under this title and another person shall be set
12 off and the balance only shall be allowed or paid except
13 as provided in subsection (b) of this section and in section
14 949 and subsection (b)(4) of section 962. Obligations aris-
15 ing out of the termination of reinsurance contracts pursu-
16 ant to section 962 may be set off against other debts and
17 credits arising out of contracts between the national in-
18 surer and the reinsurer.

19 (b) EXCEPTIONS.—No setoff shall be allowed in favor
20 of any person when—

21 (1) the obligation of the national insurer to the
22 person would not at the date of the filing of a peti-
23 tion for receivership entitle the person to share as a
24 claimant in the assets of the national insurer;

1 (2) the obligation of the national insurer to the
2 person was purchased by or transferred to the per-
3 son with a view to its being used as a setoff;

4 (3) the obligation of the national insurer is
5 owed to an affiliate of such person or any other enti-
6 ty or association other than the person;

7 (4) the obligation of the person is owed to an
8 affiliate of the national insurer or any other entity
9 or association other than the national insurer;

10 (5) the obligation of the person is to pay an as-
11 sessment levied against the members or subscribers
12 of the national insurer, is to pay a balance upon a
13 subscription to the capital stock of the national in-
14 surer, or is in any other way in the nature of a cap-
15 ital contribution; or

16 (6) the obligations between the person and the
17 national insurer arise out of transactions by which
18 either the person or the national insurer has as-
19 sumed risks and obligations from the other party
20 and then has ceded back to that party substantially
21 the same risks and obligations.

22 Notwithstanding the provisions of this subsection, the re-
23 ceiver may permit setoffs if in his or her discretion a setoff
24 is appropriate because of specific circumstances relating
25 to a transaction.

1 **SEC. 959. QUALIFIED FINANCIAL CONTRACTS.**

2 (a) NO STAY.—Notwithstanding any other provision
3 of this title, including any other provision of this title per-
4 mitting the modification of contracts, or other law of a
5 State, no person shall be stayed or prohibited from
6 exercising—

7 (1) any contractual right to terminate, liquidate
8 or close out any netting agreement or qualified fi-
9 nancial contract with a national insurer because of—

10 (A) the insolvency, financial condition or
11 default of the national insurer at any time, pro-
12 vided that such right is enforceable under appli-
13 cable law other than this title; or

14 (B) the commencement of a receivership
15 proceeding under this title;

16 (2) any right under a pledge, security, collateral
17 or guarantee agreement or any other similar security
18 arrangement or credit support document relating to
19 a netting agreement or qualified financial contract;
20 or

21 (3) subject to any provision of section 958, any
22 right to set off or net out any termination value,
23 payment amount, or other transfer obligation arising
24 under or in connection with a netting agreement or
25 qualified financial contract where the counterparty
26 or its guarantor is organized under the laws of the

1 United States or a State or foreign jurisdiction ap-
2 proved by the Director as eligible for netting.

3 (b) SETTLEMENT ON TERMINATION OF NETTING
4 AGREEMENT.—Upon termination of a netting agreement,
5 the net or settlement amount, if any, owed by a non-de-
6 faulting party to a national insurer against which an appli-
7 cation or petition has been filed under this title shall be
8 transferred to or on the order of the receiver for such na-
9 tional insurer, even if the national insurer is the defaulting
10 party, notwithstanding any provision in the netting agree-
11 ment that may provide that the non-defaulting party is
12 not required to pay any net or settlement amount due to
13 the defaulting party upon termination. Any limited two-
14 way payment provision in a netting agreement with a na-
15 tional insurer that has defaulted shall be deemed to be
16 a full two-way payment provision as against the defaulting
17 national insurer. Any such property or amount shall, ex-
18 cept to the extent it is subject to one or more secondary
19 liens or encumbrances, be a general asset of the national
20 insurer.

21 (c) TRANSFER NETTING AGREEMENT OR QUALIFIED
22 FINANCIAL CONTRACT.—In making any transfer of a net-
23 ting agreement or qualified financial contract of a national
24 insurer concerning which a receivership proceeding is
25 pending under this title, the receiver shall either—

1 (1) transfer to one party (other than a national
2 insurer subject to a proceeding under this title) all
3 netting agreements and qualified financial contracts
4 between a counterparty or any affiliate of such
5 counterparty and the insurer that is the subject of
6 the proceeding, including—

7 (A) all rights and obligations of each party
8 under each such netting agreement and quali-
9 fied financial contract; and

10 (B) all property, including any guarantees
11 or credit support documents, securing any
12 claims of each party under each such netting
13 agreement and qualified financial contract; or

14 (2) transfer none of the netting agreements,
15 qualified financial contracts, rights, obligations or
16 property referred to in paragraph (1) (with respect
17 to such counterparty and any affiliate of such
18 counterparty).

19 (d) TRANSFER; NOTICE.—

20 (1) If a receiver for a national insurer makes
21 any transfer of one or more netting agreements,
22 then the receiver shall use its best efforts to notify
23 any person who is party to the netting agreements
24 of the transfer by 12:00 noon (the receiver's local
25 time) on the business day following the transfer.

1 (2) For purposes of this subsection, the term
2 “business day” means any day other than a Satur-
3 day, Sunday, or any day on which either the New
4 York Stock Exchange or the Federal Reserve Bank
5 of New York is closed.

6 (e) PRERECEIVERSHIP TRANSFERS.—Notwith-
7 standing any other provision of this title, a receiver may
8 not avoid any transfer of money or other property arising
9 under or in connection with a netting agreement (or any
10 pledge, security, collateral or guarantee agreement or any
11 other similar security arrangement or credit support docu-
12 ment relating to a netting agreement) that is made before
13 the commencement of a receivership proceeding under this
14 title. However, a transfer may be avoided under section
15 953 if the transfer was made with actual intent to hinder,
16 delay or defraud the national insurer, a receiver appointed
17 for the insurer or existing or future creditors.

18 (f) NETTING AGREEMENT TO BE TAKEN AS A
19 WHOLE.—

20 (1) In exercising any of its powers under this
21 title to reject or repudiate a netting agreement, the
22 receiver must take such action with respect to each
23 netting agreement and all transactions entered into
24 in connection therewith, in its entirety. Notwith-
25 standing any other provision of this title, any claim

1 of a counterparty against the estate arising from the
2 receiver's rejection or repudiation of a netting agree-
3 ment that has not been previously assumed by the
4 receiver shall be determined and shall be allowed or
5 disallowed as if such claim had arisen before the
6 date of the filing of the petition under this title, pro-
7 vided that no such claim shall be allowed to have a
8 priority greater than the claim of a general creditor.
9 The amount of the claim shall be the contractual di-
10 rect compensatory damages determined as of the
11 date of the rejection or repudiation of the netting
12 agreement.

13 (2) For purposes of this subsection, the term
14 "contractual direct compensatory damages" does not
15 include punitive or exemplary damages, damages for
16 lost profit or lost opportunity or damages for pain
17 and suffering, but does include normal and reason-
18 able costs of cover or other reasonable measures of
19 damages utilized in the derivatives market for the
20 contract and agreement claims.

21 (g) CONTRACTUAL RIGHT DEFINED.—For purposes
22 of this section, the term "contractual right" includes any
23 right, whether or not evidenced in writing, arising under
24 statutory or common law, a rule or bylaw of a national
25 securities exchange, national securities clearing organiza-

1 tion or securities clearing agency, a rule or bylaw, or a
2 resolution of the governing body, of a contract market or
3 its clearing organization, or under law merchant.

4 (h) NO APPLICATION TO AFFILIATES.—This section
5 shall not apply to persons who are affiliates of the national
6 insurer that is the subject of the receivership proceeding.

7 (i) APPLICATION TO THE GENERAL ACCOUNT, SEPA-
8 RATE ACCOUNTS, AND PROTECTED CELLS.—All rights of
9 counterparties under this title shall apply to netting agree-
10 ments entered into on behalf of—

11 (1) the general account;

12 (2) separate accounts if the assets of each sepa-
13 rate account are available only to counterparties to
14 netting agreements entered into on behalf of that
15 separate account; or

16 (3) protected cells if the assets of each pro-
17 tected cell are available only to counterparties to
18 netting agreements entered into on behalf of that
19 protected cell.

20 **SEC. 960. RECOVERY FROM REINSURERS.**

21 Except as provided in section 961, the amount recov-
22 erable by the receiver from reinsurers shall not be reduced
23 as a result of the filing of a proceeding under this title,
24 regardless of any provision in the reinsurance contract or
25 other agreement.

1 **SEC. 961. CUT-THROUGH PROVISIONS.**

2 If a reinsurance contract or other written agreement
3 is entered into prior to the receivership proceeding and
4 is not otherwise prohibited by law and expressly provides
5 for another payee of such reinsurance in the event of the
6 insolvency of the ceding national insurer, any payment
7 made or due to such third party under such contract or
8 other written agreement shall be a reduction to the
9 amount due the receiver. Except as provided in this sec-
10 tion, payment made directly to an insured or other payee
11 shall not diminish the reinsurer's obligation to the national
12 insurer's estate.

13 **SEC. 962. LIFE REINSURANCE.**

14 (a) CONTINUATION OF REINSURANCE CONTRACTS
15 PRIOR TO LIQUIDATION.—Contracts reinsuring policies of
16 insurance issued by a company that has not been placed
17 in liquidation pursuant to this Act shall be continued or
18 terminated pursuant to the terms and conditions of each
19 reinsurance contract.

20 (b) CONTINUATION OF REINSURANCE CONTRACTS
21 REINSURING COVERED POLICIES.—Reinsurance contracts
22 on policies of insurance that are covered policies (as such
23 term is defined in section 1001) that have been ceded by
24 an insolvent insurer (as such term is defined in section
25 1001) subject to this title shall be assumed by affected
26 guaranty associations unless the receiver shall have termi-

1 nated such contract or contracts pursuant to their terms
2 prior to the order of liquidation (in this section referred
3 to as the “coverage date”). From and after the coverage
4 date, the guaranty association is deemed to have assumed
5 the rights and obligations of the reinsurance contracts,
6 subject only to its right to terminate pursuant to sub-
7 section (f) of this section. The following paragraphs (1)
8 through (4) shall apply to reinsurance contracts so as-
9 sumed until terminated under subsection (f) of this sub-
10 section:

11 (1) The guaranty association shall be respon-
12 sible for all unpaid premiums due under the reinsur-
13 ance contracts (for periods both before and after the
14 coverage date), and shall be responsible for the per-
15 formance of all other obligations to be performed
16 after the coverage date, in each case which relates
17 to policies of insurance covered (in whole or in part)
18 under Title X or XI. The guaranty association may
19 charge policies of insurance covered in part by the
20 guaranty association, through reasonable allocation
21 methods, the costs for reinsurance in excess of the
22 obligations of the guaranty association.

23 (2) The guaranty association shall be entitled to
24 any amounts payable by the reinsurer under the re-
25 insurance contracts with respect to losses or events

1 that occur in periods after the coverage date and
2 that relate to policies of insurance covered (in whole
3 or in part) under subtitle A of title X, provided that,
4 upon receipt of any such amounts, the guaranty as-
5 sociation shall be obliged to pay to the beneficiary
6 under the insurance policy on account of which the
7 amounts were paid a portion of the amount equal to
8 the excess of (A) the amount received by the guar-
9 anty association, over (B) the benefits paid by the
10 guaranty association on account of the insurance
11 policy less the retention of the impaired or insolvent
12 member insurer (as such terms are defined in para-
13 graphs (11) and (12) of section 1001) applicable to
14 the loss or event.

15 (3) Within 30 days following the coverage date,
16 the guaranty association and each reinsurer under
17 reinsurance contracts assumed by the guaranty asso-
18 ciation (in this section referred to as the “indemnity
19 reinsurer”) shall calculate the net balance due to or
20 from the guaranty association under each such rein-
21 surance contract as of the coverage date, which cal-
22 culation shall give full credit to all items paid by ei-
23 ther the company or its receiver) or the indemnity
24 reinsurer prior to the coverage date. Either the
25 guaranty association or indemnity reinsurer shall

1 pay the net balance due the other within 5 days of
2 the completion of the aforementioned calculation. If
3 the receiver has received any amounts due the guar-
4 anty association pursuant to paragraph (2), the re-
5 ceiver shall remit the same to the guaranty associa-
6 tion as promptly as practicable.

7 (4) If the guaranty association, within 60 days
8 of the coverage date, pays the premiums due for pe-
9 riods both before and after the coverage date that
10 relate to policies of insurance covered by the guar-
11 anty association (in whole or in part), the reinsurer
12 shall not be entitled to terminate the reinsurance
13 contracts for failure to pay premium (insofar as the
14 reinsurance contracts relate to policies of insurance
15 covered by the guaranty association (in whole or in
16 part)) and shall not be entitled to set off any unpaid
17 premium due for periods prior to the coverage date
18 against amounts due the guaranty association.

19 (c) CONTINUATION OF REINSURANCE CONTRACTS
20 REINSURING POLICIES OF INSURANCE NOT COVERED
21 UNDER SUBTITLE A OF TITLE X SUBSEQUENT TO AN
22 ORDER OF LIQUIDATION.—When, pursuant to court ap-
23 proval under subsection (c) of section 931, or pursuant
24 to a plan approved by the court under section 979, a re-
25 ceiver continues policies of insurance in force following an

1 order of liquidation, and such policies of insurance are not
2 covered in whole or in part under subtitle A of title X,
3 the reinsurance on such policies of insurance shall also be
4 continued in force by the receiver pursuant to the terms
5 and conditions of the reinsurance contract, subject only
6 to the receiver's right to terminate pursuant to subsection
7 (f) of this section. Payment of premiums on such contracts
8 shall be chargeable against the estate as a Class 1 admin-
9 istrative expense under subsection (b) of section 975.
10 Amounts paid by the reinsurer on account of losses on
11 the policies of insurance shall be to the estate of the insol-
12 vent insurer unless the court shall, in the interest of eq-
13 uity, order otherwise. Reinsurance contracts covering poli-
14 cies of insurance that are not continued or transferred
15 pursuant to this section shall terminate pursuant to sub-
16 section (f) of this section.

17 (d) TRANSFER OF REINSURANCE CONTRACTS.—
18 When policies of insurance, or other obligations covered
19 by subtitle A of title X, are transferred to an assuming
20 insurer, and other policy obligations are transferred by the
21 receiver to an assuming insurer, reinsurance on such poli-
22 cies of insurance may also be transferred by the guaranty
23 association or the receiver, subject to the following:

24 (1) Unless the reinsurer and assuming insurer
25 agree otherwise, the reinsurance contract transferred

1 shall not cover any new policies of insurance in addi-
2 tion to those transferred.

3 (2) The obligation described in subsection
4 (b)(2) shall no longer apply.

5 (3) Notice shall be given in writing by the
6 transferring party to the affected reinsurer not less
7 than 30 days prior to the effective date of the trans-
8 fer.

9 (e) SUPERSEDE STATE LAW.—The provisions of this
10 section shall supersede the provisions of any law of any
11 State or of any affected reinsurance contracts that provide
12 for or require any payment of reinsurance proceeds, on
13 account of losses or events that occur in periods after the
14 coverage date, to the receiver of the insolvent insurer. The
15 receiver or guaranty association, as the case may be, shall
16 remain entitled to any amounts payable by the reinsurer
17 under the reinsurance contracts with respect to losses or
18 events that occur in periods prior to the coverage date
19 (subject to the provisions of this Act, including applicable
20 setoff provisions).

21 (f) TERMINATION OF REINSURANCE CONTRACTS.—
22 At any time within one year after the date of entry of
23 the order of liquidation, the guaranty association may
24 elect to terminate those reinsurance contracts covering ob-
25 ligations of the national insurer that relate to policies of

1 insurance protected (in whole or in part) under subtitle
2 A of title X, and the receiver may elect to terminate those
3 reinsurance contracts covering obligations of the national
4 insurer that relate to policies of insurance not protected
5 under subtitle A of title X. The election shall be effected
6 by a written notice to any affected reinsurer. Whenever
7 such an election is made, or whenever this Act otherwise
8 requires a reinsurance contract to be terminated, the fol-
9 lowing procedures shall apply:

10 (1) Either the reinsurer or whichever of the re-
11 ceiver or guaranty association that has the right to
12 make such election to terminate shall, upon written
13 notice to the other party to the reinsurance contract
14 no later than 30 days after the receipt by the rein-
15 surer of notice of termination, commence a manda-
16 tory negotiation and arbitration procedure in accord-
17 ance with this subsection.

18 (2) Each party shall appoint an actuary to de-
19 termine an estimated sum due as a result of the ter-
20 mination of the reinsurance contract calculated in a
21 way expected to make the parties economically indif-
22 ferent as to whether the reinsurance contract con-
23 tinues or terminates. The Director shall develop
24 guidelines for calculating the estimated sum and in
25 connection therewith shall consult the American

1 Academy of Actuaries. Such guidelines shall take
2 into account the present value of future cash flows
3 expected under the reinsurance contract and be
4 based on a gross premium valuation of net liability
5 using current assumptions that reflect post-insol-
6 vency experience expectations (without provision for
7 adverse deviation), net of any amounts payable and
8 receivable, and with a market value adjustment to
9 reflect premature sale of assets to fund the settle-
10 ment.

11 (3) Within 90 days of the written notice pursu-
12 ant to paragraph (1), each party shall provide the
13 other party with its estimate of the sum due as a
14 result of the termination of the reinsurance contract,
15 together with all relevant documents and other infor-
16 mation supporting the estimate. The parties shall
17 make a good faith effort to reach agreement on the
18 sum due.

19 (4) If the parties are unable to reach agreement
20 within 90 days following the submission of materials
21 required in paragraph (3), either party may initiate
22 arbitration proceedings as provided in the reinsur-
23 ance contract. In the event that the reinsurance con-
24 tract does not contain an arbitration clause, either
25 party may initiate arbitration pursuant to this para-

1 graph by providing the other party with a written
2 demand for arbitration. The arbitration shall be con-
3 ducted pursuant to the procedures contained in the
4 following subparagraphs (A) through (E):

5 (A) Venue for the arbitration shall be with-
6 in the district of the court's jurisdiction or such
7 other location as may be agreed to by the par-
8 ties.

9 (B) Within 30 days of the responding par-
10 ty's receipt of the arbitration demand, each
11 party shall appoint an arbitrator who is a disin-
12 terested active or former officer or executive of
13 a life insurance or reinsurance company, or
14 other professional with no less than 10 years
15 experience in or serving the life insurance or re-
16 insurance industry. The two arbitrators shall
17 appoint an independent, impartial, disinterested
18 umpire who is an active or former officer or ex-
19 ecutive of a life insurance or reinsurance com-
20 pany. If the arbitrators are unable to agree on
21 an umpire, each arbitrator shall provide the
22 other with the names of three qualified individ-
23 uals, each arbitrator shall strike two names
24 from the other's list and the umpire shall be

1 chosen by drawing lots from the remaining indi-
2 viduals.

3 (C) Within 60 days following the appoint-
4 ment of the umpire, the parties shall, unless
5 otherwise ordered by the panel, submit to the
6 arbitration panel their estimates of the sum due
7 as a result of the termination of the reinsurance
8 contract, together with all relevant documents
9 and other information supporting the estimate.

10 (D) The time periods set forth in this
11 paragraph may be extended upon mutual agree-
12 ment of the parties.

13 (E) The panel shall have all powers nec-
14 essary to conduct the arbitration proceedings in
15 a fair and appropriate manner, including the
16 power to request additional information from
17 the parties, authorize discovery, hold hearings
18 and hear testimony. The panel also may, if it
19 deems necessary, appoint independent actuarial
20 experts, the expense of which shall be shared
21 equally between the parties.

22 (F) Any arbitration panel considering the
23 matters set forth in this section shall issue a
24 written award specifying a net settlement
25 amount due from one party or the other as a

1 result of the termination of the reinsurance con-
2 tract. The court shall confirm that award ab-
3 sent proof of statutory grounds for vacating or
4 modifying arbitration awards under the Federal
5 Arbitration Act.

6 (G) If the net settlement amount agreed or
7 awarded pursuant to this section is payable by
8 the reinsurer, the reinsurer shall pay the
9 amount due to either the estate or to the guar-
10 anty association, whichever is entitled thereto,
11 subject to any applicable set-off under section
12 958. If the net settlement amount agreed or
13 awarded pursuant to this section is payable by
14 the national insurer, the reinsurer shall be enti-
15 tled to file a claim against the estate for that
16 amount, which claim shall be paid pursuant to
17 the priorities established in section 974. If the
18 net settlement amount is due the reinsurer on
19 reinsurance contracts for which the guaranty
20 association had been paying premiums and col-
21 lecting recoveries from the reinsurer, it shall be
22 paid to the reinsurer by the guaranty associa-
23 tion.

