

107TH CONGRESS
1ST SESSION

H. R. 785

To amend the Internal Revenue Code of 1986 to provide for the creation of disaster protection funds by property and casualty insurance companies for the payment of policyholders' claims arising from future catastrophic events.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2001

Mr. FOLEY (for himself, Mr. MATSUI, Mr. GONZALEZ, Mr. ROYCE, Mr. TANNER, Mr. MCINNIS, Mr. CRANE, Mr. HERGER, Mr. WATKINS, Mr. ENGLISH, Mr. SAM JOHNSON of Texas, Mr. HAYWORTH, Mr. HOUGHTON, Mr. PORTMAN, Mr. WATTS of Oklahoma, Ms. PRYCE of Ohio, Mr. EHRLICH, Mr. CHAMBLISS, Mr. MILLER of Florida, Mr. JONES of North Carolina, Mr. BONILLA, Mr. BOEHNER, Mr. RADANOVICH, Mr. HINCHEY, Mr. CANNON, Mr. PAUL, Mrs. MEEK of Florida, Mr. CHABOT, Ms. JACKSON-LEE of Texas, Mr. DOOLITTLE, and Mr. CALVERT) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for the creation of disaster protection funds by property and casualty insurance companies for the payment of policyholders' claims arising from future catastrophic events.

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.**

2 This Act may be cited as the “Policyholder Disaster
3 Protection Act of 2001”.

4 **SEC. 2. FINDINGS.**

5 The Congress makes the following findings:

6 (1) Rising costs resulting from natural disasters
7 are placing an increasing strain on the ability of
8 property and casualty insurance companies to assure
9 payment of homeowners’ claims and other insurance
10 claims arising from major natural disasters now and
11 in the future.

12 (2) Present tax laws do not provide adequate
13 incentives to assure that natural disaster insurance
14 is provided or, where such insurance is provided,
15 that funds are available for payment of insurance
16 claims in the event of future catastrophic losses from
17 major natural disasters, as present law requires an
18 insurer wishing to accumulate surplus assets for this
19 purpose to do so entirely from its after-tax retained
20 earnings.

21 (3) Revising the tax laws applicable to the prop-
22 erty and casualty insurance industry to permit care-
23 fully controlled accumulation of pretax dollars in
24 separate reserve funds devoted solely to the payment
25 of claims arising from future major natural disasters
26 will provide incentives for property and casualty in-

1 surers to make natural disaster insurance available,
2 will give greater protection to the Nation’s home-
3 owners, small businesses, and other insurance con-
4 sumers, and will help assure the future financial
5 health of the Nation’s insurance system as a whole.

6 (4) Implementing these changes will reduce the
7 possibility that a significant portion of the private
8 insurance system would fail in the wake of a major
9 natural disaster and that governmental entities
10 would be required to step in to provide relief at tax-
11 payer expense.

12 **SEC. 3. CREATION OF POLICYHOLDER DISASTER PROTEC-**
13 **TION FUNDS; CONTRIBUTIONS TO AND DIS-**
14 **TRIBUTIONS FROM FUNDS; OTHER RULES.**

15 (a) CONTRIBUTIONS TO POLICYHOLDER DISASTER
16 PROTECTION FUNDS.—Subsection (c) of section 832 of
17 the Internal Revenue Code of 1986 (relating to the taxable
18 income of insurance companies other than life insurance
19 companies) is amended by striking “and” at the end of
20 paragraph (12), by striking the period at the end of para-
21 graph (13) and inserting “; and”, and by adding at the
22 end the following new paragraph:

23 “(14) the qualified contributions to a policy-
24 holder disaster protection fund during the taxable
25 year.”.

1 (b) DISTRIBUTIONS FROM POLICYHOLDER DISASTER
2 PROTECTION FUNDS.—Paragraph (1) of section 832(b) of
3 such Code is amended by striking “and” at the end of
4 subparagraph (D), by striking the period at the end of
5 subparagraph (E) and inserting “, and”, and by adding
6 at the end the following new subparagraph:

7 “(F) the amount of any distributions from
8 a policyholder disaster protection fund during
9 the taxable year, except that a distribution
10 made to return to the qualified insurance com-
11 pany any contribution which is not a qualified
12 contribution (as defined in subsection (h)) for a
13 taxable year shall not be included in gross in-
14 come if such distribution is made prior to the
15 filing of the tax return for such taxable year.”.

