

Calendar No. 410

107TH CONGRESS
2D SESSION**S. 2600**

To ensure the continued financial capacity of insurers to provide coverage
for risks from terrorism.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2002

Mr. DODD (for himself, Mr. SARBANES, Mr. SCHUMER, and Mr. REID)
introduced the following bill; which was read the first time

JUNE 10, 2002

Read the second time and placed on the calendar

A BILL

To ensure the continued financial capacity of insurers to
provide coverage for risks from terrorism.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Terrorism Risk Insur-
5 ance Act of 2002”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

1 (1) property and casualty insurance firms are
2 important financial institutions, the products of
3 which allow mutualization of risk and the efficient
4 use of financial resources and enhance the ability of
5 the economy to maintain stability, while responding
6 to a variety of economic, political, environmental,
7 and other risks with a minimum of disruption;

8 (2) the ability of businesses and individuals to
9 obtain property and casualty insurance at reasonable
10 and predictable prices, in order to spread the risk of
11 both routine and catastrophic loss, is critical to eco-
12 nomic growth, urban development, and the construc-
13 tion and maintenance of public and private housing,
14 as well as to the promotion of United States exports
15 and foreign trade in an increasingly interconnected
16 world;

17 (3) the ability of the insurance industry to
18 cover the unprecedented financial risks presented by
19 potential acts of terrorism in the United States can
20 be a major factor in the recovery from terrorist at-
21 tacks, while maintaining the stability of the econ-
22 omy;

23 (4) widespread financial market uncertainties
24 have arisen following the terrorist attacks of Sep-
25 tember 11, 2001, including the absence of informa-

1 tion from which financial institutions can make sta-
2 tistically valid estimates of the probability and cost
3 of future terrorist events, and therefore the size,
4 funding, and allocation of the risk of loss caused by
5 such acts of terrorism;

6 (5) a decision by property and casualty insurers
7 to deal with such uncertainties, either by termi-
8 nating property and casualty coverage for losses
9 arising from terrorist events, or by radically esca-
10 lating premium coverage to compensate for risks of
11 loss that are not readily predictable, could seriously
12 hamper ongoing and planned construction, property
13 acquisition, and other business projects, generate a
14 dramatic increase in rents, and otherwise suppress
15 economic activity; and

16 (6) the United States Government should pro-
17 vide temporary financial compensation to insured
18 parties, contributing to the stabilization of the
19 United States economy in a time of national crisis,
20 while the financial services industry develops the sys-
21 tems, mechanisms, products, and programs nec-
22 essary to create a viable financial services market for
23 private terrorism risk insurance.

24 (b) PURPOSE.—The purpose of this Act is to estab-
25 lish a temporary Federal program that provides for a

1 transparent system of shared public and private com-
 2 pensation for insured losses resulting from acts of ter-
 3 rorism, in order to—

4 (1) protect consumers by addressing market
 5 disruptions and ensure the continued widespread
 6 availability and affordability of property and cas-
 7 ualty insurance for terrorism risk; and

8 (2) allow for a transitional period for the pri-
 9 vate markets to stabilize, resume pricing of such in-
 10 surance, and build capacity to absorb any future
 11 losses, while preserving State insurance regulation
 12 and consumer protections.

13 **SEC. 3. DEFINITIONS.**

14 In this Act, the following definitions shall apply:

15 (1) ACT OF TERRORISM.—

16 (A) CERTIFICATION.—The term “act of
 17 terrorism” means any act that is certified by
 18 the Secretary, in concurrence with the Sec-
 19 retary of State, and the Attorney General of the
 20 United States—

21 (i) to be a violent act or an act that
 22 is dangerous to—

23 (I) human life;

24 (II) property; or

25 (III) infrastructure;

1 (ii) to have resulted in damage within
2 the United States, or outside the United
3 States in the case of an air carrier de-
4 scribed in paragraph (3)(A)(ii); and

5 (iii) to have been committed by an in-
6 dividual or individuals acting on behalf of
7 any foreign person or foreign interest, as
8 part of an effort to coerce the civilian pop-
9 ulation of the United States or to influence
10 the policy or affect the conduct of the
11 United States Government by coercion.

12 (B) LIMITATION.—No act or event shall be
13 certified by the Secretary as an act of terrorism
14 if—

15 (i) the act or event is committed in
16 the course of a war declared by the Con-
17 gress; or

18 (ii) losses resulting from the act or
19 event, in the aggregate, do not exceed
20 \$5,000,000.

21 (C) DETERMINATIONS FINAL.—Any certifi-
22 cation of, or determination not to certify, an act
23 or event as an act of terrorism under this para-
24 graph shall be final, and shall not be subject to
25 judicial review.