24 (g) REINSURANCE CONTRACTS NOT ALTERED OR
25 MODIFIED.—Except as otherwise expressly provided in

1 this section, nothing herein shall alter or modify the terms
2 and conditions of any reinsurance contract. Nothing here-
3 in shall abrogate or limit any rights of any reinsurer to
4 claim that it is entitled to rescind a reinsurance contract.
5 Nothing herein shall give a policyholder or beneficiary an
6 independent cause of action against an indemnity rein-
7 surer that is not otherwise set forth in the reinsurance
8 contract.

9 **Subtitle G—Creditors and Claims**

10 **SEC. 963. RIGHTS AND LIABILITIES OF CREDITORS FIXED** 11 **UPON LIQUIDATION.**

12 The rights and liabilities of the national insurer and
13 of its creditors, policyholders, shareholders, or members
14 and all other persons interested in its assets, shall be fixed
15 as of the date of the entry of the order of liquidation un-
16 less otherwise provided in this Act or by order of the court.

17 **SEC. 964. CLAIMS FILING; LATE FILING.**

18 (a) FILING PROOFS OF CLAIMS.—To the extent re-
19 quired, proof of all claims shall be filed with the receiver
20 in the form required by section 965 on or before the last
21 day established by the court, which date shall not be later
22 than 18 months after entry of the order of liquidation un-
23 less the court, for good cause shown, extends such time,
24 and except that proofs of claim for cash surrender values
25 or other investment values in life, disability income or

1 long-term care insurance or annuities need not be filed
2 unless the receiver expressly so requires.

3 (b) LIST OF PERSONS WHO HAVE NOT FILED.—

4 Upon the rehabilitation or liquidation of any national in-
5 surer which has issued insurance policies insuring the lives
6 of persons, the Director shall, within a reasonable time
7 after the last day set for the filing of claims, make a list
8 of the persons who have not filed proofs of claim and
9 whose rights have not been reinsured, to whom it appears
10 from the books of the national insurer, there are amounts
11 owing on such insurance policies and the Director shall
12 set opposite the name of each person such amount so
13 owing to such person. The Director shall incur no personal
14 liability by reason of any mistake in such list. Each person
15 whose name shall appear upon said list shall be deemed
16 to have duly filed prior to the last day set for filing of
17 claims a proof of claim for the amount set opposite his
18 or her name on said list.

19 (c) LATE FILING.—The receiver shall permit a claim-
20 ant making a late filing to share in distributions, including
21 a ratable share of distributions previously made, whether
22 past or future, as if the claim were not late-filed, to the
23 extent that the payment will not prejudice the orderly ad-
24 ministration of the receivership, under the following cir-
25 cumstances:

1 (1) The existence of the claim was not known
2 to the claimant and the claimant filed the claim as
3 promptly as reasonably possible after learning of it.

4 (2) The claim is filed pursuant to subsection
5 (b) of section 974.

6 (3) The valuation under section 968 of security
7 held by a secured creditor shows a deficiency, and
8 the claim is filed within 30 days after the valuation.

9 (d) LATE CLAIMS BY GUARANTY ASSOCIATIONS AND
10 BY REINSURERS.—The receiver shall permit guaranty as-
11 sociations, and those reinsurers whose reinsurance con-
12 tracts are terminated pursuant to section 962, to file
13 claims late and to receive a ratable share of distributions
14 previously made as if such claims were not late.

15 (e) OTHER LATE CLAIMS.—Notwithstanding the
16 foregoing, the receiver may consider and allow a late-filed
17 claim which is not covered by subsection (c) of this section
18 and permit it to receive distributions as if it had not been
19 filed late, to the extent such treatment will not prejudice
20 the orderly administration of the receivership. The late-
21 filing claimant shall receive distributions in the same per-
22 centage as other claimants in class 6, pursuant to sub-
23 section (g) of section 975.

1 **SEC. 965. PROOF OF CLAIM.**

2 (a) **CONTENT OF PROOF OF CLAIM.**—A proof of
3 claim shall consist of a statement signed by or on behalf
4 of the claimant that includes all of the following that are
5 applicable—

6 (1) the particulars of the claim, including any
7 consideration given for it;

8 (2) the identity and amount of any security for
9 the claim;

10 (3) the payments made on the debt, if any;

11 (4) that the sum claimed is justly owing and
12 that there is no set off, counterclaim, or defense to
13 the claim;

14 (5) any right of priority of payment or other
15 specific right asserted by the claimants;

16 (6) the name and address of the claimant and
17 the attorney who represents him or her, if any; and

18 (7) the claimant's social security or Federal em-
19 ployer identification number.

20 (b) **FORM PERMITTED.**—The receiver may require
21 that a prescribed form be used and may require that other
22 information and documents be included.

23 (c) **SUPPLEMENTARY INFORMATION OR EVIDENCE.**—
24 The receiver may request the claimant to present informa-
25 tion or evidence supplementary to that required under
26 subsection (a) at any time and may take testimony under

1 oath, require production of affidavits or depositions, or
2 otherwise obtain additional information or evidence.

3 (d) SINGLE OMNIBUS PROOF OF CLAIM BY GUAR-
4 ANTY ASSOCIATION.—Any guaranty association shall be
5 permitted to file a single omnibus proof of claim for all
6 claims of the guaranty association in connection with the
7 payment of claims of the insolvent national insurer. The
8 omnibus proof of claim may be periodically updated by the
9 guaranty association and the guaranty association may be
10 required to submit a reasonable amount of documentation
11 in support of the claim.

12 **SEC. 966. ALLOWANCE OF CLAIMS.**

13 (a) CLAIMS REVIEW.—The receiver shall review all
14 claims duly filed in the receivership proceeding and shall
15 further investigate as he or she considers necessary. Con-
16 sistent with the provisions of this title, the receiver may
17 compound, compromise or in any other manner negotiate
18 the amount for which claims will be recommended to the
19 court unless the receiver is required by law to accept
20 claims as settled by a person or organization, including
21 a guaranty association, subject to any statutory or con-
22 tractual rights of the affected reinsurers to participate in
23 the claims allowance process.

24 (b) CONTINGENT OR UNLIQUIDATED CLAIMS.—Ex-
25 cept as provided in section 967, a contingent or unliqui-

1 dated claim may not be allowed unless such claim becomes
2 absolute on or before the date established by the court.

3 (c) UNMATURED CLAIMS.—A claim that is
4 unmatured as of the date established by the court may
5 be allowed as if it were mature, except it shall be dis-
6 counted at the higher of the legal rate of interest accruing
7 on judgments or the rate of interest available on United
8 States Treasury securities of approximately the same ma-
9 turity.

10 (d) JUDGMENT OR ORDER AGAINST AN INSURED OR
11 NATIONAL INSURER.—A judgment or order against an in-
12 sured or the national insurer entered after the date of the
13 filing of a successful petition for rehabilitation or liquida-
14 tion and a judgment or order against an insured or the
15 national insurer entered at any time by default or by collu-
16 sion need not be considered as evidence of liability or of
17 the quantum of damages. A judgment or order against an
18 insured or the national insurer entered within 120 days
19 before the filing of the petition need not be considered as
20 evidence of liability or of the quantum of damages.

21 (e) EMPLOYMENT CONTRACT CLAIMS.—Claims
22 under employment contracts by directors, principal offi-
23 cers or persons in fact performing similar functions or
24 having similar powers are limited to payment for services
25 rendered prior to any order of rehabilitation or liquidation.

1 (f) CLAIMS ARISING FROM TRANSFERRED POLI-
2 CIES.—No claim based on breach of any policy of insur-
3 ance shall be allowed against a reinsurer where such policy
4 has been transferred to a new assuming insurer.

5 (g) TOTAL LIABILITY.—The total liability of the na-
6 tional insurer to all claimants arising out of the same act
7 or policy shall be no greater than its total liability would
8 be were the national insurer not in rehabilitation or liq-
9 uidation.

10 (h) SMALL CLAIMS DISALLOWED.—Claims equal to
11 or less than \$50 shall be disallowed.

12 **SEC. 967. ALLOWANCE OF CONTINGENT AND UNLIQUI-**
13 **DATED CLAIMS.**

14 (a) IN GENERAL.—A reported claim of an insured or
15 third party may be allowed, regardless of the fact that it
16 was contingent or unliquidated as of the date established
17 under section 964, if any contingency is removed in ac-
18 cordance with subsection (b) of this section and the value
19 of the claim is determined in accordance with subsection
20 (c) of this section.

21 (b) CONTINGENT CLAIM.—A contingent claim may be
22 allowed—

23 (1) if the claimant has presented proof of the
24 insurer's obligation to pay reasonably satisfactory to
25 the receiver; or

1 (2)(A) the claim was based upon a cause of ac-
2 tion against an insured of the national insurer;

3 (B) it may be reasonably inferred from proof
4 presented upon the claim that the claimant would be
5 able to obtain a judgment; and

6 (C) the person has furnished suitable proof, un-
7 less the court for good cause shown shall otherwise
8 direct, that no further valid claims can be made
9 against the national insurer arising out of the cause
10 of action other than those already presented.

11 (c) UNLIQUIDATED CLAIM.—

12 (1) An unliquidated claim may be allowed if—

13 (A) its amount has been determined; or

14 (B) its amount remains undetermined, the
15 valuation of the unliquidated claim may be
16 made by estimate whenever the receiver deter-
17 mines that either liquidation of the claim would
18 unduly delay the administration of the receiver-
19 ship proceeding or that the administrative ex-
20 pense of processing and adjudicating the claim
21 or group of claims of a similar type would be
22 unduly excessive when compared with the assets
23 that are estimated to be available for distribu-
24 tion with respect to the claim.

1 (2) Any estimate shall be based on an accepted
2 method of valuing claims with reasonable certainty,
3 such as actuarial evaluation.

4 **SEC. 968. RESERVE FOR THIRD PARTY CLAIMS AGAINST IN-**
5 **SURED.**

6 (a) **THIRD PARTY FILERS.**—If a third party asserts
7 a cause of action against an insured, the third party may
8 file a claim, which claim may be allowed as provided in
9 section 966.

10 (b) **FILING BY INSURED.**—Whether or not the third
11 party files a claim, the insured may file a claim on his
12 or her behalf. The receiver, in his or her discretion, may
13 elect to evaluate such claim under section 967(c) or sub-
14 section (c) of this section.

15 (c) **ELIMINATION OF CLAIM.**—The receiver may esti-
16 mate the amount of an insured's reported claim after con-
17 sideration of the probably outcome of any pending action
18 against the insured on which the claim is based, the prob-
19 able damages recoverable in the action and the probable
20 costs and expenses of defense. Upon the receiver's petition
21 and after approval by the court, the receiver shall set aside
22 funds equal to the dividend which would be payable on
23 the claim as estimated, pending the outcome of litigation
24 and negotiation between the insured and the third party.
25 The receiver may reconsider the amount withheld under

1 this subsection on the basis of additional information and
2 petition the court as he or she deems appropriate. After
3 notice and a hearing, the court may amend its allowance
4 as appropriate. As claims against the insured are settled
5 or barred, the claim of the insured shall be allowed and
6 there shall be paid from the amount reserved the same
7 percentage dividend as was paid on other claims of the
8 same priority, based on the lesser of—

9 (1) the amount actually due from the insured
10 on the basis of a judgment or by agreement with the
11 third party, plus the reasonable costs and expense of
12 defense; or

13 (2) the amount of the estimate approved by the
14 court and for which provision was made in accord-
15 ance with this subsection.

16 After all claims are settled or barred, any sum remaining
17 from the amount withheld shall revert to the undistributed
18 assets of the national insurer.

19 (d) MULTIPLE CLAIMS.—If several claims founded
20 upon one policy are filed, whether by third parties or as
21 claims by the insured under this section, and the aggre-
22 gate allowed of the claims exceeds the aggregate policy
23 limits, the policy limits shall be apportioned ratably among
24 the allowed claims. If any insured's claim is subsequently
25 reduced under subsection (c), the amount thus freed shall

1 be apportioned ratably among the claims which have been
2 reduced under this subsection.

3 (e) EXCEPTION.—No claim may be allowed under
4 this section to the extent it is covered by any guaranty
5 association.

6 **SEC. 969. ALLOWANCE OF SECURED CLAIMS.**

7 (a) DETERMINATION OF VALUE OF SECURITY.—The
8 value of security held by a secured creditor shall be
9 determined—

10 (1) by converting the same into money accord-
11 ing to the terms of the agreement pursuant to which
12 the security was delivered to the creditors; or

13 (2) by agreement, arbitration, compromise, or
14 litigation between the creditor and the receiver.

15 (b) PROCEDURE.—The determination shall be under
16 the court's supervision and control with due regard for the
17 receiver's recommendation. The amount determined shall
18 be credited upon the secured claim and any deficiency
19 shall be treated as an unsecured claim. If the claimant
20 surrenders his or her security to the receiver, the entire
21 claim shall be allowed as if unsecured.

22 **SEC. 970. PRELIMINARY NOTICE OF CLAIMS DETERMINA-**
23 **TION.**

24 (a) IN GENERAL.—Except as otherwise provided in
25 this title, after consideration of claims in accordance with

1 sections 966, 967, 968, and 969 the receiver shall provide
2 notice of his or her preliminary determination and of the
3 right to object to the claimant or the claimant's represent-
4 ative and to any reinsurer which is or would be liable to
5 the receiver in respect of the claim if it were allowed. No-
6 tice shall be sent by first class mail to the intended recipi-
7 ent's last known address, according to the receiver's
8 records, and shall include a description of the claim pro-
9 posed to be allowed or denied, the rationale for such allow-
10 ance or denial, and the procedures for submitting objec-
11 tions to the receiver.

12 (b) FILING OF OBJECTIONS.—Within 60 days from
13 the mailing of the notice, the claimant or the reinsurer
14 may file written objections with the receiver. Any claimant
15 or reinsurer who fails to object on a timely basis may not
16 further object to that claim determination.

17 (c) SUBMISSION OF UNRESOLVED OBJECTION TO
18 COURT.—Whenever an objection is filed with the receiver
19 and the matter is not resolved by the parties, the receiver
20 shall submit the claim with his or her final determination
21 to the court in accordance with section 973.

22 **SEC. 971. CLAIMS OF CO-DEBTORS.**

23 (a) IN GENERAL.—If a creditor, whose claim against
24 an insurer is secured in whole or in part by the under-
25 taking of another person, fails to prove and file that claim,

1 the other person may do so in the creditor's name and
2 shall be subrogated to the rights of the creditor, whether
3 the claim has been filed by the creditor or by the other
4 person in the creditor's name, to the extent that he or
5 she discharges the undertaking. In the absence of an
6 agreement with the creditor to the contrary, the other per-
7 son shall not be entitled to any distribution until the
8 amount paid to the creditor on the undertaking plus the
9 distributions paid on the claim from the insurer's estate
10 to the creditor equals the amount of the entire claim of
11 the creditor. Any excess received by the creditor shall be
12 held by him or her in trust for the other person.

13 (b) DEFINITIONS.—For purposes of this section, the
14 term “other person” is not intended to apply to a guaranty
15 association.

16 **SEC. 972. APPROVAL OF AGREED CLAIMS.**

17 (a) IN GENERAL.—Claims with respect to which no
18 objection is filed on a timely basis under 970 shall be
19 treated as agreed claims under this section.

20 (b) UNRESOLVED DISPUTES.—Unresolved disputes
21 shall be determined in accordance with section 973 or as
22 otherwise provided in this Act.

23 (c) REPORT OF AGREED CLAIMS.—As soon as prac-
24 ticable, the receiver shall file with the court a report of
25 the agreed claims against the national insurer with his or

1 her recommendation. The report shall include the name
2 and address of each claimant and the amount of the claim
3 finally recommended, if any. If the national insurer has
4 issued annuities or life insurance policies, the receiver
5 shall report the persons, according to the records of the
6 national insurer, to whom amounts are owed as cash sur-
7 render values or other investment value and the amounts
8 owed.

9 (d) NOTICE.—Notice of the proposed allowance or
10 disallowance of any claim under this section shall be given
11 as provided at section 947.

12 (e) COURT ACTION.—The court may, not sooner than
13 14 days from the date notice was mailed pursuant to sub-
14 section (d), approve, disapprove or modify the receiver's
15 claim report.

16 **SEC. 973. DENIAL OF A CLAIM.**

17 (a) NOTICE OF DENIED CLAIM.—If the receiver de-
18 nies a claim in whole or in part, he or she shall provide
19 notice of the final determination and hearing as provided
20 at section 947, by first class mail at the last known ad-
21 dress, according to the receiver's records.

22 (b) HEARING.—A hearing shall be held with respect
23 to the claim determination, not sooner than 14 days from
24 the date notice was mailed pursuant to subsection (a) of
25 this section.

1 **SEC. 974. CLAIM BY CREDITOR IN RECEIPT OF VOIDABLE**
2 **TRANSFER.**

3 (a) IN GENERAL.—The court shall disallow the claim
4 of any entity from which property is recoverable under sec-
5 tion 956 or that is the transferee of a transfer voidable
6 under section 951, 952, 953, or section 955, or a similar
7 provision of the laws of the United States other than
8 under this title, unless such entity or transferee has paid
9 the amount, or turned over any such property, for which
10 such entity or transferee is liable under said sections. If
11 the avoidance is effected by a proceeding in which a final
12 judgment has been entered, the claim shall not be allowed
13 unless the money is paid or the property is delivered to
14 the receiver within 30 days from the date of the entering
15 of the final judgment, unless the court allows further time
16 for an appeal or other continuation of the proceeding.

17 (b) EXCUSED LATE FILING.—A claim arising by rea-
18 son of the recovery of property under section 949 or sec-
19 tion 956, whether voluntary or involuntary, may be filed
20 as an excused late filing under subsection (c) of section
21 964 if filed within 30 days from the date of the avoidance
22 or within the further time allowed by the court.

23 **SEC. 975. PRIORITY OF DISTRIBUTION.**

24 (a) IN GENERAL.—The priority of distribution from
25 the national insurer's general assets shall be in accordance
26 with the order in which each class of claims is set forth

1 in this section. Every claim in each class shall be paid
2 in full or adequate funds retained for their payment before
3 the members of the next class receive payment. Except
4 as provided in subsection (b)(7) of this section, section
5 937, and subsection (e) of section 978, subclasses shall
6 not be established within a class.

7 (b) CLASS 1.—Class 1 claims shall be the costs and
8 expenses of administration, including the following:

9 (1) The actual and necessary costs of pre-
10 serving or recovering the national insurer's assets.

11 (2) Reasonable compensation for all services
12 rendered by or to the receiver.

13 (3) Any necessary filing fees.

14 (4) The fees and mileage payable to witnesses.

15 (5) The reasonable expenses of a guaranty asso-
16 ciation, including overhead, salaries and other gen-
17 eral administrative expenses, allocable to such receiv-
18 ership, to include administrative and claims handling
19 expenses and expenses in connection with arrange-
20 ments for ongoing coverage, other than expenses in-
21 curred in the performance of duties relating to the
22 detection and prevention of insolvencies.

23 (6) Amounts described in the second sentence
24 of subsection (c) of section 962.

1 (7) Unsecured loan and other credit obligations
2 incurred by the receiver. Any such obligation shall
3 have priority over all other costs of administration.

4 (c) CLASS 2.—Class 2 claims shall be as follows:

5 (1) All claims under insurance policies, includ-
6 ing claims under nonassessable policies for unearned
7 premium; all other claims of a guaranty association
8 not included in Class 1 or Class 5; and in the case
9 of a guaranty association covering life, disability in-
10 come or long-term care insurance or annuities, all
11 claims as a creditor of the impaired or insolvent na-
12 tional insurer for all payments of and liabilities in-
13 curred on behalf of covered claims or covered obliga-
14 tions of the national insurer and for the funds need-
15 ed to reinsure those obligations with a solvent in-
16 surer.

17 (2) If it is provided by written agreement, stat-
18 ute or rule that the assets in a separate account are
19 not chargeable with the liabilities arising out of any
20 other business of the national insurer, that part of
21 a claim that includes a separate account shall be
22 satisfied out of the assets in the separate account
23 equal to the reserves maintained in the separate ac-
24 count under the separate account agreement. The
25 remainder of the claim shall be treated as a Class

1 2 claim to the extent that reserves therefore have
2 been established in the national insurer's general ac-
3 count pursuant to statute, rule or the separate ac-
4 count agreement.

5 (3) A claim involving liabilities and other obli-
6 gations of a protected cell established pursuant to
7 section 323 shall be satisfied solely out of the assets
8 in the protected cell. The remainder of the claim
9 shall be deemed to be zero for purposes of this title.

10 (4) Notwithstanding the foregoing, the fol-
11 lowing claims shall be excluded from Class 2 pri-
12 ority:

13 (A) Obligations of the insolvent national
14 insurer arising out of reinsurance contracts
15 issued by the national insurer.