16 (c) DEFINITIONS AND OTHER RULES RELATING TO
17 POLICYHOLDER DISASTER PROTECTION FUNDS.—Section
18 832 of such Code (relating to insurance company taxable
19 income) is amended by adding at the end the following
20 new subsection:

21 “(h) DEFINITIONS AND OTHER RULES RELATING TO
22 POLICYHOLDER DISASTER PROTECTION FUNDS.—For
23 purposes of subsections (b)(1)(F) and (c)(14)—

24 “(1) POLICYHOLDER DISASTER PROTECTION
25 FUND.—The term ‘policyholder disaster protection

1 fund' (hereafter in this subsection referred to as the
2 'fund') means any custodial account, trust, or any
3 other arrangement or account—

4 “(A) which is established to hold assets
5 that are set aside solely for the payment of
6 qualified losses, and

7 “(B) under the terms of which—

8 “(i) the assets in the fund are re-
9 quired to be invested in a manner con-
10 sistent with the investment requirements
11 applicable to the qualified insurance com-
12 pany under the laws of its jurisdiction of
13 domicile,

14 “(ii) the net income for the taxable
15 year derived from the assets in the fund is
16 required to be distributed no less fre-
17 quently than annually,

18 “(iii) an excess balance drawdown
19 amount is required to be distributed to the
20 qualified insurance company no later than
21 the close of the taxable year following the
22 taxable year for which such amount is de-
23 termined,

24 “(iv) a catastrophe drawdown amount
25 may be distributed to the qualified insur-

1 ance company if distributed prior to the
2 close of the taxable year following the year
3 for which such amount is determined,

4 “(v) a State required drawdown
5 amount may be distributed, and

6 “(vi) no distributions from the fund
7 are required or permitted other than the
8 distributions described in clauses (ii)
9 through (v) and the return to the qualified
10 insurance company of contributions that
11 are not qualified contributions.

12 “(2) QUALIFIED INSURANCE COMPANY.—The
13 term ‘qualified insurance company’ means any insur-
14 ance company subject to tax under section 831(a).

15 “(3) QUALIFIED CONTRIBUTION.—The term
16 ‘qualified contribution’ means a contribution to a
17 fund for a taxable year to the extent that the
18 amount of such contribution, when added to the pre-
19 vious contributions to the fund for such taxable
20 year, does not exceed the excess of—

21 “(A) the fund cap for the taxable year,
22 over

23 “(B) the fund balance determined as of the
24 close of the preceding taxable year.

1 “(4) EXCESS BALANCE DRAWDOWN
2 AMOUNTS.—The term ‘excess balance drawdown
3 amount’ means the excess (if any) of—

4 “(A) the fund balance as of the close of
5 the taxable year, over

6 “(B) the fund cap for the following taxable
7 year.

8 “(5) CATASTROPHE DRAWDOWN AMOUNT.—

9 “(A) IN GENERAL.—The term ‘catastrophe
10 drawdown amount’ means an amount that does
11 not exceed the lesser of the amount determined
12 under subparagraph (B) or (C).

13 “(B) NET LOSSES FROM QUALIFYING
14 EVENTS.—The amount determined under this
15 subparagraph shall be equal to the qualified
16 losses for the taxable year determined without
17 regard to clause (ii) of paragraph (8)(A).

18 “(C) GROSS LOSSES IN EXCESS OF
19 THRESHOLD.—The amount determined under
20 this subparagraph shall be equal to the excess
21 (if any) of—

22 “(i) the qualified losses for the taxable
23 year, over

24 “(ii) the lesser of—

1 “(I) the fund cap for the taxable
2 year (determined without regard to
3 paragraph (9)(E)), or

4 “(II) 30 percent of the qualified
5 insurance company’s surplus as re-
6 gards policyholders as shown on the
7 company’s annual statement for the
8 calendar year preceding the taxable
9 year.

10 “(D) SPECIAL DRAWDOWN AMOUNT FOL-
11 LOWING A RECENT CATASTROPHE LOSS
12 YEAR.—If for any taxable year included in the
13 reference period the qualified losses exceed the
14 amount determined under subparagraph (C)(ii),
15 the ‘catastrophe drawdown amount’ shall be an
16 amount that does not exceed the lesser of the
17 amount determined under subparagraph (B) or
18 the amount determined under this subpara-
19 graph. The amount determined under this sub-
20 paragraph shall be an amount equal to the ex-
21 cess (if any) of—

22 “(i) the qualified losses for the taxable
23 year, over

24 “(ii) the lesser of—

1 “(I) 1/3 of the fund cap for the
2 taxable year (determined without re-
3 gard to paragraph (9)(E)), or

4 “(II) 10 percent of the qualified
5 insurance company’s surplus as re-
6 gards policyholders as shown on the
7 company’s annual statement for the
8 calendar year preceding the taxable
9 year.