16 (B) Obligations incurred after the expira-
17 tion date of the insurance policy or after the in-
18 surance policy has been replaced by the insured
19 or canceled at the insured's request or after the
20 insurance policy has been canceled as provided
21 in this title. Notwithstanding this subsection,
22 unearned premium claims on insurance policies,
23 other than reinsurance contracts issued by the
24 insurer, shall not be excluded.

1 (C) Any claim which is in excess of any ap-
2 plicable limits provided in the insurance policy
3 issued by the insolvent national insurer.

4 (D) Any amount accrued as punitive or ex-
5 emplary damages unless expressly covered
6 under the terms of the insurance policy.

7 (E) Tort claims of any kind against the
8 national insurer and claims against the national
9 insurer for bad faith or wrongful settlement
10 practices.

11 (d) CLASS 3.—Class 3 claims shall be debts due to
12 employees for services performed to the extent that they
13 do not exceed \$1,000 and represent payment for services
14 performed within 1 year before the filing of the petition
15 for receivership proceeding. Officers and directors are not
16 entitled to the benefit of this priority. This priority is in
17 lieu of any other similar priority that may be authorized
18 by law as to wages or compensation of employees.

19 (e) CLASS 4.—Class 4 shall be claims of general
20 creditors not included in Classes 1 through 3, including
21 claims under reinsurance contracts issued by the insurer,
22 claims by reinsurers for amounts due under reinsurance
23 contracts terminated pursuant to subsection (f) of section
24 962 and claims of guaranty associations for assessments
25 not paid by the national insurer.

1 (f) CLASS 5.—Class 5 claims shall be claims of the
2 Federal Government and any State or local government
3 not included in Class 2. Claims, including those of the
4 Federal Government, or of any State or local govern-
5 mental body for a penalty or forfeiture, are allowed in this
6 class only to the extent of the pecuniary loss sustained
7 from the act, transaction, or proceeding out of which the
8 penalty or forfeiture arose, with reasonable and actual
9 costs incurred. The remainder of the claims shall be post-
10 poned to the class of claims under subsection (i).

11 (g) CLASS 6.—Class 6 claims shall be late filed claims
12 which would otherwise be classified in Classes 2 through
13 5.

14 (h) CLASS 7.—Class 7 claims shall be surplus, capital
15 or contribution notes, or similar obligations, and premium
16 refunds on assessable policies.

17 (i) CLASS 8.—Class 8 claims shall be the claims of
18 shareholders or other owners.

19 **SEC. 976. LIQUIDATOR'S PROPOSAL FOR EARLY ACCESS**
20 **DISBURSEMENTS.**

21 (a) IN GENERAL.—Within 120 days of a final order
22 of liquidation the liquidator shall make application to the
23 court for approval of a proposal to make early access dis-
24 bursements out of marshaled assets, to any guaranty asso-

1 ciation having obligations because of the insolvency of a
2 national insurer.

3 (b) CONTENT OF PROPOSAL.—The proposal shall at
4 least include provisions for—

5 (1) reserving amounts for the payment of ex-
6 penses of administration and the payment of claims
7 of secured creditors, to the extent of the value of the
8 security held, and claims falling within the priorities
9 established in Class 1 and, to the extent not within
10 guaranty association coverage, Class 2 of section
11 975;

12 (2) initial disbursement of the assets marshaled
13 to date, which shall be as soon as practicable and in
14 any case not later than 120 days after approval of
15 the early access plan, and subsequent disbursement
16 of assets which shall be at least annually;

17 (3) equitable allocation of disbursements to
18 each of the guaranty associations entitled thereto;

19 (4) the securing by the liquidator from each of
20 the guaranty associations entitled to disbursements
21 pursuant to this section of an agreement to return
22 to the liquidator such assets, together with invest-
23 ment income actually earned on assets previously
24 disbursed, as may be required to pay claims of se-
25 cured creditors and claims falling within the prior-

1 ities established in section 975 accordance with such
2 priorities, and no bond shall be required of the guar-
3 anty association;

4 (5) a full report to be made by each guaranty
5 association to the liquidator accounting for all assets
6 so disbursed to the guaranty association, all dis-
7 bursements made therefrom, any interest earned by
8 the guaranty association on the assets and any other
9 matter as the court may direct;

10 (6) disbursements to guaranty associations in
11 sums as large as possible, subject to the limitations
12 set forth in subsection (b)(1); if the liquidator deter-
13 mines that there are insufficient assets to disburse
14 at the time of any required disbursement, the liqui-
15 dator shall make application to the court, with no-
16 tice to the affected guaranty associations pursuant
17 to subsection (b) of section 916 for approval of the
18 determination not to disburse, stating the reasons
19 therefore;

20 (7) the liquidator's proposal shall provide for
21 disbursements to the guaranty associations in
22 amounts estimated at least equal to the sum of—

23 (A) claim payments and allocated loss ad-
24 justment expenses of the guaranty association;
25 and

1 (B) reserves as established by the guaranty
2 association for reported unpaid claims and allo-
3 cated loss adjustment expenses; amounts used
4 for (A) and (B) above shall be those reported
5 to the liquidator by the guaranty association in
6 its most recent financial report to the liqui-
7 dator; the liquidator's proposal shall further
8 provide that if the assets available for disburse-
9 ment from time to time do not equal or exceed
10 the amount of claim payments made or to be
11 made by the guaranty association then dis-
12 bursements shall be in the amount of available
13 assets; the liquidator shall liquidate the assets
14 of the national insurer in an expeditious man-
15 ner, but is not required to make forced or quick
16 sales that would result in obtaining less than
17 market value for assets; unless otherwise pro-
18 vided for by the court, the reserves of the insol-
19 vent national insurer as reflected in its records
20 on the date of the order of liquidation shall be
21 used for purposes of determining the pro rata
22 allocations of initial disbursements among eligi-
23 ble guaranty associations; and

24 (8) the liquidator may not offset the amount to
25 be disbursed to any guaranty association by the

1 amount of any “special deposit” or any other statu-
2 tory deposit or asset of the insolvent national insurer
3 unless such deposit has been forwarded to the asso-
4 ciation.

5 (c) GUARANTY ASSOCIATION METHOD.—Nothing in
6 this section shall affect the method in which life insurance
7 guaranty associations or property casualty associations
8 compute their coverage obligations.

9 **Subtitle H—The Plan**

10 **SEC. 977. WHO MAY FILE A PLAN.**

11 (a) IN GENERAL.—Except as otherwise provided in
12 this section, only the receiver may file a plan within 1 year
13 after the earlier of the date of the order of rehabilitation
14 or liquidation under this title.

15 (b) OTHER PERMITTED PLAN FILERS.—Any party
16 in interest may file a plan only if—

17 (1) the receiver has not filed a plan within 1
18 year after the earlier of the date of the order of re-
19 habilitation or liquidation under this title; or

20 (2) the receiver has not filed a plan that has
21 been approved by the court, within 18 months after
22 the earlier of the date of the order of rehabilitation
23 or liquidation under this title.

24 (c) REDUCTION OR INCREASE IN TIME PERIODS.—
25 On request of a party in interest made within the respec-

1 tive periods specified in subsections (b)(1) and (b)(2) and
2 after such notice as the court deems appropriate, the court
3 may for cause reduce or increase the time periods of either
4 subsection.

5 (d) PLAN OBJECTIONS OR MODIFICATIONS.—Once a
6 plan has been filed, any party in interest may object to
7 the plan or propose modifications to it.

8 **SEC. 978. CONTENTS OF A PLAN.**

9 (a) REQUIRED PLAN PROVISIONS.—A plan shall—

10 (1) except as provided at subsection (e), provide
11 the same treatment for each claim or interest of a
12 particular class, unless the holder of a particular
13 claim or interest agrees to a less favorable treatment
14 of such particular claim or interest;

15 (2) provide adequate means for the plan's im-
16 plementation;

17 (3) contain adequate information concerning
18 the financial condition of the national insurer and
19 the operation and effect of the plan, in sufficient de-
20 tail as far as is reasonably practicable in light of the
21 nature and history of the national insurer, the condi-
22 tion of the national insurer's books and records and
23 the nature of the plan. Alternatively, the plan itself
24 may identify the sources of such information as con-

1 tained in the document depository established pursu-
2 ant to section 942;

3 (4) provide for the transfer of books, records,
4 documents and other information relevant to the du-
5 ties and obligations covered by the plan;

6 (5) provide for the notice to parties in interest
7 of the provisions of the plan and an opportunity to
8 be heard;

9 (6) provide for the termination of the receiver-
10 ship proceedings and discharge of the receiver, if ap-
11 propriate; and

12 (7) provide for the continuation of policies of
13 insurance (subject to the terms of the policies, in-
14 cluding any restructured provisions effected under
15 subsection (d) of this section) not protected (in
16 whole or in part) under subtitle A of title X, and for
17 reinsurance contracts on such policies of insurance,
18 that are not terminable by the insurer under the
19 terms of the policies of insurance or by the receiver
20 pursuant to subsection (f) of section 962.

21 (b) PERMITTED PLAN PROVISIONS.—A plan may in-
22 clude any other provisions not inconsistent with the provi-
23 sions of this title, including—

24 (1) payment of a dividend pursuant to section
25 981;

1 (2) assumption or reinsurance of all or a por-
2 tion of the national insurer's remaining liabilities by,
3 and transfer of assets to, an insurer or other entity;

4 (3) to the extent appropriate, provide for appli-
5 cation of the market conduct standards contained in
6 subtitle F of title III to any entity administering
7 claims on behalf of the receiver or assuming direct
8 liabilities of the national insurer;

9 (4) contracting with a State guaranty associa-
10 tion or any other qualified entity to perform the ad-
11 ministration of claims covered and/or not covered by
12 guaranty associations;

13 (5) a provision for annual independent financial
14 and performance audits of any entity administering
15 claims on behalf of the receiver which is not other-
16 wise subject to examination pursuant to section
17 202(a); and

18 (6) termination of the national insurer's liabil-
19 ities as of a date certain.

20 (c) LIQUIDATION ORDER; LIQUIDATING TRUST PER-
21 MITTED.—If the court has entered an order of liquidation
22 pursuant to this title, any plan may include provisions
23 which—

24 (1) establish a liquidating trust pursuant to
25 section 982;

1 (2) establish one or more reinsurance recover-
2 able trusts pursuant to section 986; or

3 (3) require mandatory negotiation and arbitra-
4 tion procedures pursuant to section 985.

5 (d) INSURERS OF LIFE, DISABILITY INCOME, OR
6 LONG-TERM CARE INSURANCE OR ANNUITIES.—If the
7 national insurer has provided life, disability income, or
8 long-term care insurance or annuities, the plan may mod-
9 ify and restructure insurance policies or provide substitute
10 policies of insurance, subject to the limitations imposed
11 under subsection (b)(2) of section 1009.

12 (e) CERTAIN CLASSIFIED CLAIMS.—As to claims
13 which are classified under subsections (c), (e), or (f) of
14 section 975, a plan may designate and separately treat
15 one or more separate sub-classes consisting only of those
16 claims within such classes that are for or reduced to de
17 minimis amounts. A de minimis amount shall be any
18 amount equal to or less than a maximum de minimis
19 amount approved by the court as being reasonable and
20 necessary for administrative convenience.

21 **SEC. 979. COURT APPROVAL OF PLAN.**

22 (a) CONDITIONS OF APPROVAL.—After notice and a
23 hearing, the court shall approve a plan only if it finds
24 that—

1 (1) the plan complies with the applicable provi-
2 sions of this title; and

3 (2) with respect to each class of claims, each
4 claimant of such class will receive or retain under
5 the plan on account of such claim property of a
6 value, as of the effective date of the plan, that is not
7 less than the amount that such claimant would re-
8 ceive or retain if the insurer were liquidated within
9 a time period that is reasonable.

10 (b) INSURERS OF LIFE, DISABILITY INCOME, OR
11 LONG-TERM CARE INSURANCE OR ANNUITIES; CONSENT
12 BY GUARANTY ASSOCIATIONS.—Notwithstanding any
13 other provision of this subtitle, if the plan proposes to re-
14 structure or substitute life, disability income, or long-term
15 care insurance policies or annuity contracts, the court may
16 not approve the plan unless each guaranty association
17 whose obligations are affected in any way by such modi-
18 fication or restructuring or substitution has given its writ-
19 ten consent thereto. In the event that obligations under
20 the policies or contracts are reinsured by one or more rein-
21 surance contracts, those reinsurance contracts may either
22 remain in force with the consent of the reinsurer or be
23 terminated pursuant to subsection (f) of section 962.

1 **SEC. 980. EFFECT OF COURT APPROVAL OF PLAN.**

2 (a) IN GENERAL.—Upon its entry, the provisions of
3 a plan and the order approving it bind the national in-
4 surer, any entity acquiring property under the plan, all
5 policyholders, creditors, and equity holders of the national
6 insurer.

7 (b) STATUS OF PROPERTY DEALT WITH BY PLAN.—
8 Except as provided in the plan or in the order approving
9 the plan, after court approval of a plan, the property dealt
10 with by the plan shall be free and clear of all claims and
11 interests of creditors and equity holders of the national
12 insurer.

13 **SEC. 981. PARTIAL AND FINAL DISTRIBUTIONS OR DIVI-**
14 **DENDS.**

15 (a) IN GENERAL.—Pursuant to a plan, a receiver
16 may declare and pay a partial or final distribution or divi-
17 dend to claimants whose claims have been allowed as pro-
18 vided in this title, or fixed as provided in subsection (c)
19 of this section.

20 (b) BASIS FOR DISTRIBUTION OF DIVIDEND.—In de-
21 termining the percentage of distributions or dividends to
22 be paid on such claims, the receiver may consider the esti-
23 mated value of the assets (including estimated reinsurance
24 recoverables and the estimated value of the insurer's liabil-
25 ities) and the estimated value of the national insurer's li-
26 abilities (including estimated liabilities for unpaid losses

1 and loss expenses and for incurred but not reported losses
2 and loss expenses).

3 (c) ESTIMATIONS.—The estimation authorized pursu-
4 ant to this section may be used for purposes of fixing a
5 creditor's claim in the estate and for determining the per-
6 centage of a partial or final distribution or dividend.

7 (d) CLAIMS OF REINSURERS; INCURRED BUT NOT
8 REPORTED LOSSES.—Nothing in this section or any other
9 section of this title, shall be construed as authorizing the
10 receiver, or any other entity, to compel payment from a
11 reinsurer on the basis of estimated incurred but not re-
12 ported losses or loss expenses, except with respect to
13 claims allowed pursuant to section 967. The obligation of
14 reinsurers to make payments to the national insurer shall
15 be determined on the basis of reported claims that have
16 been allowed pursuant to subtitle G.

17 **SEC. 982. TRANSFER OF ASSETS AND LIABILITIES TO LIQUI-**
18 **DATING TRUST.**

19 (a) If there has been an order of liquidation entered
20 in the receivership proceeding then, pursuant to a plan,
21 a receiver may establish one or more liquidating trusts.
22 In the case of a liquidating trust established in connection
23 with a plan for a national insurer that issues property and
24 casualty insurance: Some or all of the national insurer's
25 assets and liabilities may be transferred to such trust.

1 (b) For purposes of this section:

2 (1) A future claim under this section is one
3 which is incurred but not reported to the national
4 insurer as of the date the liquidating trust is estab-
5 lished pursuant to this section.

6 (2) A future claimant under this section is a
7 person who has, or may have, a future claim against
8 the national insurer.

9 (c) The receiver may declare and pay distributions
10 or dividends as provided in section 981 while reserving for
11 the benefit of future claimants a similar percentage divi-
12 dend to be paid on future claims in accordance with sub-
13 section (d) of this section.

14 (d) Future claimants may share in the proceeds of
15 the liquidating trust only when, and to the extent, that
16 any future claim is allowed pursuant to subtitle G.

17 (e) The receiver may petition the court for the ap-
18 pointment of a future claim representative who shall have
19 the power to represent the interests of those who may as-
20 sert future claims against the national insurer. Notwith-
21 standing this subsection, a future claimant may elect to
22 represent his, her or its own interests and may opt out
23 of being represented by the future claims representative.

24 (f) The liquidator may terminate liquidation pro-
25 ceedings and/or dispose of property free and clear of the

1 obligation to future claimants or any other individual or
2 entity as long as such property was disposed of in accord-
3 ance with this section and other applicable provisions of
4 a plan authorized by section 978.

5 **SEC. 983. COLLATERALIZATION OF CASE RESERVES AND**
6 **INCURRED BUT NOT REPORTED LOSSES.**

7 (a) Upon the entry of a receivership order, and con-
8 tinuing thereafter, reinsurers that are required to
9 collateralize their obligations to the national insurer pur-
10 suant to contract or law shall be required to maintain such
11 collateralization in accordance with the terms of the appli-
12 cable law or contract.

13 (b) Any dispute concerning the appropriate amount
14 of collateral shall be determined in accordance with the
15 procedure established in section 985(b).

16 **SEC. 984. COMMUTATIONS.**

17 (a) The receiver may, in his or her discretion, enter
18 into a voluntary commutation and release of all obligations
19 arising from reinsurance agreements entered into by the
20 national insurer, subject to the approval of the court.

21 (b) Nothing in this section, or any other provision
22 of this Act, shall be construed to override or impair any
23 provision in a reinsurance agreement which establishes a
24 commercially reasonable and actuarially sound method for
25 valuing and commuting the obligations of the parties to

1 the reinsurance agreement; provided, however, that such
2 commutation provision shall not be effective if it is dem-
3 onstrated to the court that at the time such provision was
4 entered into, the parties had reasonable cause to believe
5 that the national insurer was insolvent or was about to
6 become insolvent. Any such contractual commutation pro-
7 vision entered into within one year of the liquidation order
8 of the national insurer shall be rebuttably presumed to
9 have been entered into with reasonable cause to believe
10 that the national insurer was insolvent or about to become
11 insolvent.

12 **SEC. 985. MANDATORY NEGOTIATION AND ARBITRATION.**

13 (a)(1) The receiver may apply to the court, with no-
14 tice to the other party to the reinsurance agreement, for
15 an order requiring the parties to submit to a mandatory
16 negotiation and arbitration procedure in accordance with
17 subsection (b), if—

18 (A) the ratio of the national insurer's actuari-
19 ally estimated casualty losses to the sum of (i) re-
20 ported claims on casualty losses allowed by the court
21 and (ii) actuarially estimated casualty losses, is 25
22 percent or less; or

23 (B) the reinsurer's total adjusted capital is at
24 or below 200 percent of its authorized control level
25 for risk-based capital purposes.

1 (2) For purposes of this subsection—

2 (A) the term “casualty losses” means the na-
3 tional insurer’s aggregate losses arising out of insur-
4 ance contracts in the following lines: Farm owners
5 Multiperil, Homeowners Multiperil, Commercial
6 Multiperil, Medical Malpractice, Workers’ Com-
7 pensation, Other Liability, Products Liability, Auto
8 Liability, Aircraft (all peril) and International (of
9 the foregoing lines); and

10 (B) the term “actuarially estimated casualty
11 losses” means actuarially estimated incurred but not
12 reported casualty losses and estimated case reserves
13 for claims not yet allowed by the court.

14 (b)(1) Within 90 days of the court’s order pursuant
15 to subsection (a) of this section, or from the date that
16 either party to a reinsurance agreement demands arbitra-
17 tion pursuant to section 983(b), each party shall provide
18 the other party with an estimate of the liabilities between
19 the parties and all relevant documents and other informa-
20 tion supporting the estimate, including but not limited to:
21 underlying premium, commission and loss data; estimated
22 incurred but not reported losses; projected ultimate pay-
23 out; net present value and the discount factor proposed.

24 (2) If the parties are unable to reach agreement with-
25 in 90 days following the submission of materials required

1 in paragraph (1) of this subsection, either party may ini-
2 tiate the arbitration procedure set forth in paragraph (3)
3 of this subsection by providing the other party with a de-
4 mand for arbitration. A copy of the demand shall be
5 promptly provided to the court by the liquidator.

6 (3) Venue for the arbitration shall be within the dis-
7 trict of the court's jurisdiction or such other location as
8 may be agreed to by the parties.

9 (A) Within 30 days of the responding party's
10 receipt of the arbitration demand, each party shall
11 appoint an arbitrator who is a disinterested active or
12 inactive officer, executive or other professional with
13 no less than 10 years' experience in or serving the
14 insurance or reinsurance industry. The two arbitra-
15 tors shall appoint an independent, impartial, disin-
16 terested umpire who is an active or inactive officer
17 or executive of an insurance or reinsurance com-
18 pany. If the arbitrators are unable to agree on an
19 umpire, each arbitrator shall provide the other with
20 the names of three qualified individuals, each arbi-
21 trator shall strike two names from the other's list
22 and the umpire shall be chosen by drawing lots from
23 the two remaining individuals.

24 (B) Within 60 days following the appointment
25 of the umpire, the parties shall, unless otherwise or-

1 dered by the panel, submit to the arbitration panel
2 their estimates of the liabilities between the parties
3 and other documents and information relevant to the
4 determination of the parties' rights and obligations
5 under the reinsurance agreements, including but not
6 limited to: underlying premium, commission and loss
7 data; estimated incurred but not reported losses;
8 projected ultimate payout; net present value and the
9 discount factor proposed.

10 (C) The arbitration panel shall issue an award
11 with respect to the parties' obligations and the court
12 shall confirm such award absent proof of statutory
13 grounds for vacating or modifying arbitration
14 awards under the Federal Arbitration Act.

15 (D) The time periods set forth in this sub-
16 section may be extended upon mutual agreement of
17 the parties.

18 (e) Within 30 days of the issuance of the award pur-
19 suant to a receiver's application under subsection (a)(1)
20 of this section in an arbitration commenced pursuant to
21 section 983(b) over the appropriate amount of collateral,
22 either the reinsurer shall post additional collateral or the
23 national insurer shall release collateral, as necessary to
24 bring the actual amount of the collateral to the amount
25 provided for in the arbitration panel's award.

1 (d) Within 30 days of issuance of the award entered
2 pursuant to a receiver's application under subsection
3 (a)(1) of this section, the reinsurer shall give notice to the
4 receiver that it—

5 (1) opts to voluntarily commute its liabilities to
6 the insurer for the amount of the award in return
7 for a full and complete release of all liabilities be-
8 tween the parties, whether past, present or future;
9 or

10 (2) opts not to commute its liabilities to the in-
11 surer, in which case the reinsurer shall establish a
12 reinsurance recoverable trust in the amount of 102
13 percent of the award. The trust shall be established
14 and maintained in accordance with section 986. The
15 reinsurer shall pay the costs and fees associated with
16 establishing and maintaining the trust.

17 (e) If the reinsurer notifies the receiver that it opts
18 to commute its liabilities pursuant to subsection (d)(1),
19 the receiver shall have 30 days to—

20 (1) accept the reinsurer's offer and tender to
21 the reinsurer a proposed commutation and release
22 agreement providing for a full and complete release
23 of all liabilities between the parties, whether past,
24 present or future; or

1 (A) is organized, or in the case of a United
2 States branch or agency office of a foreign
3 banking organization, licensed under the laws of
4 the United States or any State thereof and has
5 been granted authority to operate with fiduciary
6 powers; and

7 (B) is regulated, supervised and examined
8 by Federal or State authorities having regu-
9 latory authority over banks and trust compa-
10 nies; and

11 (4) the term “reinsurance recoverable trust”
12 means a trust established pursuant to section 985.

13 (b) The trust agreement governing a reinsurance re-
14 coverable trust shall—

15 (1) be entered into between the beneficiary, the
16 grantor and a trustee, which shall be a qualified
17 United States financial institution;

18 (2) create a trust account into which assets
19 shall be deposited in accordance with section 985; all
20 assets in the trust account shall be held by the
21 trustee at the trustee’s office in the United States;

22 (3) provide that the beneficiary shall have the
23 right to withdraw assets from the trust, only—

24 (A) if the claim was a reported claim al-
25 lowed by the court pursuant to subtitle G;

1 (B) where the beneficiary has notified the
2 grantor, in writing, of the court's allowance of
3 the claim;

4 (C) if and to the extent that the amount
5 to be withdrawn exceeds any setoff, permitted
6 by section 958, due to the grantor;

7 (D) where 60 days has expired during
8 which the grantor has failed to either pay the
9 claim or file notice of a written dispute with re-
10 spect to the claim in accordance with the terms
11 of the reinsurance agreement; or

12 (E) if the beneficiary has complied with
13 any different or other terms and conditions mu-
14 tually agreed to by the beneficiary and the
15 grantor in the trust agreement;

16 (4) require the trustee to—

17 (A) receive assets and hold all assets in a
18 safe place;

19 (B) determine that all assets are in such
20 form that the beneficiary, or the trustee upon
21 direction by the beneficiary, may whenever nec-
22 essary negotiate any such assets, without con-
23 sent or signature from the grantor or any other
24 person or entity;

1 (C) furnish to the grantor and the bene-
2 ficiary a statement of all assets in the trust ac-
3 count upon its inception and at intervals no less
4 frequent than the end of each calendar quarter;

5 (D) notify the grantor and the beneficiary
6 within 10 days, of any deposits to or with-
7 drawals from the trust account;

8 (5) be made subject to and governed by the
9 laws of this state;

10 (6) prohibit the invasion of the trust corpus for
11 the purpose of paying compensation to, or reimburs-
12 ing the expenses of, the trustee;

13 (7) provide that the trustee shall be liable for
14 its negligence, willful misconduct or lack of good
15 faith;

16 (8) provide that the trustee may resign upon
17 delivery of a written notice of resignation, effective
18 not less than 90 days after the beneficiary and
19 grantor receive the notice and that the trustee may
20 be removed by the grantor by delivery to the trustee
21 and the beneficiary or a written notice of removal,
22 effective not less than 90 days after the trustee and
23 the beneficiary receive the notice, *Provided*, That no
24 such resignation or removal shall be effective until a
25 successor trustee has been duly appointed and ap-

1 proved by the beneficiary and the grantor and all as-
2 sets in the trust have been duly transferred to the
3 new trustee;

4 (9) provide that the grantor shall have the full
5 and unqualified right to vote any shares of stock in
6 the trust account; subject to other provisions of this
7 section, any interest or dividends paid on shares of
8 stock or other obligations in the trust account, shall
9 remain in the trust;

10 (10) specify categories of investments reason-
11 ably acceptable to the beneficiary and authorize the
12 trustee to invest funds and to accept substitutions,
13 by the grantor, that the trustee determines are at
14 least equal in market value to the assets withdrawn,
15 *Provided*, That no investment or substitution shall
16 be made without prior approval from the beneficiary,
17 which shall not be unreasonably or arbitrarily with-
18 held;

19 (11) provide that the beneficiary may at any
20 time designate a party to which all or part of the
21 trust assets are to be transferred; transfer may be
22 conditioned upon the trustee receiving, prior to or si-
23 multaneously, other specified assets;

24 (12) specify the types of assets that may be in-
25 cluded in the trust account which shall consist only

1 of cash in United States dollars, certificates of de-
2 posit issued by a United States bank and payable in
3 United States dollars, and investments permitted by
4 this State's Insurance Act or any combination of the
5 above, *Provided*, That investments in or issued by
6 any entity controlling, controlled by, or under com-
7 mon control with either the grantor or the bene-
8 ficiary of the trust shall not exceed five percent of
9 total investments; assets deposited in the trust ac-
10 count shall be valued according to their current fair
11 market value;

12 (13) give the grantor the right to seek approval
13 from the beneficiary, which shall not be unreason-
14 ably or arbitrarily withheld, to withdraw from the
15 trust account all or any part of the trust assets and
16 transfer those assets to the grantor, *Provided*,
17 That—

18 (A) the grantor shall, at the time of with-
19 drawal, replace the withdrawn assets with other
20 qualified assets so as to maintain at all times
21 the deposit in the required amount; or

22 (B) after withdrawal and transfer, the
23 market value of the trust account is no less
24 than 102 percent of the award made pursuant
25 to section 985(b)(3)(c);

1 (14) provide for the return of any amount with-
2 drawn in excess of the actual amounts required for
3 payment of reported allowed claims under paragraph
4 (3), and for interest payments at a rate not in ex-
5 cess of the prime rate of interest on the excess
6 amounts withdrawn; and

7 (15) provide for termination of the reinsurance
8 recoverable trust in accordance with subsection (f).

9 (c) Nothing in this section shall be construed as alter-
10 ing the rights or obligations of the parties pursuant to
11 contractual and statutory provisions providing for notice
12 and the determination of claims.

13 (d) The grantor shall, prior to depositing assets with
14 the trustee, execute assignments or endorsements in
15 blank, or transfer legal title to the trustee of all shares,
16 obligations or any other assets requiring assignments, in
17 order that the beneficiary, or the trustee upon the direc-
18 tion of the beneficiary, may whenever necessary negotiate
19 these assets without consent or signature from the grantor
20 or any other entity.

21 (e) Either party may request that an arbitration
22 panel review the amount held in a reinsurance recoverable
23 trust. The court may order such review upon a demonstra-
24 tion that the amount in trust is either twenty five percent
25 or more deficient or 25 percent or more in excess of the

1 reinsurer's liabilities to the national insurer. Upon such
2 a demonstration, parties shall reinitiate the procedures es-
3 tablished in section 985(b).

4 (f) A reinsurance recoverable trust shall terminate
5 upon the earlier of—

6 (1) the court approval of a voluntary commuta-
7 tion between the grantor and the beneficiary pursu-
8 ant to section 985;

9 (2) the mutual agreement of the grantor and
10 the beneficiary; or

11 (3) a finding by the court that the grantor has
12 discharged its liabilities to the beneficiary.

13 Upon termination of the trust account, all assets not pre-
14 viously withdrawn by the beneficiary, pursuant to para-
15 graph (b)(3), shall, with written approval of the bene-
16 ficiary, be delivered over to the grantor.

17 **SEC. 987. LIQUIDATING TRUST PROVISIONS.**

18 (a) As used in this section—

19 (1) the terms “beneficiary” and “beneficiaries”
20 mean the creditors of the insurer for whose sole ben-
21 efit the liquidating trust is established;

22 (2) the term “grantor” means the domiciliary
23 insurance commissioner, as receiver of the insurer,
24 or his or her designee;

1 (3) the term “qualified U.S. financial institu-
2 tion” has the same meaning given such term in sec-
3 tion 986; and

4 (4) the term “liquidating trust” means a trust
5 established pursuant to section 986.

6 (b) A liquidating trust shall be established by the
7 grantor for the benefit of the beneficiaries, subject to ap-
8 proval of the court.

9 (c) A trust agreement governing a liquidating trust
10 shall be entered into between the grantor and the trustee,
11 which shall be a qualified United States financial institu-
12 tion.

13 (d) Assets and liabilities of the national insurer may
14 be transferred to the Liquidating Trust in accordance with
15 section 982 and shall be held by the trustee at the trust-
16 ee’s office in the United States.

17 (e) The trust agreement entered into pursuant to
18 subsection (b) shall—

19 (1) identify the beneficiaries of the trust;

20 (2) enumerate the authority and duties of the
21 trust;

22 (3) specify the types of assets and categories of
23 investments that may be held in the trust account;

1 (4) provide that the trustee shall be liable for
2 its negligence, willful misconduct or lack of good
3 faith;

4 (5) be made subject to and governed by the
5 laws of this State;

6 (6) provide for the compensation of the trustee
7 and the expense of establishing and maintaining the
8 trust account;

9 (7) provide for the distribution of trust assets
10 to beneficiaries of the trust; and

11 (8) provide for termination of the trust and dis-
12 tribution of any remaining assets in the trust
13 account—

14 (A) after payments have been made to all
15 beneficiaries,

16 (B) when insufficient assets exist to war-
17 rant maintaining the trust, or

18 (C) when the amount of assets in the trust
19 to be distributed make it impractical or uneco-
20 nomic to distribute to beneficiaries.

21 (f) The trustee shall furnish to the grantor a state-
22 ment of all assets in the trust account upon its inception
23 and at intervals no less frequent than the end of each cal-
24 endar quarter.

Subtitle I—Post Plan

2 SEC. 988. UNCLAIMED AND UNDISTRIBUTED FUNDS.

3 (a) IN GENERAL.—Distributions or dividends re-
4 maining unclaimed or unpaid in the receiver's possession
5 for 6 months after the final order of distribution shall be
6 handled as other unclaimed funds and shall be paid by
7 the custodian thereof without interest to the person enti-
8 tled thereto or his or her legal representative or shall be
9 presumed abandoned and handled pursuant to the provi-
10 sions of relevant State law governing disposition of un-
11 claimed property.

12 (b) CLOSED ESTATE FUND TRUST ACCOUNT.—Sub-
13 ject to the approval of the court, after the completion of
14 all post closure activities for which moneys were reserved,
15 any remaining reserved assets as well as any other assets
16 in the hands of the receiver, that may not be practicably
17 or economically distributed to claimants, shall be deposited
18 into a segregated account to be known as the closed es-
19 tates fund trust account. The Director may use moneys
20 held in this account for paying the administrative expenses
21 of insurers subject to this title that lack sufficient assets
22 to allow the Director to perform his or her duties and obli-
23 gations under this title. An annual audit of the closed es-
24 tate fund trust account shall be performed in accordance
25 with section 943 regardless of its balance.

1 **SEC. 989. TERMINATION OF RECEIVERSHIP PROCEEDINGS**
2 **AND DISCHARGE OF RECEIVER.**

3 (a) PETITION TO CLOSE ESTATE.—When all assets
4 justifying the expense of collection and distribution have
5 been marshaled and distributed under this title, the re-
6 ceiver shall petition the court to terminate the liquidation
7 proceedings and to close the estate. The court may grant
8 such other relief as may be appropriate, including a full
9 discharge of all liability and responsibility of the receiver
10 or a reservation of assets for administrative expenses in-
11 curred in the closing of the estate. The receiver may rec-
12 ommend to the court and the court shall direct which
13 records should be retained for what periods of time and
14 which should be destroyed.

15 (b) DISSOLUTION.—If the dissolution of the insurer's
16 corporate existence has not previously been ordered, it
17 shall be effected by operation of law upon the discharge
18 of the receiver, absent a contrary provision in the plan
19 approved by the court.

20 **SEC. 990. PETITION TO REOPEN PROCEEDINGS.**

21 The Director or other party in interest may petition
22 the court at any time to reopen the proceedings for good
23 cause, including the discovery of additional assets. If the
24 court is satisfied that there is good cause for reopening,
25 it shall so order.

1 **TITLE X—INSOLVENCY**
2 **PROTECTION**

3 **Subtitle A—Life Insurance**

4 **SEC. 1001. DEFINITIONS.**

5 For purposes of this subtitle:

6 (1) **ACCOUNT.**—The term “account” means ei-
7 ther of the two accounts referred to in section 1007.

8 (2) **ASSOCIATION.**—The term “association”
9 means the State life insolvency guaranty association
10 created under the laws of the relevant State.

11 (3) **AUTHORIZED ASSESSMENT.**—The terms
12 “authorized assessment” and “authorized”, when
13 used in the context of assessments, mean the Direc-
14 tor has issued an order authorizing the corporation
15 to call an assessment immediately or in the future
16 from member insurers for a specified amount. An
17 assessment is authorized when the order is issued.

18 (4) **BENEFIT PLAN.**—The term “benefit plan”
19 means a specific employee, union or association of
20 natural persons benefit plan.

21 (5) **CALLED ASSESSMENT.**—The terms “called
22 assessment” and “called”, when used in the context
23 of assessments, mean that a notice has been issued
24 by the corporation to member insurers requiring
25 that an authorized assessment be paid within the

1 time frame set forth within the notice. An author-
2 ized assessment becomes a called assessment when
3 notice is mailed by the corporation to member insur-
4 ers.

5 (6) STATE COMMISSIONER.—The term “State
6 commissioner” means the chief insurance regulatory
7 official of a State.

8 (7) CONTRACTUAL OBLIGATION.—The term
9 “contractual obligation” means an obligation under
10 a policy or certificate under a group policy, or por-
11 tion thereof for which coverage is provided under
12 section 1006.

13 (8) COVERED PERSON.—The term “covered
14 person” means a person for whom coverage is pro-
15 vided under section 1006.

16 (9) COVERED POLICY.—The term “covered pol-
17 icy” means a policy or portion of a policy for which
18 coverage is provided under section 1006.

19 (10) EXTRA-CONTRACTUAL CLAIMS.—The term
20 “extra-contractual claims” includes claims relating
21 to bad faith in the payment of claims, punitive or ex-
22 emplary damages or attorneys’ fees and costs.

23 (11) IMPAIRED INSURER.—The term “impaired
24 insurer” means a member insurer which is not an
25 insolvent insurer, and is placed under an order of re-

1 habilitation or conservation by a court of competent
2 jurisdiction.

3 (12) INSOLVENT INSURER.—The term “insol-
4 vent insurer” means a member insurer which is
5 placed under an order of liquidation by a court of
6 competent jurisdiction with a finding of insolvency.

7 (13) MEMBER INSURER.—

8 (A) The term “member insurer” means—

9 (i) a State life insurance company li-
10 censed or holding a certificate of authority
11 to transact in a nonqualifying State any
12 kind of insurance for which coverage is
13 provided under section 1006, including a
14 State insurer whose license or certificate of
15 authority in that State may have been sus-
16 pended, revoked, not renewed or volun-
17 tarily withdrawn; and

18 (ii) a national insurer that is a life in-
19 surance company and holds a Federal li-
20 cense to issue the kinds of insurance for
21 which coverage is provided under section
22 1006, including a company whose license
23 may have been revoked, suspended, re-
24 stricted or voluntarily surrendered.

25 (B) Such term does not include—

- 1 (i) a non-life insurance company,
2 other than an insurer licensed to transact
3 only health insurance;
- 4 (ii) a hospital or medical service orga-
5 nization, whether profit or nonprofit;
- 6 (iii) a health maintenance organiza-
7 tion;
- 8 (iv) a fraternal benefit society;
- 9 (v) a mandatory State pooling plan;
- 10 (vi) a mutual assessment company or
11 other person that operates on an assess-
12 ment basis;
- 13 (vii) an insurance exchange; or
- 14 (viii) an entity similar to any of the
15 above.

16 (14) MOODY'S CORPORATE BOND YIELD AVER-
17 AGE.—The term “Moody's corporate bond yield av-
18 erage” means the Monthly Average Corporates as
19 published by Moody's Investors Service, Inc., or any
20 successor thereto.

21 (15) NONQUALIFYING STATE.—The term “non-
22 qualifying State” means a State that is not a quali-
23 fied State as defined in section 1003.

24 (16) POLICY.—The term “policy” means a pol-
25 icy or contract.

1 (17) POLICYOWNER.—The term “policyowner”
2 means, with respect to a policy the person who is
3 identified as the legal owner under the terms of the
4 policy or who is otherwise vested with legal title to
5 the policy through an assignment, absolute on its
6 face, completed in accordance with the terms of the
7 policy and properly recorded as the policyowner on
8 the books of the insurer. Such term does not include
9 a person with a mere beneficial interest in a policy
10 or a person to which a policy is assigned for collat-
11 eral security purposes.

12 (18) PREMIUMS.—The term “premiums” means
13 amounts or considerations (by whatever name called)
14 received on covered policies less returned premiums,
15 considerations and deposits and less dividends and
16 experience credits. Such term does not include
17 amounts or considerations received for policies or for
18 the portions of policies for which coverage is not pro-
19 vided under subsection (b) of section 1006 except
20 that assessable premium shall not be reduced on ac-
21 count of subsection (b)(2)(C) of section 1006, relat-
22 ing to interest limitations, and subsection (e)(1)(B)
23 of section 1006, relating to limitations with respect
24 to one individual, one participant and one
25 policyowner. Such term does not include—

1 (A) premiums on an unallocated annuity
2 contract, or

3 (B) with respect to multiple non-group
4 policies of life insurance owned by one
5 policyowner, whether the policyowner is an indi-
6 vidual, firm, corporation or other person, and
7 whether the persons insured are officers, man-
8 agers, employees or other persons, premiums in
9 excess of \$5,000,000 with respect to these poli-
10 cies, regardless of the number of policies held
11 by the policyowner.

12 (19) RECEIVERSHIP COURT.—In the case of a
13 State insurer, the term “receivership court” means
14 the court having jurisdiction over the conservation,
15 rehabilitation or liquidation of the insurer. In the
16 case of a national insurer, such term means the
17 United States district court or other United States
18 court having jurisdiction over the receivership pro-
19 ceedings involving the national insurer.

20 (20) RESIDENT.—The term “resident” means a
21 person to whom a contractual obligation is owed and
22 who resides in a nonqualified State on the date of
23 entry of a court order that determines a member in-
24 surer to be an impaired insurer or a court order that
25 determines a member insurer to be an insolvent in-

1 surer, whichever occurs first. A person may be a
2 resident of only one State, which in the case of a
3 person other than a natural person shall be its prin-
4 cipal place of business. Citizens of the United States
5 that are either (1) residents of foreign countries, or
6 (2) residents of United States possessions, territories
7 or protectorates that do not have an association
8 similar to qualified State associations shall be
9 deemed residents of the nonqualifying State, in the
10 case of national insurers, and the State of domicile
11 of other insolvent insurers, that issued the policies.

12 (21) STRUCTURED SETTLEMENT ANNUITY.—
13 The term “structured settlement annuity” means an
14 annuity purchased in order to fund periodic pay-
15 ments for a plaintiff or other claimant in payment
16 for or with respect to personal injury suffered by the
17 plaintiff or other claimant.

18 (22) STATE.—The term “State” means a State,
19 the District of Columbia and Puerto Rico.