10 “(E) REFERENCE PERIOD.—For purposes
11 of subparagraph (D), the reference period shall
12 be determined under the following table:

“For a taxable year beginning in—	The reference period shall be—
2005 and later	The 3 preceding taxable years.
2004	The 2 preceding taxable years.
2003	The preceding taxable year.
2002 or before	No reference period applies.

13 “(6) STATE REQUIRED DRAWDOWN AMOUNT.—
14 The term ‘State required drawdown amount’ means
15 any amount that the department of insurance for
16 the qualified insurance company’s jurisdiction of
17 domicile requires to be distributed from the fund, to
18 the extent such amount is not otherwise described in
19 paragraph (4) or (5).

20 “(7) FUND BALANCE.—The term ‘fund balance’
21 means—

1 “(A) the sum of all qualified contributions
2 to the fund,

3 “(B) less any net investment loss of the
4 fund for any taxable year or years, and

5 “(C) less the sum of all distributions under
6 clauses (iii) through (v) of paragraph (1)(B).

7 “(8) QUALIFIED LOSSES.—

8 “(A) IN GENERAL.—The term ‘qualified
9 losses’ means, with respect to a taxable year—

10 “(i) the amount of losses and loss ad-
11 justment expenses incurred in the qualified
12 lines of business specified in paragraph
13 (9), net of reinsurance, as reported in the
14 qualified insurance company’s annual
15 statement for the taxable year, that are at-
16 tributable to one or more qualifying events
17 (regardless of when such qualifying events
18 occurred),

19 “(ii) the amount by which such losses
20 and loss adjustment expenses attributable
21 to such qualifying events have been re-
22 duced for reinsurance received and recover-
23 able, plus

24 “(iii) any nonrecoverable assessments,
25 surcharges, or other liabilities that are

1 borne by the qualified insurance company
2 and are attributable to such qualifying
3 events.

4 “(B) QUALIFYING EVENT.—For purposes
5 of subparagraph (A), the term ‘qualifying event’
6 means any event that satisfies clauses (i) and
7 (ii).

8 “(i) EVENT.—An event satisfies this
9 clause if the event is 1 or more of the fol-
10 lowing:

11 “(I) Windstorm (hurricane, cy-
12 clone, or tornado).

13 “(II) Earthquake (including any
14 fire following).

15 “(III) Winter catastrophe (snow,
16 ice, or freezing).

17 “(IV) Fire.

18 “(V) Tsunami.

19 “(VI) Flood.

20 “(VII) Volcanic eruption.

21 “(VIII) Hail.

22 “(ii) CATASTROPHE DESIGNATION.—
23 An event satisfies this clause if the event—

1 “(I) is designated a catastrophe
2 by Property Claim Services or its suc-
3 cessor organization,

4 “(II) is declared by the President
5 to be an emergency or disaster, or

6 “(III) is declared to be an emer-
7 gency or disaster in a similar declara-
8 tion by the chief executive official of a
9 State, possession, or territory of the
10 United States, or the District of Co-
11 lumbia.

12 “(9) FUND CAP.—

13 “(A) IN GENERAL.—The term ‘fund cap’
14 for a taxable year is the sum of the separate
15 lines of business caps for each of the qualified
16 lines of business specified in the table contained
17 in subparagraph (C) (as modified under sub-
18 paragraphs (D) and (E)).

19 “(B) SEPARATE LINES OF BUSINESS
20 CAP.—For purposes of subparagraph (A), the
21 separate lines of business cap, with respect to
22 a qualified line of business specified in the table
23 contained in subparagraph (C), is the product
24 of—

1 “(i) net written premiums reported in
 2 the annual statement for the calendar year
 3 preceding the taxable year in such line of
 4 business, multiplied by

5 “(ii) the fund cap multiplier applica-
 6 ble to such qualified line of business.

7 “(C) QUALIFIED LINES OF BUSINESS AND
 8 THEIR RESPECTIVE FUND CAP MULTIPLIERS.—
 9 For purposes of this paragraph, the qualified
 10 lines of business and fund cap multipliers speci-
 11 fied in this subparagraph are those specified in
 12 the following table:

“Line of Business on Annual Statement Blank:	Fund Cap Multiplier:
Fire	0.25
Allied	1.25
Farmowners Multiple Peril	0.25
Homeowners Multiple Peril	0.75
Commercial Multi Peril (non-liability portion)	0.50
Earthquake	13.00
Inland Marine	0.25.