20 (23) STATE INSURANCE COMPANY AND STATE
21 LIFE INSURANCE COMPANY.—The terms “State in-
22 surance company” and “State life insurance com-
23 pany” mean a State-chartered insurance company
24 that underwrites and sells life insurance, health in-

1 surance, disability income insurance, long-term care
2 insurance, annuity contracts, or funding agreements;

3 (24) SUPPLEMENTAL CONTRACT.—The term
4 “supplemental contract” means a written agreement
5 entered into for the distribution of proceeds under a
6 life or annuity policy.

7 (25) UNALLOCATED ANNUITY CONTRACT.—The
8 term “unallocated annuity contract” means an an-
9 nuity contract or group annuity certificate which is
10 not issued to and owned by an individual, except to
11 the extent of any annuity benefits guaranteed to an
12 individual by an insurer under the contract or cer-
13 tificate.

14 **SEC. 1002. NATIONAL INSURER PARTICIPATION IN QUALI-**
15 **FIED STATE ASSOCIATIONS.**

16 (a) QUALIFIED STATE ASSOCIATION MEMBER-
17 SHIP.—A national insurer holding a Federal license to
18 issue life insurance or annuities must, as a condition of
19 its authority to transact business, become and continue
20 as a member of a qualified State’s association in each
21 State in which the national insurer is doing business.

22 (b) DEFINITION OF DOING BUSINESS.—A national
23 insurer is doing business in a State for purposes of this
24 subtitle if it has any policies on the life or lives of residents
25 of the State, collects premiums from a policyowner resi-

1 dent in the State, or has current obligations to
2 policyowners or beneficiaries of policies in that State.

3 **SEC. 1003. QUALIFIED STATE DEFINED.**

4 (a) QUALIFIED STATE DEFINED.—For purposes of
5 this title, the term “qualified State” means a State which
6 has established an association—

7 (1) that provides protection for covered persons
8 in the event of insolvency of any national insurer or
9 State insurer doing business in the State that meets
10 or exceeds the standards set forth in sections 1006,
11 1008, and 1010; and

12 (2) which has been determined by the Director
13 to comply with the standards set forth in sections
14 1006, 1008, 1009 (including the definitions of “im-
15 paired insurer” and “insolvent insurer” in section
16 1001), and 1010, and such determination has not
17 been revoked.

18 (b) DEEMED COMPLIANCE.—An association shall be
19 deemed in compliance with and the requirements of sub-
20 section (a) until 3 years after the effective date of this
21 Act, following which date an association must meet those
22 requirements. An association that is determined by the Di-
23 rector not to meet the standards required in subsection
24 (a) at any time on or after 3 years following the effective
25 date of this Act shall be preempted by this subtitle. The

1 Director may, for good cause, extend this 3-year period
2 for not more than 6 months as to any association. The
3 Director shall notify an association's board of directors
4 and the relevant State's State commissioner that the asso-
5 ciation's qualification under subsection (a) has been re-
6 voked for the reasons stated, effective 90 days following
7 the date of such notification.

8 **SEC. 1004. TRANSITION RULES WHEN ASSOCIATION PRE-**
9 **EMPTED.**

10 In the event an association's qualification is revoked
11 under section 1003 following a date on which a member
12 insurer of that association has been determined to be in-
13 solvent, for insolvencies occurring on or before the date
14 on which the standard benefits of this title apply, and
15 prior to a termination of receivership proceedings—

16 (1) the Director shall develop a plan, in con-
17 sultation with the association and the relevant
18 State's State commissioner, to provide appropriate
19 benefits and coverage to covered persons, and as-
20 sessments appropriate to the line of insurance af-
21 fected, which plan may include benefits and coverage
22 provided in whole or in part by the corporation;

23 (2) such plan shall incorporate appropriate ad-
24 justments in the event payments for benefits have
25 been made under the association's coverage, includ-

1 ing the adjustment of benefits transferred to, and
2 assumption of liabilities by, succeeding insurance
3 companies; and

4 (3) appropriate supplemental assessments, if
5 necessary, may be made pursuant to section 1010,
6 by the corporation as the Director finds necessary to
7 effect the change in benefits provided under this
8 title.

9 **SEC. 1005. ESTABLISHMENT OF THE NATIONAL LIFE INSUR-**
10 **ANCE GUARANTY CORPORATION; PROTEC-**
11 **TION FOR RESIDENTS IN PREEMPTED**
12 **STATES.**

13 (a) ESTABLISHMENT OF THE CORPORATION.—There
14 is established the National Life Insurance Guaranty Cor-
15 poration. The corporation shall be a nonprofit corporation
16 and shall have succession until dissolved by Act of the
17 Congress. The corporation—

18 (1) shall not be an agency or instrumentality of
19 the United States Government; and

20 (2) except as otherwise provided in this subtitle,
21 shall be subject to, and have all the powers conferred
22 upon a nonprofit corporation by, the District of Co-
23 lumbia Nonprofit Corporation Act (section 29–
24 301.01 et seq., D.C. Official Code).

1 (b) MEMBERSHIP IN THE CORPORATION.—The mem-
2 bership of the corporation shall consist of all member in-
3 surers.

4 (c) CORPORATE GOVERNANCE.—

5 (1) BOARD OF DIRECTORS.—The board of di-
6 rectors of the corporation shall be the governing
7 body of the corporation and shall be vested with all
8 powers necessary for the management and adminis-
9 tration of the affairs of the corporation and the pro-
10 motion of its purposes as authorized by this Act.
11 The board's authority shall be specified in the by-
12 laws of the corporation.

13 (2) INITIAL BOARD.—The initial board of the
14 corporation shall be elected by the membership of
15 the corporation, provided that if the membership
16 fails to elect the initial board of the corporation
17 within 3 years of the effective date of this Act, then
18 the initial board shall be appointed by the Director.
19 Membership on the board shall be fairly representa-
20 tive of member insurers of differing size and lines of
21 business written.

22 (3) BYLAWS.—The Director shall prescribe the
23 initial bylaws and rules governing the corporation
24 which shall set forth the composition of the board,
25 the term of board members, filling of board vacan-

1 cies, board compensation, election of officers and
2 procedures to call board meetings, and all matters
3 necessary for the governance of the corporation not
4 addressed by the District of Columbia Nonprofit
5 Corporation Act.

6 (4) AMENDMENTS TO BYLAWS AND RULES.—
7 Amendments to the bylaws and rules of the corpora-
8 tion following the establishment of the initial bylaws
9 and rules as provided in paragraph (3) shall be
10 adopted by the board of the corporation following
11 the approval thereof by the Director.

12 (d) RELATIONSHIP OF CORPORATION TO THE FED-
13 ERAL GOVERNMENT.—

14 (1) The corporation shall be subject to super-
15 vision and oversight of the Director.

16 (2) The obligations of the corporation shall not
17 be backed, directly or indirectly, by the full faith and
18 credit of the United States. The corporation shall re-
19 ceive no financial assistance from or have any au-
20 thority to borrow from the United States.

21 (3) Funds held by or due to the corporation
22 shall not be included in the budget of the United
23 States, nor may the United States borrow or pledge
24 such funds.

1 (e) CORPORATION TO PROVIDE PROTECTION IN PRE-
2 EMPTED STATES.—The corporation shall provide the pro-
3 tections under this subtitle for covered persons, as set
4 forth in section 1006, in any State in which the operations
5 and activities of the association have been preempted pur-
6 suant to section 1003.

7 (f) CONTRACTING WITH PERSON TO ADMINISTER
8 BENEFITS.—The corporation may, with the approval of
9 the Director, contract with another person to administer
10 the benefits to be provided by the corporation under this
11 subtitle.

12 (g) FUNDING OF BENEFITS.—Funds for the provi-
13 sion of covered benefits by the corporation shall be in ac-
14 cordance with the formulas and procedures, and subject
15 to the limitations of, section 1010. Premiums and other
16 considerations for purposes of such assessments shall in-
17 clude all nationwide premiums of national insurers on the
18 covered lines of business.

19 **SEC. 1006. PROTECTIONS AGAINST INSOLVENCY: COV-**
20 **ERAGE AND LIMITATIONS.**

21 (a) COVERED PERSONS.—This subtitle shall provide
22 coverage for the policies specified in subsection (d)—

23 (1) to persons who, regardless of where they re-
24 side (except for certificate holders under group poli-
25 cies who are not residents of a nonqualifying State),

1 are the beneficiaries, assignees or payees of the per-
2 sons covered under paragraph (2);

3 (2) to persons who are owners of or certificate
4 holders under the policies (other than unallocated
5 annuity contracts, and structured settlement annu-
6 ities) and in each case who—

7 (A) are residents of a nonqualifying State,

8 or

9 (B) are not residents, but only if—

10 (i) the insurer that issued the policies
11 is domiciled in a nonqualifying State; and

12 (ii) the persons are not eligible for
13 coverage by an association in any other
14 State due to the fact that the insurer was
15 not licensed in the State at the time speci-
16 fied in the State's association law; and

17 (3) for structured settlement annuities specified
18 in subsection (b), paragraphs (1) and (2) shall not
19 apply, and this title shall (except as provided in
20 paragraphs (5) and (6)) provide coverage to a per-
21 son who is a payee under a structured settlement
22 annuity (or beneficiary of a payee if the payee is de-
23 ceased), if the payee—

24 (A) is a resident of a nonqualifying State,

25 regardless of where the policyowner resides, or

1 (B) is not a resident of a nonqualifying
2 State, but only if—

3 (i)(I) the policyowner of the struc-
4 tured settlement annuity is a resident of a
5 nonqualifying State, or

6 (II) the policyowner of the structured
7 settlement annuity is not a resident of a
8 nonqualifying State, but—

9 (aa) the insurer that issued the
10 structured settlement annuity is domi-
11 ciled in a nonqualifying State; and

12 (bb) the State in which the
13 policyowner resides has an associa-
14 tion; and

15 (ii) neither the payee (nor beneficiary)
16 nor the policyowner is eligible for coverage
17 by the association of the State in which the
18 payee or policyowner resides.

19 (b) This subtitle shall not provide coverage to a per-
20 son who is a payee (or beneficiary) of a policyowner resi-
21 dent of a nonqualifying State, if the payee (or beneficiary)
22 is afforded any coverage by a qualified State's association.

23 (c) This subtitle is intended to provide coverage to
24 persons who are residents of a nonqualifying State and,
25 in special circumstances, to persons not resident in a non-

1 qualifying State. In order to avoid duplicate coverage, if
2 a person who would otherwise receive coverage under this
3 title is provided coverage under the laws of any State other
4 than the nonqualifying State, the person shall not be pro-
5 vided coverage under this title. In determining the applica-
6 tion of the provisions of this subsection in situations where
7 a person could be covered by the association of more than
8 one qualifying or nonqualifying State, whether as a
9 policyowner, payee, beneficiary or assignee, this title shall
10 be construed in conjunction with the laws of such States
11 to result in coverage by only one association.

12 (d) POLICIES COVERED.—

13 (1) IN GENERAL.—This subtitle shall provide
14 coverage to the persons specified in subsection (a)
15 for direct, non-group life or annuity policies and
16 supplemental contracts to any of these and for cer-
17 tificates under direct group policies, except as lim-
18 ited by this title. Annuity contracts and certificates
19 under group annuity policies include allocated agree-
20 ments, structured settlement annuities, and any im-
21 mediate or deferred annuity policies.

22 (2) POLICIES NOT COVERED.—This subtitle
23 shall not provide coverage for—

1 (A) a portion of a policy not guaranteed by
2 the insurer, or under which the risk is borne by
3 the policyowner;

4 (B) a reinsurance contract, unless assump-
5 tion certificates have been issued pursuant to
6 the reinsurance contract;

7 (C) a portion of a policy to the extent that
8 the rate of interest on which it is based, or the
9 interest rate, crediting rate or similar factor de-
10 termined by use of an index or other external
11 reference stated in the policy employed in calcu-
12 lating returns or changes in value—

13 (i) averaged over the period of 4 years
14 prior to the date on which the Director be-
15 comes obligated under this title with re-
16 spect to the policy, exceeds a rate of inter-
17 est determined by subtracting 2 percentage
18 points from Moody's Corporate Bond Yield
19 Average averaged for that same 4-year pe-
20 riod or for such lesser period if the policy
21 was issued less than 4 years before the
22 member insurer becomes an impaired or
23 insolvent insurer under this subtitle; and

24 (ii) on and after the date on which the
25 Director becomes obligated with respect to

1 the policy, exceeds the rate of interest de-
2 termined by subtracting 3 percentage
3 points from Moody's Corporate Bond Yield
4 Average as most recently available;

5 (D) a portion of a policy issued to a plan
6 or program of an employer, membership asso-
7 ciation or other person to provide life or annu-
8 ity benefits to its employees, members or oth-
9 ers, to the extent that the plan or program is
10 self-funded or uninsured, including but not lim-
11 ited to benefits payable by an employer, mem-
12 bership association or other person under—

13 (i) a multiple employer welfare ar-
14 rangement as defined in section 514 of the
15 Employee Retirement Income Security Act
16 of 1974 (29 U.S.C. 1144);

17 (ii) a minimum premium group insur-
18 ance plan;

19 (iii) a stop-loss group insurance plan;
20 or

21 (iv) an administrative services only
22 contract;

23 (E) a portion of a policy to the extent that
24 it provides for—

1 (i) dividends or experience rating
2 credits;

3 (ii) voting rights; or

4 (iii) payment of any fees or allowances
5 to any person, including the policyowner,
6 in connection with the service to or admin-
7 istration of the policy;

8 (F) a policy issued in a nonqualified State
9 by an insurer (other than a national insurer) at
10 a time when it was not licensed or did not have
11 a certificate of authority to issue the policy in
12 the nonqualified State;

13 (G) a portion of a policy to the extent that
14 the assessments required by section 1010 with
15 respect to the policy are preempted by Federal
16 or State law;

17 (H) an obligation that does not arise under
18 the express written terms of the policy issued
19 by the insurer to the policyowner, including
20 without limitation—

21 (i) claims based on marketing mate-
22 rials;

23 (ii) claims based on side letters, riders
24 or other documents that were issued by the

1 insurer without meeting applicable policy
2 form filing or approval requirements;

3 (iii) misrepresentations of or regard-
4 ing policy benefits;

5 (iv) extra-contractual claims; or

6 (v) a claim for penalties or consequen-
7 tial or incidental damages;

8 (I) a contractual agreement that estab-
9 lishes an insurer's obligations to provide a book
10 value accounting guaranty for defined contribu-
11 tion benefit plan participants by reference to a
12 portfolio of assets that is owned by the benefit
13 plan or its trustee, which in each case is not an
14 affiliate of the insurer;

15 (J) a portion of a policy to the extent it
16 provides for interest or other changes in value
17 to be determined by the use of an index or
18 other external reference stated in the policy, but
19 which have not been credited to the policy or as
20 to which the policyowner's rights are subject to
21 forfeiture, as of the date the member insurer
22 becomes an impaired or insolvent insurer under
23 this title, whichever is earlier. If a policy's in-
24 terest or changes in value are credited less fre-
25 quently than annually, then for purposes of de-

1 termining the values that have been credited
2 and are not subject to forfeiture under sub-
3 section (b)(2)(C) of section 1005, the interest
4 or change in value determined by using the pro-
5 cedures defined in the policy will be credited as
6 if the contractual date of crediting interest or
7 changing values was the date of impairment or
8 insolvency, whichever is earlier, and will not be
9 subject to forfeiture;

10 (K) activities, assets, liabilities or obliga-
11 tions of a protected cell established pursuant to
12 section 323;

13 (L) a funding agreement; and

14 (M) an unallocated annuity contract.

15 (e) COVERAGE LIMITATIONS.—

16 (1) IN GENERAL.—The benefits provided under
17 this subtitle shall in no event exceed the lesser of—

18 (A) the contractual obligations for which
19 the insurer is liable or would have been liable
20 if it were not an impaired or insolvent insurer,
21 or

22 (B) with respect to one life, regardless of
23 the number of policies—

24 (i) \$300,000 in life insurance death
25 benefits, but not more than \$100,000 in

1 net cash surrender and net cash with-
2 drawal values for life insurance;

3 (ii) \$100,000 in the present value of
4 annuity benefits, including net cash sur-
5 render and net cash withdrawal values;

6 (iii) with respect to each payee of a
7 structured settlement annuity (or bene-
8 ficiary or beneficiaries of the payee if de-
9 ceased), \$100,000 in present value annuity
10 benefits, in the aggregate, including net
11 cash surrender and net cash withdrawal
12 values, if any.

13 (2) LIMITATION.—In no event shall benefits
14 exceed—

15 (A) an aggregate of \$300,000 in benefits
16 with respect to any one life under paragraph
17 (1)(B)(i), or

18 (B) with respect to one policyowner of mul-
19 tiple non-group policies of life insurance, wheth-
20 er the policyowner is an individual, firm, cor-
21 poration or other person, and whether the per-
22 sons insured are officers, managers, employees
23 or other persons, more than \$5,000,000 in ben-
24 efits, regardless of the number of policies held
25 by the policyowner.

1 SEC. 1008. BOARD OF DIRECTORS.

2 The board of directors of a qualifying State's associa-
3 tion shall provide for representation of insurers on a basis
4 that does not unfairly discriminate against national insur-
5 ers or against insurers domiciled in other jurisdictions,
6 and shall be fairly representative of insurers of differing
7 sizes and lines of insurance written. State commissioners
8 shall be member insurers and may be represented by offi-
9 cers at the discretion of the member insurer.

10 SEC. 1009. POWERS AND DUTIES OF THE CORPORATION.

11 (a) IMPAIRED INSURER.—Subject to the coverage
12 limitations set forth in section 1006, if a member insurer
13 is an impaired insurer, the corporation may, in its discre-
14 tion, and subject to any conditions imposed by the cor-
15 poration that do not impair the contractual obligations of
16 the impaired insurer and that are approved by the Direc-
17 tor, meet its obligation under subsection (e) of section
18 1005 by doing taking one of the following actions:

19 (1) Guarantee, assume or reinsure, or cause to
20 be guaranteed, assumed, or reinsured, any or all of
21 the policies of the impaired insurer.

22 (2) Provide such monies, pledges, loans, notes,
23 guarantees or other means as are proper to effec-
24 tuate paragraph (1) and assure payment of the con-
25 tractual obligations of the impaired insurer pending
26 action under paragraph (1).

1 (b) INSOLVENT INSURER.—Subject to the coverage
2 limitations set forth in section 1006, if a member insurer
3 is an insolvent insurer, the corporation shall, in its discre-
4 tion, meet its obligation under subsection (e) of section
5 1005 by taking one of the actions under the following two
6 paragraphs:

7 (1)(A)(i) Guaranty, assume or reinsure, or
8 cause to be guaranteed, assumed or reinsured, the
9 policies of the insolvent insurer; or

10 (ii) assure payment of the contractual obliga-
11 tions of the insolvent insurer; and

12 (B) provide monies, pledges, loans, notes, guar-
13 antees, or other means reasonably necessary to dis-
14 charge the duties imposed by this section; or

15 (2) Provide benefits and coverages in accord-
16 ance with the following provisions:

17 (A) With respect to life insurance policies
18 and annuities, assure payment of benefits for
19 premiums identical to the premiums and bene-
20 fits (except for terms of conversion and renew-
21 ability) that would have been payable under the
22 policies of the insolvent insurer, for claims
23 incurred—

24 (i) with respect to group policies, not
25 later than the earlier of the next renewal

1 date under those policies or 45 days, but
2 in no event less than 30 days, after the
3 date on which the corporation becomes ob-
4 ligated under this section with respect to
5 the policies;

6 (ii) with respect to non-group policies,
7 not later than the earlier of the next re-
8 newal date (if any) under the policies or 1
9 year, but in no event less than 30 days,
10 from the date on which the corporation be-
11 comes obligated under this section with re-
12 spect to the policies.

13 (B) Make diligent efforts to provide all
14 known insureds or annuitants (for non-group
15 policies), or group policyowners with respect to
16 group policies, 30 days notice of the termi-
17 nation (pursuant to subparagraph (A)) of the
18 benefits provided.

19 (C) With respect to non-group policies cov-
20 ered by this title, make available to each known
21 insured or annuitant, or policyowner if other
22 than the insured or annuitant, and with respect
23 to an individual formerly insured or formerly an
24 annuitant under a group policy who is not eligi-
25 ble for replacement group coverage, make avail-

1 able substitute coverage on an individual basis
2 in accordance with the provisions of subpara-
3 graph (D), if the insureds or annuitants had a
4 right under law or the terminated policy or an-
5 nuity to convert coverage to individual coverage
6 or to continue an individual policy or annuity in
7 force until a specified age or for a specified
8 time, during which the insurer had no right
9 unilaterally to make changes in any provision of
10 the policy or had a right only to make changes
11 in premium by class.

12 (D)(i) In providing the substitute coverage
13 required under subparagraph (C), the corpora-
14 tion may offer either to reissue the terminated
15 coverage or to issue an alternative policy.

16 (ii) Alternative or reissued policies shall be
17 offered without requiring evidence of insur-
18 ability, and shall not provide for any waiting
19 period or exclusion that would not have applied
20 under the terminated policy.

21 (iii) The corporation may reinsure any al-
22 ternative or reissued policy.

23 (E)(i) Alternative policies adopted by the
24 corporation shall be subject to the approval of
25 the Director and the receivership court. The

1 corporation may adopt alternative policies of
2 various types for future issuance without regard
3 to any particular impairment or insolvency.

4 (ii) Alternative policies shall contain at
5 least the minimum statutory provisions required
6 in the nonqualifying State if the insolvent in-
7 surer is not a national insurer; in the case of
8 an insolvent national insurer such policies shall
9 comply, with the provisions of this Act and pro-
10 vide benefits that shall not be unreasonable in
11 relation to the premium charged. The corpora-
12 tion shall set the premium in accordance with
13 a table of rates that it shall adopt. The pre-
14 mium shall reflect the amount of insurance to
15 be provided and the age and class of risk of
16 each insured, but shall not reflect any changes
17 in the health of the insured after the original
18 policy was last underwritten.

19 (iii) Any alternative policy issued by the
20 corporation shall provide coverage of a type
21 similar to that of the policy issued by the im-
22 paired or insolvent insurer, as determined by
23 the corporation.

24 (F) If the corporation elects to reissue ter-
25 minated coverage at a premium rate different

1 from that charged under the terminated policy,
2 the premium shall be set by the corporation in
3 accordance with the amount of insurance pro-
4 vided and the age and class of risk, subject to
5 approval of the nonqualifying State commis-
6 sioner in the case of a State insurer, and the
7 Director in the case of a national insurer, and
8 the receivership court.

9 (G) Benefits under this subtitle with re-
10 spect to coverage under any policy of the im-
11 paired or insolvent insurer or under any re-
12 issued or alternative policy shall cease on the
13 date the coverage or policy is replaced by an-
14 other similar policy by the policyowner, the in-
15 sured or the corporation.

16 (H) When proceeding under this para-
17 graph with respect to a policy carrying guaran-
18 teed minimum interest rates, the corporation
19 shall assure the payment or crediting of a rate
20 of interest consistent with subsection (d)(2)(C)
21 of section 1006.

22 (c) NONPAYMENT OF PREMIUMS.—Nonpayment of
23 premiums within 31 days after the date required under
24 the terms of any guaranteed, assumed, alternative or re-
25 issued policy or substitute coverage shall terminate bene-

1 fits under this subtitle with respect to the policy, except
2 with respect to any claims incurred or any net cash sur-
3 render value which may be due in accordance with the pro-
4 visions of this title.

5 (d) PREMIUMS DUE AFTER ENTRY OF ORDER.—
6 Premiums due for coverage after entry of an order of liq-
7 uidation of an insolvent insurer shall belong to and be pay-
8 able at the direction of the corporation, and the corpora-
9 tion shall be liable for unearned premiums due to
10 policyowners arising after the entry of the order.

11 (e) POWERS OF THE CORPORATION.—In carrying out
12 its duties under subsection (b), the corporation may—

13 (1) subject to approval by the Director, impose
14 permanent policy liens in connection with a guar-
15 antee, assumption or reinsurance contract, if the
16 corporation finds that the amounts which can be as-
17 sessed under this subtitle are less than the amounts
18 needed to assure full and prompt performance of the
19 protections provided under this subtitle, or that the
20 economic or financial conditions as they affect the
21 insurance industry are sufficiently adverse to render
22 the imposition of such permanent policy liens, in the
23 public interest; and

24 (2) subject to approval by the Director, impose
25 temporary moratoriums or liens on payments of cash

1 values and policy loans, or any other right to with-
2 draw funds held in conjunction with policies, in addi-
3 tion to any contractual provisions for deferral of
4 cash or policy loan value. In addition, in the event
5 of a temporary moratorium or moratorium charge
6 imposed by the receivership court on payment of
7 cash values or policy loans, or on any other right to
8 withdraw funds held in conjunction with policies, out
9 of the assets of the impaired or insolvent insurer,
10 the corporation may defer the payment of cash val-
11 ues, policy loans or other rights by the corporation
12 for the period of the moratorium or moratorium
13 charge imposed by the receivership court, except for
14 claims covered by this title to be paid in accordance
15 with a hardship procedure established by the liqui-
16 dator or rehabilitator and approved by the receiver-
17 ship court.

18 (f) DEPOSITS.—A deposit in the nonqualifying State,
19 held pursuant to State law or required by the State com-
20 missioner of the nonqualifying State for the benefit of
21 creditors, including policyowners, not turned over to the
22 domiciliary liquidator upon the entry of a final order of
23 liquidation or order approving a rehabilitation plan of an
24 insurer domiciled in the nonqualifying State or in a recip-
25 rocal State, pursuant to applicable State law governing re-

1 ceivership of State insurers, shall be promptly paid to the
2 corporation. The corporation shall be entitled to retain a
3 portion of any amount so paid to it equal to the percentage
4 determined by dividing the aggregate amount of
5 policyowners claims related to that insolvency for which
6 the corporation has provided statutory benefits by the ag-
7 gregate amount of all policyowners' claims in nonquali-
8 fying State related to that insolvency and shall remit to
9 the domiciliary receiver the amount so paid to the corpora-
10 tion and retained pursuant to this subsection. Any amount
11 so paid to the corporation less the amount retained by it
12 shall be treated as a distribution of estate assets pursuant
13 to applicable State law governing receivership of State in-
14 surers of the State of domicile of the impaired or insolvent
15 insurer.

16 (g) ADVICE TO STATE COMMISSIONER.—The cor-
17 poration may render assistance and advice to the State
18 commissioner in a nonqualifying State, upon the State
19 commissioner's request, concerning rehabilitation, pay-
20 ment of claims, continuance of coverage, or the perform-
21 ance of other contractual obligations of an impaired or in-
22 solvent insurer.

23 (h) STANDING.—The corporation shall have standing
24 to appear or intervene before a court or agency in the
25 State, or United States district court, with jurisdiction

1 over an impaired or insolvent insurer concerning which
2 benefits under this subtitle are to be provided, or with ju-
3 risdiction over any person or property against which the
4 corporation may have rights through subrogation or other-
5 wise. Standing shall extend to all matters germane to the
6 powers and duties under this subtitle, including, but not
7 limited to, proposals for reinsuring, modifying or guaran-
8 teeing the policies of the impaired or insolvent insurer and
9 the determination of the policies and contractual obliga-
10 tions.

11 (i) SUBROGATION.—

12 (1) Persons receiving benefits under this sub-
13 title shall be deemed to have assigned their rights
14 under, and any causes of action against any person
15 for losses arising under, resulting from or otherwise
16 relating to, their covered policies to the corporation
17 to the extent of the benefits received because of this
18 subtitle, whether the benefits are payments of or on
19 account of contractual obligations, continuation of
20 coverage or provision of substitute or alternative cov-
21 erages. The corporation shall also have the right to
22 require an assignment to it of such rights and
23 causes of action by any payee, policyowner, bene-
24 ficiary, insured or annuitant as a condition prece-

1 dent to the receipt of any right or benefits conferred
2 by this subtitle upon the person.

3 (2) The subrogation rights of the corporation
4 provided under the law of a nonqualifying State
5 shall be accorded the same priority against the as-
6 sets of the impaired or insolvent insurer as that pos-
7 sessed by the person entitled to receive benefits
8 under this subtitle.

9 (3) In addition to paragraphs (1) and (2), the
10 corporation shall have all common law rights of sub-
11 rogation and any other equitable or legal remedy
12 that would have been available to the impaired or in-
13 solvent insurer or policyowner, beneficiary or payee
14 of a policy with respect to the policy (including with-
15 out limitation, in the case of a structured settlement
16 annuity, any rights of the policyowner, beneficiary or
17 payee of the annuity, to the extent of benefits re-
18 ceived pursuant to this subtitle, against a person
19 originally or by succession responsible for the losses
20 arising from the personal injury relating to the an-
21 nuity or payment therefore), excepting any such per-
22 son responsible solely by reason of serving as an as-
23 signee in respect of a qualified assignment under
24 section 130 of the Internal Revenue Code of 1986.

1 (4) If the preceding provisions of this sub-
2 section are invalid or ineffective with respect to any
3 person or claim for any reason, the amount payable
4 under this subtitle with respect to the related bene-
5 fits under this subtitle shall be reduced by the
6 amount realized by any other person with respect to
7 the person or claim that is attributable to the poli-
8 cies (or portion thereof) protected by this subtitle.

9 (5) If benefits have been provided under this
10 subtitle with respect to a covered obligation and a
11 person recovers amounts as to which the corporation
12 has rights as described in the preceding paragraphs,
13 the person shall pay to the corporation the portion
14 of the recovery attributable to the policies (or por-
15 tion thereof) covered by this subtitle.

16 (j) OTHER CORPORATION POWERS.—In addition to
17 the rights and powers provided elsewhere in this subtitle,
18 the corporation may—

19 (1) enter into such contracts as are necessary
20 or proper to carry out the provisions and purposes
21 of this subtitle;

22 (2) sue or be sued, including taking any legal
23 actions necessary or proper to recover any unpaid
24 assessments under section 1010 and to settle claims
25 or potential claims against it;

1 (3) borrow money to effect the purposes of this
2 subtitle; any notes or other evidence of indebtedness
3 of the Corporation not in default shall be legal in-
4 vestments for Companies and may be carried as ad-
5 mitted assets;

6 (4) employ or retain such persons as are nec-
7 essary or appropriate to handle the financial trans-
8 actions of the corporation, and to perform such
9 other functions as become necessary or proper under
10 this subtitle;

11 (5) take such legal action as may be necessary
12 or appropriate to avoid or recover payment of im-
13 proper claims;

14 (6) exercise, for the purposes of this subtitle
15 and to the extent approved by the Director, the pow-
16 ers of a national insurer, except that the corporation
17 may not issue insurance policies or annuity contracts
18 other than those issued to provide the protections
19 under this subtitle;

20 (7) request information from a person seeking
21 protection under this subtitle in order to aid the cor-
22 poration in determining its obligations under this
23 subtitle with respect to the person, and the person
24 shall promptly comply with the request;

1 (8) become a member of an association of asso-
2 ciations; and

3 (9) take other necessary or appropriate action
4 to discharge its duties and obligations under this
5 subtitle or to exercise its powers under this subtitle.

6 (k) JUDGMENT.—The corporation shall have discre-
7 tion and may exercise reasonable business judgment to de-
8 termine the means by which the benefits and protections
9 of this subtitle will be provided in an economical and effi-
10 cient manner.

11 (l) OTHER BENEFITS.—Where the corporation has
12 arranged or offered to provide the benefits of this subtitle
13 to a covered person under a plan or arrangement that ful-
14 fills obligations to provide the protections under this sub-
15 title, the person shall not be entitled to benefits under this
16 subtitle in addition to or other than those provided under
17 the plan or arrangement.

18 (m) VENUE.—Venue in a suit against the corporation
19 arising under this subtitle shall be in the United States
20 district court for the District of Columbia.

21 **SEC. 1010. ASSESSMENTS.**

22 (a) IN GENERAL.—For the purpose of providing the
23 funds necessary to provide the protections and benefits
24 under this subtitle, the corporation shall be authorized to
25 assess the member insurers separately for each account,

1 at such time and for such amounts as the board of the
2 corporation finds necessary. Assessments shall be due not
3 less than 30 days after prior written notice to the member
4 insurers and shall accrue interest at a rate of interest
5 specified by law on and after the due date.

6 (b) CLASSES OF ASSESSMENT.—There shall be 2
7 classes of assessments, as follows:

8 (1) Class A assessments shall be authorized and
9 called for the purpose of meeting administrative and
10 legal costs and other expenses. Class A assessments
11 may be authorized and called whether or not related
12 to a particular impaired or insolvent insurer. The
13 board of the corporation may authorize the corpora-
14 tion to make a Class A assessment only against na-
15 tional insurers, and against national insurers and
16 other member insurers in nonqualifying States, to
17 meet its administrative and legal costs and other ex-
18 penses pursuant to operating rules established by
19 the board.

20 (2) Class B assessments shall be authorized and
21 called to the extent necessary to provide the protec-
22 tion and benefits under this subtitle with regard to
23 an impaired or an insolvent insurer.

24 (c) ASSESSMENT AMOUNTS.—

1 (1) The amount of a Class A assessment shall
2 be determined by the board of the corporation and
3 may be authorized and called on a pro rata or non-
4 pro rata basis. If pro rata, the board of the corpora-
5 tion may provide that it be credited against future
6 Class B assessments. The total of all non-pro rata
7 assessments shall not exceed \$150 per assessed
8 member insurer in any one calendar year. The
9 amount of a Class B assessment shall be allocated
10 for assessment purposes among the accounts or sub-
11 accounts pursuant to an allocation formula which
12 may be based on the premiums or reserves of the
13 impaired or insolvent insurer or any other standard
14 deemed by the board as being fair and reasonable
15 under the circumstances.

16 (2) Class B assessments against member insur-
17 ers for each account and subaccount shall be in the
18 proportion that the premiums received on business
19 in the nonqualifying State by each assessed member
20 insurer on policies covered by each account or sub-
21 account for the 3 most recent calendar years for
22 which information is available preceding the year in
23 which the insurer became insolvent (or, in the case
24 of an assessment with respect to an impaired in-
25 surer, the 3 most recent calendar years for which in-

1 formation is available preceding the year in which
2 the insurer became impaired) bears to premiums re-
3 ceived on business in the nonqualifying State for
4 those calendar years by all assessed member insur-
5 ers.

6 (3) Assessments for funds to meet the require-
7 ments of the corporation with respect to an impaired
8 or insolvent insurer shall not be authorized or called
9 until necessary to implement the purposes of this
10 title. Classification of assessments under subsection
11 (b) and computation of assessments under this sub-
12 section shall be made with a reasonable degree of ac-
13 curacy, recognizing that exact determinations may
14 not always be possible. The corporation shall notify
15 each member insurer of its anticipated pro rata
16 share of an authorized assessment not yet called
17 within 180 days after the assessment is authorized.

18 (d) ABATED OR DEFERRED ASSESSMENTS.—The
19 board of the corporation may abate or defer, in whole or
20 in part, the assessment of a member insurer if, in the
21 opinion of the board, payment of the assessment would
22 endanger the ability of the member insurer to fulfill its
23 contractual obligations. In the event an assessment
24 against a member insurer is abated, or deferred in whole
25 or in part, the amount by which the assessment is abated

1 or deferred may be assessed against the other member in-
2 surers, in a manner consistent with the basis for assess-
3 ments set forth in this section. Once the conditions that
4 caused a deferral have been removed or rectified, the mem-
5 ber insurer shall pay all assessments that were deferred
6 pursuant to a repayment plan approved by the board of
7 the corporation.

8 (e) MAXIMUM ASSESSMENT.—

9 (1) AMOUNT.—

10 (A) Subject to the provisions of subpara-
11 graph (B), the total of all assessments author-
12 ized by the corporation with respect to a mem-
13 ber insurer for each of the life insurance and
14 annuity accounts shall not in one calendar year
15 exceed 2 percent of that member insurer's aver-
16 age annual premiums received in the nonquali-
17 fying State on the policies covered by the ac-
18 count during the 3 calendar years preceding the
19 year in which the insurer became an impaired
20 or insolvent insurer.

21 (B) If 2 or more assessments are author-
22 ized in one calendar year with respect to insur-
23 ers that become impaired or insolvent in dif-
24 ferent calendar years, the average annual pre-
25 miums for purposes of the aggregate assess-

1 ment percentage limitation referenced in sub-
2 paragraph (A) shall be equal and limited to the
3 higher of the 3-year average annual premiums
4 for the applicable subaccount or account as cal-
5 culated pursuant to this section.

6 (C) If the maximum assessment, together
7 with other assets held in an account or sub-
8 account, does not provide in 1 year in either ac-
9 count or subaccount an amount sufficient to
10 carry out the responsibilities under this title,
11 the necessary additional funds shall be assessed
12 as soon thereafter as permitted by this subtitle.

13 (2) The board of the corporation may provide
14 by operating rules a method of allocating funds
15 among claims, whether relating to one or more im-
16 paired or insolvent insurers, when the maximum as-
17 sessment will be insufficient to cover anticipated
18 claims.

19 (3) If the maximum assessment for a sub-
20 account of the life and annuity account in 1 year
21 does not provide an amount sufficient to provide the
22 protection and benefits of this subtitle, then pursu-
23 ant to subsection (c)(2), the other subaccounts of
24 the life and annuity account may be accessed by the

1 corporation for the necessary additional amount,
2 subject to the maximum stated in paragraph (1).

3 (f) REFUNDS.—The board of the corporation may, by
4 an equitable method as established by operating rules, re-
5 fund to member insurers, in proportion to the contribution
6 of each insurer to that account or subaccount, the amount
7 by which the assets of the account exceed the amount the
8 board finds is necessary to carry out during the coming
9 year the obligations of this subtitle with regard to that
10 account or subaccount, including assets accruing from as-
11 signment, subrogation, net realized gains and income from
12 investments. A reasonable amount may be retained in any
13 account to provide funds for the continuing expenses of
14 the corporation, and for future claims.

15 (g) RATES AND DIVIDENDS.—It shall be proper
16 under this subtitle for any national insurer, in determining
17 its premium rates and policyowner dividends as to any
18 kind of insurance within the scope of this title, to consider
19 the amount reasonably necessary to meet its assessment
20 obligations under this subtitle.

21 (h) CERTIFICATES OF CONTRIBUTION.—The cor-
22 poration shall issue to each insurer paying an assessment
23 under this subtitle, other than a Class A assessment, a
24 certificate of contribution, in a form prescribed by the Di-
25 rector, for the amount of the assessment so paid. All out-

1 standing certificates shall be of equal dignity and priority
2 without reference to amounts or dates of issue. A certifi-
3 cate of contribution may be shown by a national insurer
4 in its financial statement as an asset in such form and
5 for such amount, if any, and period of time as the Director
6 may approve.

7 (i) ASSESSMENT PROTESTS.—

8 (1) A member insurer that wishes to protest all
9 or part of an assessment shall pay when due the full
10 amount of the assessment as set forth in the notice
11 provided by the corporation. The payment shall be
12 available to meet obligations under this subtitle dur-
13 ing the pendency of the protest or any subsequent
14 appeal. Payment shall be accompanied by a state-
15 ment in writing that the payment is made under
16 protest and setting forth a brief statement of the
17 grounds for the protest.

18 (2) Within 60 days following the payment of an
19 assessment under protest by a member insurer, the
20 corporation shall notify the member insurer in writ-
21 ing of its determination with respect to the protest
22 unless the corporation notifies the member insurer
23 that additional time is required to resolve the issues
24 raised by the protest.

1 (3) Within 30 days after a final decision has
2 been made, the corporation shall notify the pro-
3 testing member insurer in writing of that final deci-
4 sion. Within 60 days of receipt of notice of the final
5 decision, the protesting member insurer may appeal
6 that final action to the Director.

7 (4) In the alternative to rendering a final deci-
8 sion with respect to a protest based on a question
9 regarding the assessment base, the corporation may
10 refer protests to the Director for a final decision,
11 with or without a recommendation from the corpora-
12 tion.

13 (5) If the protest or appeal on the assessment
14 is upheld, the amount paid in error or excess shall
15 be returned to the member insurer. Interest on a re-
16 fund due a protesting member shall be paid at the
17 rate actually earned by the corporation.

18 (j) INFORMATION REQUESTS.—The corporation may
19 request information of member insurers in order to aid
20 in carrying out its duties under this section and member
21 insurers shall promptly comply with a request.

22 **SEC. 1011. APPEAL BY NATIONAL INSURER OF ASSESS-**
23 **MENTS.**

24 A national insurer that has paid an assessment to
25 a qualified State's association shall comply with the proce-

1 dures in that State for protesting the assessment. In the
2 event of an adverse determination by the State commis-
3 sioner in that State the national insurer may appeal to
4 the Director.

5 **SEC. 1012. DUTIES AND POWERS OF DIRECTOR.**

6 (a) DIRECTOR'S DUTIES AND POWERS.—In addition
7 to the duties and powers enumerated elsewhere in this
8 subtitle, the Director—

9 (1) shall provide the corporation upon request
10 with a statement of the premiums in nonqualifying
11 States for each member insurer;

12 (2) shall, when an impairment of a national in-
13 surer is declared and the amount of the impairment
14 is determined, serve a demand upon the impaired in-
15 surer to make good the impairment within a reason-
16 able time; notice to the impaired insurer shall con-
17 stitute notice to its shareholders, if any; and

18 (3) may either—

19 (A) suspend or revoke, after notice and
20 hearing, a Federal license of a national insurer;
21 or

22 (B) levy a forfeiture in an amount not to
23 exceed 5 percent of the unpaid assessment per
24 month, but no forfeiture shall be less than \$100
25 per month—

1 (i) on a national insurer or other
2 member insurer that fails to pay an assess-
3 ment to the corporation when due or fails
4 to otherwise comply with the requirements
5 of this subtitle; or

6 (ii) on a national insurer that fails to
7 pay an assessment to a qualified State's
8 association or otherwise comply with its
9 plan of operation.