13 “(D) SUBSEQUENT MODIFICATIONS OF
 14 THE ANNUAL STATEMENT BLANK.—If, with re-
 15 spect to any taxable year beginning after the ef-
 16 fective date of this subsection, the annual state-
 17 ment blank required to be filed is amended to
 18 replace, combine, or otherwise modify any of
 19 the qualified lines of business specified in sub-
 20 paragraph (C), then for such taxable year sub-
 21 paragraph (C) shall be applied in a manner

1 such that the fund cap shall be the same
 2 amount as if such reporting modification had
 3 not been made.

4 “(E) 20-YEAR PHASE-IN.—Notwith-
 5 standing subparagraph (C), the fund cap for a
 6 taxable year shall be the amount determined
 7 under subparagraph (C), as adjusted pursuant
 8 to subparagraph (D) (if applicable), multiplied
 9 by the phase-in percentage indicated in the fol-
 10 lowing table:

“Taxable year beginning in:	Phase-in percentage to be applied to fund cap computed under subparagraphs (A) and (B):
2002	5 percent
2003	10 percent
2004	15 percent
2005	20 percent
2006	25 percent
2007	30 percent
2008	35 percent
2009	40 percent
2010	45 percent
2011	50 percent
2012	55 percent
2013	60 percent
2014	65 percent
2015	70 percent
2016	75 percent
2017	80 percent
2018	85 percent
2019	90 percent
2020	95 percent
2021 and later	100 percent.

11 “(10) TREATMENT OF INVESTMENT INCOME
 12 AND GAIN OR LOSS.—

13 “(A) CONTRIBUTIONS IN KIND.—A trans-
 14 fer of property other than money to a fund

1 shall be treated as a sale or exchange of such
2 property for an amount equal to its fair market
3 value as of the date of transfer, and appro-
4 priate adjustment shall be made to the basis of
5 such property. Section 267 shall apply to any
6 loss realized upon such a transfer.

7 “(B) DISTRIBUTIONS IN KIND.—A transfer
8 of property other than money by a fund to the
9 qualified insurance company shall not be treat-
10 ed as a sale or exchange or other disposition of
11 such property. The basis of such property im-
12 mediately after such transfer shall be the great-
13 er of the basis of such property immediately be-
14 fore such transfer or the fair market value of
15 such property on the date of such transfer.

16 “(C) INCOME WITH RESPECT TO FUND AS-
17 SETS.—Items of income of the type described in
18 paragraphs (1)(B), (1)(C), and (2) of sub-
19 section (b) that are derived from the assets held
20 in a fund, as well as losses from the sale or
21 other disposition of such assets, shall be consid-
22 ered items of income, gain, or loss of the quali-
23 fied insurance company. Notwithstanding para-
24 graph (1)(F) of subsection (b), distributions of
25 net income to the qualified insurance company

1 pursuant to paragraph (1)(B)(ii) of this sub-
2 section shall not cause such income to be taken
3 into account a second time.

4 “(11) NET INCOME; NET INVESTMENT LOSS.—
5 For purposes of paragraph (1)(B)(ii), the net in-
6 come derived from the assets in the fund for the tax-
7 able year shall be the items of income and gain for
8 the taxable year, less the items of loss for the tax-
9 able year, derived from such assets, as described in
10 paragraph (10)(C). For purposes of paragraph (7),
11 there is a net investment loss for the taxable year
12 to the extent that the items of loss described in the
13 preceding sentence exceed the items of income and
14 gain described in the preceding sentence.

15 “(12) ANNUAL STATEMENT.—For purposes of
16 this subsection, the term ‘annual statement’ shall
17 have the meaning set forth in section 846(f)(3).

18 “(13) EXCLUSION OF PREMIUMS AND LOSSES
19 ON CERTAIN PUERTO RICAN RISKS.—Notwith-
20 standing any other provision of this subsection, pre-
21 miums and losses with respect to risks covered by a
22 catastrophe reserve established under the laws or
23 regulations of the Commonwealth of Puerto Rico
24 shall not be taken into account under this subsection

1 in determining the amount of the fund cap or the
2 amount of qualified losses.

3 “(14) REGULATIONS.—The Secretary shall pre-
4 scribe such regulations as may be necessary or ap-
5 propriate to carry out the purposes of this sub-
6 section, including regulations—

7 “(A) which govern the application of this
8 subsection to a qualified insurance company
9 having a taxable year other than the calendar
10 year or a taxable year less than 12 months,

11 “(B) which govern a fund maintained by a
12 qualified insurance company that ceases to be
13 subject to this part, and

14 “(C) which govern the application of para-
15 graph (9)(D).”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2001.

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