10 (b) APPEAL BY NATIONAL INSURER.—A national in-
11 surer may appeal a final action of the board of directors
12 of the association in a qualifying State to the Director if
13 the appeal is taken within 60 days of its receipt of notice
14 of the final action being appealed.

15 (c) NOTIFICATION OF INTERESTED PERSONS.—The
16 liquidator, rehabilitator or conservator of an impaired in-
17 surer may notify all interested persons of the effect of this
18 subtitle.

19 **SEC. 1013. COOPERATION BETWEEN DIRECTOR AND STATE**
20 **COMMISSIONERS.**

21 (a) NOTICE TO STATE COMMISSIONERS.—The Direc-
22 tor shall notify the State commissioner in each State in
23 which a national insurer is doing business within 30 days
24 of taking any of the following actions against a national
25 insurer—

1 (1) revocation or suspension of the national in-
2 surer's authority to transact insurance;

3 (2) the entry of a formal order that the na-
4 tional insurer restrict its premium writing, obtain
5 additional contributions to surplus, reinsure all or
6 any part of its business, or increase capital, surplus,
7 or any other account for the security of policyowners
8 or creditors; or

9 (3) the Director has reasonable cause to believe
10 from an examination, whether completed or in proc-
11 ess, of any national insurer that such national in-
12 surer may be an impaired or insolvent insurer.

13 (b) NOTICE TO DIRECTOR.—Each State commis-
14 sioner shall notify the Director when any action listed in
15 subsection (a)(1) is taken or condition is believed to exist
16 with respect to a State insurer that is a member insurer.

17 (c) REPORT TO ASSOCIATIONS.—The Director shall
18 also report to the boards of directors of the appropriate
19 associations when the Director has taken any of the ac-
20 tions set forth in subsection (a). Any report to the boards
21 of directors shall contain all significant details of the ac-
22 tion taken and may be provided with the cooperation of
23 the corporation.

24 (d) OBLIGATIONS OF THE CORPORATION.—The cor-
25 poration may make reports and recommendations to the

1 Director, as appropriate, upon any matter germane to the
2 solvency, liquidation, rehabilitation or conservation of any
3 member insurer. The reports and recommendations shall
4 not be considered public documents. The corporation shall
5 also provide such information and advice as requested by
6 the Director when providing protection and benefits under
7 this subtitle in a nonqualifying State.

8 (e) NOTICE BY THE CORPORATION.—The corporation
9 may notify the Director of any information indicating a
10 member insurer in a nonqualifying State may be an im-
11 paired or insolvent insurer.

12 **SEC. 1014. PROHIBITED DISCRIMINATION IN TAX TREAT-**
13 **MENT.—**

14 No State law may discriminate between national in-
15 surers and other insurers with respect to deductions or
16 offsets of assessments against premium, franchise or in-
17 come tax liability to the State, and any State law that
18 does so shall not be effective.

19 **SEC. 1015. MISCELLANEOUS PROVISIONS.**

20 (a) NO REDUCTION IN LIABILITY.—This subtitle
21 shall not be construed to reduce the liability for unpaid
22 assessments of the insureds of an impaired or insolvent
23 insurer operating under a plan with assessment liability.

24 (b) CORPORATION AS CREDITOR.—

1 (1) For the purpose of providing the protections
2 and benefits required under this subtitle, the cor-
3 poration shall be deemed to be a creditor of an im-
4 paired or insolvent national insurer to the extent of
5 assets attributable to covered policies reduced by any
6 amounts to which the corporation is entitled as
7 subrogee pursuant to subsection (i) of section 1009.
8 Assets of the impaired or insolvent insurer attrib-
9 utable to covered policies shall be used to continue
10 all covered policies and pay all contractual obliga-
11 tions of the impaired or insolvent insurer as required
12 by this subtitle.

13 (2) For purposes of this subsection, the term
14 “assets attributable to covered policies” are that
15 proportion of the assets which the reserves that
16 should have been established for such policies bear
17 to the reserves that should have been established for
18 all policies of insurance written by the impaired or
19 insolvent insurer.

20 (c) DISBURSEMENTS PAYABLE TO THE CORPORA-
21 TION.—As a creditor of the impaired or insolvent insurer
22 as established in subsection (b) of this section and con-
23 sistent with section 975, the corporation shall be entitled
24 to receive a disbursement of assets out of the marshaled
25 assets, from time to time, as the assets become available

1 to reimburse it, as a credit against contractual obligations
2 required to be covered under this subtitle. If the liquidator
3 has not, within 120 days of a final determination of insol-
4 vency of an insurer by the receivership court, made an
5 application to the court for the approval of a proposal to
6 disburse assets out of marshaled assets to State associa-
7 tions having obligations because of the insolvency, then the
8 corporation shall be entitled to make application to the
9 receivership court for approval of its own proposal to dis-
10 burse these assets.

11 (d) TERMINATION; SHAREHOLDER DISTRIBUTIONS.—
12

13 (1) Prior to the termination of any liquidation,
14 rehabilitation or conservation proceeding, the court
15 may take into consideration the contributions of the
16 respective parties, including the corporation, the
17 shareholders, and policyowners of the insolvent in-
18 surer, and any other party with a bona fide interest,
19 in making an equitable distribution of the ownership
20 rights of the insolvent national insurer. In such a
21 determination, consideration shall be given to the
22 welfare of the policyowners of the continuing or suc-
23 cessor insurer.

24 (2) No distribution to shareholders, if any, of
25 an impaired or insolvent insurer shall be made until

1 and unless the total amount of valid claims of the
2 Director and the corporation when acting under this
3 subtitle, with interest thereon for funds expended in
4 carrying out their powers and duties with respect to
5 the insurer, have been fully recovered by the Direc-
6 tor or the corporation, as applicable.

7 **SEC. 1016. EXAMINATION OF THE CORPORATION; ANNUAL**
8 **REPORT.**

9 The corporation shall be subject to examination and
10 regulation by the Director. The corporation shall submit
11 to the Director each year, not later than 120 days after
12 the end of its fiscal year, a financial report in a form ap-
13 proved by the Director and a report of its activities during
14 the preceding fiscal year, as they relate to the duties and
15 functions carried out under this subtitle.

16 **SEC. 1017. IMMUNITY.**

17 There shall be no liability on the part of and no cause
18 of action of any nature shall arise against any member
19 insurer or its agents or employees, the corporation or its
20 agents or employees, members of the board of directors,
21 or the Director or the Director's representatives, for any
22 action or omission by them in the performance of their
23 powers and duties under this subtitle.

1 **SEC. 1018. STAY OF PROCEEDINGS; REOPENING DEFAULT**
2 **JUDGMENTS.**

3 All proceedings in which an insolvent national insurer
4 is a party in any Federal or State court shall be stayed
5 60 days from the date an order of liquidation, rehabilita-
6 tion or conservation is final to permit proper legal action
7 by the associations, or by the corporation when acting
8 under the provisions of this title, on any matters germane
9 to their powers or duties. As to judgment under any deci-
10 sion, order, verdict or finding based on default an associa-
11 tion, or the corporation, may apply to have such judgment
12 set aside by the same court that made such judgment and
13 shall be permitted to defend against such suit on the mer-
14 its.

15 **SEC. 1019. PROHIBITED ADVERTISEMENT OF STATE ASSO-**
16 **CIATION OR THE CORPORATION IN INSUR-**
17 **ANCE SALES; NOTICE TO POLICYOWNERS.**

18 (a) IN GENERAL.—No person, including a national
19 insurer or other insurance producer or affiliate of a na-
20 tional insurer or other insurer shall make, publish, dis-
21 seminate, circulate or place before the public, or cause di-
22 rectly or indirectly, to be made, published, disseminated,
23 circulated or placed before the public, in any newspaper,
24 magazine or other publication, or in the form of a notice,
25 circular, pamphlet, letter or poster, or over any radio sta-
26 tion or television station, or in any other way, any adver-

1 tisement, announcement or statement, written or oral,
2 which uses the existence of an association, or the corpora-
3 tion, for the purpose of sales, solicitation or inducement
4 to purchase any form of insurance covered by the associa-
5 tion or the corporation. However, such prohibition does
6 not apply to an association or any other entity which does
7 not sell or solicit insurance.

8 (b) DISCLAIMER.—A national insurer may not deliver
9 a policy to a policyowner unless a summary document de-
10 scribing the general purposes and current limitations of
11 the appropriate association, or the corporation, and com-
12 plying with subsection (c), is delivered to the policyowner
13 at the time of delivery of the policy. The document shall
14 also be available upon request by a policyowner. The dis-
15 tribution, delivery or contents or interpretation of this doc-
16 ument does not guarantee that either the policy or the
17 policyowner is covered in the event of the impairment or
18 insolvency of a member insurer. Failure to receive this
19 document does not give the policyowner, certificate holder,
20 or insured any greater rights than those stated in this
21 title. The summary document required of a national in-
22 surer under this subsection shall be in lieu of any similar
23 document required by any State.

24 (c) FORM OF DISCLAIMER.—The form and content
25 of the disclaimer required by subsection (b) shall be as

1 prescribed by the State commissioner in the State in which
2 the policy is delivered or issued for delivery, in the case
3 of a qualified State, or the Director, in the case of a non-
4 qualified State. The disclaimer may also include a provi-
5 sion that the national insurer, other insurer and insurance
6 producers are prohibited from using the existence of the
7 association and the corporation for the purpose of sales,
8 solicitation or inducement to purchase any form of insur-
9 ance.

10 **Subtitle B—Property and Casualty** 11 **Insurance**

12 **SEC. 1020. DEFINITIONS.**

13 For purposes of this subtitle:

14 (1) ACCOUNT.—The term “account” means ei-
15 ther of the three accounts referred to in section
16 1027.

17 (2) ASSOCIATION.—The term “association”
18 means the State property and casualty insurance
19 guaranty association created under the laws of the
20 relevant State.

21 (3) CLAIMANT.—The term “claimant” means
22 any insured making a first party claim or any per-
23 son instituting a liability claim, provided that no
24 person who is an affiliate of the insolvent insurer
25 may be a claimant.

1 (4) COVERED CLAIM.—

2 (A) IN GENERAL.—The term “covered
3 claim” means an unpaid claim, including one
4 for unearned premiums, submitted by a claim-
5 ant, which arises out of and is within the cov-
6 erage and is subject to the applicable limits of
7 an insurance policy to which this subtitle ap-
8 plies issued by a member insurer, if the member
9 insurer becomes an insolvent insurer after the
10 effective date of this subtitle and—

11 (i) the claimant or insured is a resi-
12 dent of a nonqualifying State at the time
13 of the insured event, provided that for en-
14 tities other than an individual, the resi-
15 dence of a claimant, insured or policy-
16 holder is the State in which its principal
17 place of business is located at the time of
18 the insured event; or

19 (ii) the claim is a first party claim for
20 damage to property with a permanent loca-
21 tion in a nonqualifying State.

22 (B) EXCLUSIONS.—Such term shall not
23 include—

24 (i) any amount awarded as punitive or
25 exemplary damages;

1 (ii) any amount sought as a return of
2 premium under any retrospective rating
3 plan;

4 (iii) any amount due any reinsurer,
5 insurer, insurance pool or underwriting as-
6 sociation as subrogation recoveries, rein-
7 surance recoveries, contribution, indem-
8 nification or otherwise; no claim for any
9 amount due any reinsurer, insurer, insur-
10 ance pool or underwriting association may
11 be asserted against a person insured under
12 a policy issued by an insolvent insurer
13 other than to the extent the claim exceeds
14 the corporation's obligation limitations set
15 forth in section 1025;

16 (iv) any first party claims by an in-
17 sured whose net worth exceeds
18 \$25,000,000 on December 31 of the year
19 prior to the year in which the member in-
20 surer becomes an insolvent insurer; pro-
21 vided that an insured's net worth on that
22 date shall be deemed to include the aggre-
23 gate net worth of the insured and all of its
24 subsidiaries as calculated on a consolidated
25 basis; or

1 (v) any first party claims by an in-
2 sured which is an affiliate of the insolvent
3 insurer.

4 (5) INSOLVENT INSURER.—The term “insolvent
5 insurer” means a member insurer which is placed
6 under an order of liquidation by a court of com-
7 petent jurisdiction with a finding of insolvency.

8 (6) MEMBER INSURER.—

9 (A) The term “member insurer” means
10 any person who—

11 (i) writes any kind of insurance to
12 which this subtitle applies, including the
13 exchange of reciprocal or inter-insurance
14 contracts; and

15 (ii) is a State insurer licensed or hold-
16 ing a certificate of authority to transact in
17 a nonqualifying State any kind of insur-
18 ance for which coverage is provided under
19 section 1025, including a State insurer
20 whose license or certificate of authority in
21 that State may have been suspended, re-
22 voked, not renewed or voluntarily with-
23 drawn; or

24 (iii) is a national insurer that holds a
25 Federal license under this Act to issue the

1 kinds of insurance for which coverage is
2 provided under section 1025.

3 (B) A State insurer or national insurer
4 shall cease to be a member insurer effective on
5 the day following the termination or expiration
6 of its license to transact the kinds of insurance
7 to which this subtitle applies; provided, how-
8 ever, that such State insurer or national insurer
9 shall remain liable as a member insurer for any
10 and all obligations, including obligations for as-
11 sessments levied prior to the termination or ex-
12 piration of the State insurer's or national insur-
13 er's license and assessments levied after the ter-
14 mination or expiration, with respect to such
15 State insurer or national insurer that becomes
16 an insolvent insurer prior to the termination or
17 expiration of the State insurer's or national in-
18 surer's license.

19 (7) NET DIRECT WRITTEN PREMIUMS.—The
20 term “net direct written premiums” means direct
21 gross premiums less return premiums written in a
22 nonqualifying State to which this subtitle applies
23 and dividends paid or credited to policyholders on
24 that direct business. Such term does not include pre-
25 miums on contracts between insurers or reinsurers.

1 (8) NON-QUALIFYING STATE.—The term “non-
2 qualifying State” means a State that is not a quali-
3 fied State as defined in section 1022.

4 (9) RECEIVERSHIP COURT.—In the case of a
5 State insurer, the term “receivership court” means
6 the court having jurisdiction over the conservation,
7 rehabilitation or liquidation of the insurer. In the
8 case of a national insurer holding a Federal license
9 under this Act, such term means the United States
10 district court or other United States court having ju-
11 risdiction over the receivership proceedings involving
12 such national insurer.

13 (10) STATE COMMISSIONER.—The term “State
14 commissioner” means the chief insurance regulatory
15 official of a State.

16 **SEC. 1021. NATIONAL INSURER PARTICIPATION IN QUALI-**
17 **FIED STATE ASSOCIATIONS.**

18 (a) QUALIFIED STATE ASSOCIATION MEMBER-
19 SHIP.—A national insurer holding a Federal license to
20 issue property and casualty insurance must, as a condition
21 of its authority to transact business, become and continue
22 as a member of a qualified State’s association in each
23 State in which the national insurer is doing business.

24 (b) DEFINITION OF DOING BUSINESS.—A national
25 insurer is doing business in a State for purposes of this

1 subtitle if it has any policies on property with a permanent
2 location in the State, collects premiums from a
3 policyowner resident in the State, or has current obliga-
4 tions to policyowners or beneficiaries of policies in that
5 State.

6 **SEC. 1022. QUALIFIED STATE DEFINED.**

7 (a) **QUALIFIED STATE DEFINED.**—For purposes of
8 this subtitle, the term “qualified State” means a State
9 which has established an association—

10 (1) that provides protection for covered claims
11 in the event of insolvency of any national insurer or
12 State insurer doing business in the State that meets
13 or exceeds the standards set forth in sections 1025,
14 1026, and 1027; and

15 (2) which has been determined by the Director
16 to comply with the standards set forth in sections
17 1025, 1026, and 1027, and such determination has
18 not been revoked.

19 (b) **DEEMED COMPLIANCE.**—An association shall be
20 deemed in compliance with the requirements of subsection
21 (a) until 3 years after the effective date of this Act, fol-
22 lowing which date an association must meet those require-
23 ments. An association that is determined by the Director
24 not to meet the standards required in subsection (a) at
25 any time on or after 3 years following the effective date

1 of this Act shall be preempted by this subtitle. The Direc-
2 tor may, for good cause, extend this 3-year period for not
3 more than 6 months as to any association. The Director
4 shall notify an association's board of directors and the rel-
5 evant State's State commissioner that the association's
6 qualification under subsection (a) has been revoked for the
7 reasons stated, effective 90 days following the date of such
8 notification.

9 **SEC. 1023. TRANSITION RULES WHEN ASSOCIATION PRE-**
10 **EMPTED.**

11 In the event an association's qualification is revoked
12 under section 1022 following a date on which a member
13 insurer of that association has been determined to be in-
14 solvent, for insolvencies occurring on or before the date
15 on which the standard benefits of this title apply, and
16 prior to a termination of receivership proceedings—

17 (1) the Director shall develop a plan, in con-
18 sultation with the association and the relevant
19 State's State commissioner, to provide appropriate
20 coverage to covered claims, and assessments appro-
21 priate to the line of insurance affected, which plan
22 may include coverage provided in whole or in part by
23 the corporation;

24 (2) such plan shall incorporate appropriate ad-
25 justments in the event payments for claims have

1 been made under the association's coverage, includ-
2 ing the adjustment of claims transferred to, and as-
3 sumption of liabilities by, succeeding insurance com-
4 panies; and

5 (3) appropriate supplemental assessments, if
6 necessary, may be made pursuant to section 1027,
7 by the corporation as the Director finds necessary to
8 effect the change in benefits provided under this
9 subtitle.

10 **SEC. 1024. ESTABLISHMENT OF THE NATIONAL PROPERTY**
11 **AND CASUALTY INSURANCE GUARANTY COR-**
12 **PORATION; PROTECTION FOR RESIDENTS IN**
13 **PREEMPTED STATES.**

14 (a) ESTABLISHMENT OF THE CORPORATION.—There
15 is established the National Property and Casualty Insur-
16 ance Guaranty Corporation. The corporation shall be a
17 nonprofit corporation and shall have succession until dis-
18 solved by Act of the Congress. The corporation—

19 (1) shall not be an agency or instrumentality of
20 the United States Government; and

21 (2) except as otherwise provided in this subtitle,
22 shall be subject to, and have all the powers conferred
23 upon a nonprofit corporation by, the District of Co-
24 lumbia Nonprofit Corporation Act (section 29-
25 301.01 et seq., D.C. Official Code).

1 (b) MEMBERSHIP IN THE CORPORATION.—The mem-
2 bership of the corporation shall consist of all member in-
3 surers.

4 (c) CORPORATE GOVERNANCE.—

5 (1) BOARD OF DIRECTORS.—The board of di-
6 rectors of the corporation shall be the governing
7 body of the corporation and shall be vested with all
8 powers necessary for the management and adminis-
9 tration of the affairs of the corporation and the pro-
10 motion of its purposes as authorized by this Act.
11 The board's authority shall be specified in the by-
12 laws of the corporation.

13 (2) INITIAL BOARD.—The initial board of the
14 corporation shall be elected by the membership of
15 the corporation, provided that if the membership
16 fails to elect the initial board of the corporation
17 within 3 years of the effective date of this Act, then
18 the initial board shall be appointed by the Director.
19 Membership on the board shall be fairly representa-
20 tive of member insurers of differing size and lines of
21 business written.

22 (3) BYLAWS AND RULES.—The Director shall
23 prescribe the initial bylaws and rules governing the
24 corporation which shall set forth the composition of
25 the board, the term of board members, filling of

1 board vacancies, board compensation, election of of-
2 ficers and procedures to call board meetings, and all
3 matters necessary for the governance of the corpora-
4 tion not addressed by the District of Columbia Non-
5 profit Corporation Act.

6 (4) AMENDMENTS TO BYLAWS AND RULES.—
7 Amendments to the bylaws and rules of the corpora-
8 tion following the establishment of the initial bylaws
9 and rules as provided in paragraph (3) shall be
10 adopted by the board of the corporation following
11 the approval thereof by the Director.

12 (d) RELATIONSHIP OF CORPORATION TO THE FED-
13 ERAL GOVERNMENT.—

14 (1) The corporation shall be subject to super-
15 vision and oversight of the Director.

16 (2) The obligations of the corporation shall not
17 be backed, directly or indirectly, by the full faith and
18 credit of the United States. The corporation shall re-
19 ceive no financial assistance from or have any au-
20 thority to borrow from the United States.

21 (3) Funds held by or due to the corporation
22 shall not be included in the budget of the United
23 States, nor may the United States borrow or pledge
24 such funds.

1 (e) CORPORATION TO PROVIDE PROTECTION IN PRE-
2 EMPTED STATES.—The corporation shall provide the pro-
3 tections under this subtitle for covered claims in any State
4 in which the operations and activities of the association
5 have been preempted pursuant to section 1022.

6 (f) CONTRACTING WITH PERSON TO ADMINISTER
7 BENEFITS.—The corporation may, with the approval of
8 the Director, contract with another person to administer
9 the claims submitted to the corporation under this sub-
10 title.

11 (g) FUNDING OF CLAIMS.—Funds for the provision
12 of covered claims by the corporation shall be in accordance
13 with the formulas and procedures, and subject to the limi-
14 tations of, section 1027. Premiums and other consider-
15 ations for purposes of such assessments shall include all
16 nationwide premiums of national insurers on the covered
17 lines of business.

18 **SEC. 1025. PROTECTIONS AGAINST INSOLVENCY; COV-**
19 **ERAGE AND LIMITATIONS.**

20 (a) COVERED CLAIMS.—This subtitle shall provide
21 coverage for covered claims on policies specified in sub-
22 section (b)—

- 23 (1) existing prior to the order of liquidation,
24 (2) arising within thirty (30) days after the
25 order of liquidation,

1 (3) arising before the policy expiration date if
2 less than thirty (30) days after the order or liquida-
3 tion, or

4 (4) arising before the insured replaces the poli-
5 cy or causes its cancellation, if the insured does so
6 within thirty (30) days of the order of liquidation.

7 (b) POLICIES COVERED.—

8 (1) SCOPE.—This subtitle shall provide cov-
9 erage to the claims specified in subsection (a) for all
10 kinds of direct insurance, other than—

11 (A) life, annuity or disability insurance;

12 (B) mortgage guaranty, financial guaranty
13 or other forms of insurance offering protection
14 against investment risks;

15 (C) fidelity or surety bonds, or any other
16 bonding obligations;

17 (D) credit insurance, vendors' single inter-
18 est insurance, or collateral protection insurance
19 or any similar insurance protecting the interests
20 of a creditor arising out of a creditor-debtor
21 transaction;

22 (E) insurance of warranties or service con-
23 tracts including insurance that provides for the
24 repair, replacement or service of goods or prop-
25 erty, indemnification for repair, replacement or

1 service for the operational or structural failure
2 of the goods or property due to a defect in ma-
3 terials, workmanship or normal wear and tear,
4 or provides reimbursement for the liability in-
5 curred by the issuer of agreements or service
6 contracts that provide such benefits;

7 (F) title insurance;

8 (G) ocean marine insurance;

9 (H) any transaction or combination of
10 transactions between a person (including affili-
11 ates of such person) and an insurer (including
12 affiliates of such insurer) which involves the
13 transfer of investment or credit risk unaccom-
14 panied by transfer of insurance risk; or

15 (I) any insurance provided by or guaran-
16 teed by government.

17 (2) DEFINITIONS.—For purposes of this sub-
18 section:

19 (A) The term “financial guaranty insur-
20 ance” includes—

21 (i) failure of any obligor or obligors on
22 any debt instrument or other monetary ob-
23 ligation, including common or preferred
24 stock, to pay when due the principal, inter-
25 est, dividend or purchase price of such in-

1 strument or obligation, whether failure is
2 the result of a financial default or insol-
3 vency and whether or not the obligation is
4 incurred directly or as guarantor by, or on
5 behalf of, another obligor which has also
6 defaulted;

7 (ii) changes in the level of interest
8 rates whether short-term or long-term, or
9 in the difference between interest rates ex-
10 isting in various markets;

11 (iii) changes in the rate of exchange
12 of currency, or from the inconvertibility of
13 one currency into another for any reason;
14 and

15 (iv) changes in the value of specific
16 assets or commodities, or price levels in
17 general.

18 (B) The term “credit insurance” means in-
19 surance on accounts receivable.

20 (C) The term “ocean marine insurance”
21 means any form of insurance, regardless of the
22 name, label or marketing designation of the in-
23 surance policy, which insures against maritime
24 perils or risks and other related perils or risks,
25 which are usually insured against by traditional

1 marine insurance, such as hull and machinery,
2 marine builders risk, and marine protection and
3 indemnity. Perils and risk insured against in-
4 clude without limitation loss, damage, expense
5 or legal liability of the insured for loss, damage
6 or expense arising out of or incident to owner-
7 ship, operation, chartering, maintenance, use,
8 repair or construction of any vessel, craft or in-
9 strumentality in use in ocean or inland water-
10 ways for commercial purposes, including liabil-
11 ity of the insured for personal liability of the in-
12 sured for personal injury, illness or death or for
13 loss of damage to the property of the insured
14 or another person.

15 (c) COVERAGE LIMITATIONS.—

16 (1) IN GENERAL.—The obligation to a claimant
17 under this subtitle shall be satisfied by paying to the
18 claimant—

19 (A) the full amount of a covered claim for
20 the benefits under a workers' compensation in-
21 surance coverage; and

22 (B) an amount not exceeding \$10,000 per
23 policy for a covered claim for the return of un-
24 earned premiums;

1 (2) OTHER LIMITATIONS.—In no event shall a
2 claimant be entitled to an amount in excess of the
3 obligation of the insolvent insurer under the policy
4 or coverage from which the claim arises. Notwith-
5 standing any other provisions of this subtitle, a cov-
6 ered claim shall not include a claim filed after the
7 final date set by the receivership court for the filing
8 of claims against the liquidator or receiver of an in-
9 solvent insurer.

10 **SEC. 1026. BOARD OF DIRECTORS.**

11 The board of directors of a qualifying State's associa-
12 tion shall provide for representation of insurers on a basis
13 that does not unfairly discriminate against national insur-
14 ers or against insurers domiciled in other jurisdictions,
15 and shall be fairly representative of insurers of differing
16 sizes and lines of insurance written. State commissioners
17 shall be member insurers and may be represented by offi-
18 cers at the discretion of the member insurer.

19 **SEC. 1027. POWERS AND DUTIES OF THE CORPORATION.**

20 (a) For purposes of administration and assessment,
21 the corporation shall establish three separate accounts as
22 follows:

- 23 (1) A workers' compensation insurance account.
24 (2) An automobile insurance account.

1 (3) An account for all other insurance to which
2 this subtitle applies.

3 (b)(1) The corporation shall be deemed the national
4 insurer to the extent of its obligation on covered claims
5 and to that extent shall have all rights, duties and obliga-
6 tions of the insolvent insurer as if the national insurer
7 had not become insolvent, including but not limited to the
8 right to pursue and retain salvage and subrogation recov-
9 erable on covered claims obligations to the extent paid by
10 the corporation.

11 (2) The corporation shall allocate claims paid and ex-
12 penses incurred among the 3 accounts separately, and as-
13 sess member insurers separately for each account,
14 amounts necessary to pay the obligations of the associa-
15 tion under section 1025(c) subsequent to an insolvency,
16 the expenses of handling covered claims subsequent to an
17 insolvency, and other expenses authorized by this Act, as
18 follows:

19 (A) PROPORTION.—The assessments of each
20 member insurer shall be in the proportion that the
21 net direct written premiums of the member insurer
22 for the calendar year preceding the assessment on
23 the kinds of insurance in the account bears to the
24 net direct written premiums of all member insurers

1 for the calendar year preceding the assessment on
2 the kinds of insurance in the account.

3 (B) NOTIFICATION.—Each member insurer
4 shall be notified of the assessment not later than
5 thirty (30) days before it is due.

6 (C) LIMITATION.—A member insurer may not
7 be assessed in any one year on any account an
8 amount greater than two percent (2%) of that mem-
9 ber insurer's net direct written premiums for the
10 calendar year preceding the assessment on the kinds
11 of insurance in the account. If the maximum assess-
12 ment, together with the other assets of the corpora-
13 tion in any account, does not provide in any one
14 year in any account an amount sufficient to make all
15 necessary payments from that account, the funds
16 available shall be pro-rated and the unpaid portion
17 shall be paid as soon thereafter as funds become
18 available.

19 (D) PAYMENT OF CLAIMS.—The corporation
20 shall pay claims in any order which it deems reason-
21 able, including the payment of claims as they are re-
22 ceived from the claimants or in groups or categories
23 of claims.

24 (E) EXEMPTION; DEFERRAL.—The corporation
25 may exempt or defer, in whole or in part, the assess-

1 ment of a member insurer, if the assessment would
2 cause the member insurer's financial statement to
3 reflect amounts of capital or surplus less than the
4 minimum amounts required for a certificate of au-
5 thority by a jurisdiction in which the member in-
6 surer is authorized to transact insurance. However,
7 during the period of deferment no dividends shall be
8 paid to shareholders or policyholders. Deferred as-
9 sessments shall be paid when the payment will not
10 reduce capital or surplus below required minimums.

11 (F) REFUND.—Payments shall be refunded to
12 those member insurers receiving larger assessments
13 by virtue of such deferment, or at the election of the
14 member insurer, credited against future assess-
15 ments.

16 (G) SET OFF.—A member insurer may set off
17 against any assessment, authorized payments made
18 on covered claims and expenses incurred in the pay-
19 ment of claims by the member insurer if they are
20 chargeable to the account for which the assessment
21 is made.

22 (3) The corporation shall investigate claims brought
23 against the corporation and adjust, compromise, settle and
24 pay covered claims to the extent of the corporation's obli-
25 gation and deny all other claims. The corporation may re-

1 view settlements, releases and judgments to which the in-
2 solvent insurer or its insureds were parties to determine
3 the extent to which the settlements, releases and judg-
4 ments may be properly contested. The corporation shall
5 have the right to appoint or substitute and to direct legal
6 counsel retained under liability insurance policies for the
7 defense of covered claims.

8 (4) The corporation shall notify claimants in this
9 State as deemed necessary by the Director, to the extent
10 records are available to the corporation.

11 (5) The corporation shall handle claims through its
12 employees or through one or more insurers or through one
13 or more insurers or other persons designated as servicing
14 facilities. Designation of a servicing facility is subject to
15 the approval of the Director, but the designation may be
16 declined by a member insurer.

17 (6) The corporation shall reimburse each servicing fa-
18 cility for obligations of the corporation paid by the facility
19 and for expenses incurred by the facility while handling
20 claims on behalf of the corporation and shall pay the other
21 expenses of the corporation authorized by this Act.

22 (b) OTHER POWERS.—The corporation may:

23 (1) Employ or retain persons necessary to han-
24 dle claims and perform other duties of the corpora-
25 tion.

1 (2) Borrow funds necessary to affect the pur-
2 poses of this Act in accordance with the plan of op-
3 eration.

4 (3) Sue or be sued.

5 (4) Negotiate and become a party to contracts
6 necessary to carry out the purpose of this Act.

7 (5) Perform other acts necessary or proper to
8 effectuate the purpose of this Act.

9 (6) Refund to member insurers in proportion to
10 the contribution of each member insurer to the cor-
11 poration that amount by which the assets of the cor-
12 poration exceed the liabilities, if at the end of any
13 calendar year, the board of directors finds that the
14 assets of the corporation exceed the liabilities of the
15 corporation as estimated by the board of directors
16 for the coming year.

17 **SEC. 1028. DUTIES AND POWERS OF DIRECTOR.**

18 (a) DIRECTOR'S DUTIES AND POWERS.—The Direc-
19 tor shall—

20 (1) notify the corporation of the existence of an
21 insolvent insurer not later than three days after the
22 Director receives notice of the determination of the
23 insolvency. The corporation shall be entitled to a
24 copy of a complaint seeking an order of liquidation
25 with a finding of insolvency against a member in-

1 surer at the same time that the complaint is filed
2 with a court of competent jurisdiction; and

3 (2) provide the corporation with a statement of
4 the net direct written premiums of each member in-
5 surer upon request of the board of directors.

6 (b) **ADDITIONALLY DUTIES AND POWERS.**—The Di-
7 rector may—

8 (1) suspend or revoke, after notice and hearing,
9 the Federal license of a national insurer that fails to
10 pay an assessment when due; or

11 (2) levy a fine on a member insurer that fails
12 to pay an assessment, not to exceed five percent of
13 the unpaid assessment per month, except that a fine
14 shall not be less than \$100 per month.

15 (c) **JUDICIAL REVIEW.**—A final action or order of the
16 Director under this subtitle shall be subject to judicial re-
17 view under the terms of section 803.

18 **SEC. 1029. EFFECT OF PAID CLAIMS.**

19 (a) **IN GENERAL.**—A person recovering under this
20 subtitle shall be deemed to have assigned any rights under
21 the policy to the corporation to the extent of his or her
22 recovery from the corporation. Every insured or claimant
23 seeking the protection of this subtitle shall cooperate with
24 the corporation to the same extent as the person would
25 have been required to cooperate with the insolvent insurer.

1 The corporation shall have no cause of action against the
2 insured of the insolvent insurer for sums it has paid out
3 except causes of action the insolvent insurer would have
4 had if the sums had been paid by the insolvent insurer
5 and except as provided in subsection (b). In the case of
6 an insolvent insurer subject to assessment liability, the
7 payments of claims of the corporation shall not operate
8 to reduce the liability of the insureds to the receiver, liqui-
9 dator, or statutory successor for unpaid assessments.

10 (b) RIGHT TO RECOVER.—The corporation shall have
11 the right to recover from the following persons the amount
12 of any covered claim paid on behalf of the person pursuant
13 to this subtitle—

14 (1) an insured whose net worth on December
15 31 of the year immediately preceding the date the
16 member insurer becomes an insolvent insurer ex-
17 ceeds \$50 million and whose liability obligations to
18 other persons are satisfied in whole or in part by
19 payments made under this subtitle; and

20 (2) any person who is an affiliate of the insol-
21 vent insurer and whose liability obligations to other
22 persons are satisfied in whole or in part by pay-
23 ments made under this subtitle.

24 (c) CORPORATION AS CLAIMANT.—The corporation
25 shall be recognized as a claimant in the liquidation of an

1 insolvent insurer for amounts paid by the corporation on
2 covered claims as determined under this subtitle and shall
3 receive dividends and other distributions at the priority
4 established by section 975, or applicable state law. The
5 receiver, liquidator or statutory successor of an insolvent
6 insurer shall be bound by determinations of covered claim
7 eligibility under this subtitle and by settlement of claims
8 made by the corporation to the extent such determinations
9 or settlements satisfy obligations of the corporation. The
10 receiver shall not be bound in any way by such determina-
11 tions or settlements to the extent there remains a claim
12 against the insolvent insurer. The receivership court shall
13 grant the claims priority equal to that which the claimant
14 would have been entitled against the assets of the insolvent
15 insurer in the absence of this subtitle.

16 (d) **FILINGS.**—The corporation shall periodically file
17 with the receiver or liquidator of the insolvent insurer
18 statements of the covered claims paid by the corporation
19 and estimates of anticipated claims on the corporation
20 which shall preserve the rights of the corporation against
21 the assets of the insolvent insurer.

22 **SEC. 1030. EXHAUSTION OF OTHER COVERAGE.**

23 (a) **IN GENERAL.**—Any person having a claim
24 against an insolvent insurer, whether or not the insurer
25 is a member insurer, under any provision in an insurance

1 policy other than a policy of an insolvent insurer which
2 is also a covered claim, shall be required to exhaust first
3 his or her rights under the policy. An amount payable on
4 a covered claim under this subtitle shall be reduced by the
5 amount of recovery under the insurance policy.

6 (b) MULTIPLE ASSOCIATIONS.—A person having a
7 claim which may be recovered from more than one associa-
8 tion in a qualifying or nonqualifying State, or from one
9 or more such associations and the corporation, shall seek
10 recovery first from the association of the place of residence
11 of the insured (or, if the insured resides in a nonqualifying
12 State, from the corporation), except that if it is a first
13 party claim for damages to property with a permanent lo-
14 cation, the person shall seek recovery first from the asso-
15 ciation of the location of the property. If it is a workers'
16 compensation claim, the person shall seek recovery first
17 from the association of the residence of the claimant (or,
18 if the claimant resides in a nonqualifying State, from the
19 corporation). A recovery under this subtitle shall be re-
20 duced by the amount of recovery from another association.

21 **SEC. 1031. COOPERATION BETWEEN DIRECTOR AND STATE**
22 **COMMISSIONERS.**

23 (a) NOTICE TO STATE COMMISSIONERS.—The Direc-
24 tor shall notify the State commissioner in each State in
25 which a national insurer is doing business within 30 days

1 of taking any of the following actions against a national
2 insurer—

3 (1) revocation or suspension of the national in-
4 surer's authority to transact insurance;

5 (2) the entry of a formal order that the na-
6 tional insurer restrict its premium writing, obtain
7 additional contributions to surplus, reinsure all or
8 any part of its business, or increase capital, surplus,
9 or any other account for the security of policyowners
10 or creditors; or

11 (3) the Director has reasonable cause to believe
12 from an examination, whether completed or in proc-
13 ess, of any national insurer that such national in-
14 surer may be an insolvent insurer.

15 (b) NOTICE TO DIRECTOR.—Each State commis-
16 sioner shall notify the Director when any action listed in
17 subsection (a)(1) is taken or condition is believed to exist
18 with respect to a State insurer that is a member insurer.

19 (c) REPORT TO ASSOCIATIONS.—The Director shall
20 also report to the boards of directors of the appropriate
21 associations when the Director has taken any of the ac-
22 tions set forth in subsection (a). Any report to the boards
23 of directors shall contain all significant details of the ac-
24 tion taken and may be provided with the cooperation of
25 the corporation.

1 (d) OBLIGATIONS OF THE CORPORATION.—The cor-
2 poration may make reports and recommendations to the
3 Director, as appropriate, upon any matter germane to the
4 solvency, liquidation, rehabilitation or conservation of any
5 member insurer. The reports and recommendations shall
6 not be considered public documents. The corporation shall
7 also provide such information and advice as requested by
8 the Director when providing protection and benefits under
9 this title in a nonqualifying State.

10 (e) NOTICE BY THE CORPORATION.—The corporation
11 may notify the Director of any information indicating a
12 member insurer in a nonqualifying State may be an insol-
13 vent insurer.

14 **SEC. 1032. PROHIBITED DISCRIMINATION IN TAX TREAT-**
15 **MENT.**

16 No State law may discriminate between national in-
17 surers and other insurers with respect to deductions or
18 offsets of assessments against premium, franchise or in-
19 come tax liability to the State, and any State law that
20 does so shall not be effective.

21 **SEC. 1033. EXAMINATION OF THE CORPORATION; ANNUAL**
22 **REPORT.**

23 The corporation shall be subject to examination and
24 regulation by the Director. The corporation shall submit
25 to the Director each year, not later than 120 days after

1 the end of its fiscal year, a financial report in a form ap-
2 proved by the Director and a report of its activities during
3 the preceding fiscal year, as they relate to the duties and
4 functions carried out under this subtitle.

5 **SEC. 1034. IMMUNITY.**

6 There shall be no liability on the part of and no cause
7 of action of any nature shall arise against any member
8 insurer or its agents or employees, the corporation or its
9 agents or employees, members of the board of directors,
10 or the Director or the Director's representatives, for any
11 action or omission by them in the performance of their
12 powers and duties under this subtitle.

13 **SEC. 1035. STAY OF PROCEEDINGS.**

14 (a) **STAY.**—All proceedings in which an insolvent in-
15 surer is a party in any Federal or State court shall, sub-
16 ject to waiver by the corporation in specific cases involving
17 covered claims, be stayed for six (6) months and additional
18 time that may be determined by the court from the date
19 the insolvency is determined or an ancillary proceeding is
20 instituted, whichever is later, to permit proper defense by
21 the corporation of all pending causes of action. As to cov-
22 ered claims arising from a judgment under decision, ver-
23 dict or finding based on the default of an insolvent insurer
24 or its failure to defend an insured, the corporation, either
25 on its own behalf or on behalf on an insured, may apply

1 to have the judgment, order, decision, verdict or finding
2 set aside by the same court or administrator that made
3 the judgment, order, decision, verdict or finding and shall
4 be permitted to defend the claim on the merits.

5 (b) RECORDS.—The liquidator, receiver or statutory
6 successor of an insolvent insurer covered by this subtitle
7 shall permit access by the corporation or its authorized
8 representative to the insolvent insurer’s records which are
9 necessary for the corporation in carrying out its functions
10 under this subtitle with regard to covered claims. The liq-
11 uidator, receiver, or statutory successor shall provide the
12 corporation or its representative with copies of those
13 records upon the request of the corporation and at the
14 expense of the corporation.

15 **TITLE XI—EFFECTIVE DATE**

16 **SEC. 1101. EFFECTIVE DATE.**

17 Except as otherwise specifically provided in this Act,
18 this Act shall take effect upon the expiration of the 12-
19 month period beginning on the date of the enactment of
20 this Act.

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