1 (2) BUSINESS INTERRUPTION COVERAGE.—The
2 term “business interruption coverage”—

3 (A) means coverage of losses for temporary
4 relocation expenses and ongoing expenses, in-
5 cluding ordinary wages, where—

6 (i) there is physical damage to the
7 business premises of such magnitude that
8 the business cannot open for business;

9 (ii) there is physical damage to other
10 property that totally prevents customers or
11 employees from gaining access to the busi-
12 ness premises; or

13 (iii) the Federal, State, or local gov-
14 ernment shuts down an area due to phys-
15 ical or environmental damage, thereby pre-
16 venting customers or employees from gain-
17 ing access to the business premises; and

18 (B) does not include lost profits, other
19 than in the case of a small business concern (as
20 defined in section 3 of the Small Business Act
21 (15 U.S.C. 632) and applicable regulations
22 thereunder) in any case described in clause (i),
23 (ii), or (iii) of subparagraph (A).

24 (3) INSURED LOSS.—The term “insured loss”—

1 (A) means any loss resulting from an act
2 of terrorism that is covered by primary property
3 and casualty insurance, including business
4 interruption coverage, issued by a participating
5 insurance company, if such loss—

6 (i) occurs within the United States; or

7 (ii) occurs to an air carrier (as de-
8 fined in section 40102 of title 49, United
9 States Code) or to a United States flag
10 vessel (or a vessel based principally in the
11 United States, on which United States in-
12 come tax is paid and whose insurance cov-
13 erage is subject to regulation in the United
14 States), regardless of where the loss oc-
15 curs; and

16 (B) excludes coverage under any life or
17 health insurance.

18 (4) MARKET SHARE.—

19 (A) IN GENERAL.—The “market share” of
20 a participating insurance company shall be cal-
21 culated using the total amount of direct written
22 property and casualty insurance premiums for
23 the participating insurance company during the
24 2-year period preceding the year in which the
25 subject act of terrorism occurred (or during

1 such other period for which adequate data are
2 available, as determined by the Secretary), as a
3 percentage of the aggregate of all such property
4 and casualty insurance premiums industry-wide
5 during that period.

6 (B) ADJUSTMENTS.—The Secretary may
7 adjust the market share of a participating in-
8 surance company under subparagraph (A), as
9 necessary to reflect current market participa-
10 tion of that participating insurance company.

11 (5) NAIC.—The term “NAIC” means the Na-
12 tional Association of Insurance Commissioners.

13 (6) PARTICIPATING INSURANCE COMPANY.—
14 The term “participating insurance company” means
15 any insurance company, including any subsidiary or
16 affiliate thereof—

17 (A) that—

18 (i) is licensed or admitted to engage
19 in the business of providing primary insur-
20 ance in any State, and was so licensed or
21 admitted on September 11, 2001; or

22 (ii) is not licensed or admitted as de-
23 scribed in clause (i), if it is an eligible sur-
24 plus line carrier listed on the Quarterly

1 Listing of Alien Insurers of the NAIC, or
2 any successor thereto;

3 (B) that receives direct premiums for any
4 type of commercial property and casualty insur-
5 ance coverage or that, not later than 21 days
6 after the date of enactment of this Act, submits
7 written notification to the Secretary of its in-
8 tent to participate in the Program with regard
9 to personal lines of property and casualty insur-
10 ance; and

11 (C) that meets any other criteria that the
12 Secretary may reasonably prescribe.

13 (7) PARTICIPATING INSURANCE COMPANY DE-
14 DUCTIBLE.—The term “participating insurance com-
15 pany deductible” means—

16 (A) a participating insurance company’s
17 market share, multiplied by \$10,000,000,000,
18 with respect to insured losses resulting from an
19 act of terrorism occurring during the period be-
20 ginning on the date of enactment of this Act
21 and ending at midnight on December 31, 2002;
22 and

23 (B) a participating insurance company’s
24 market share, multiplied by \$15,000,000,000,
25 with respect to insured losses resulting from an

1 act of terrorism occurring during the period be-
2 ginning on January 1, 2003 and ending at mid-
3 night on December 31, 2003, if the Program is
4 extended in accordance with section 6.

5 (8) PERSON.—The term “person” means any
6 individual, business or nonprofit entity (including
7 those organized in the form of a partnership, limited
8 liability company, corporation, or association), trust
9 or estate, or a State or political subdivision of a
10 State or other governmental unit.

11 (9) PROGRAM.—The term “Program” means
12 the Terrorism Insured Loss Shared Compensation
13 Program established by this Act.

14 (10) PROPERTY AND CASUALTY INSURANCE.—
15 The term “property and casualty insurance”—

16 (A) means commercial lines of property
17 and casualty insurance;

18 (B) includes personal lines of property and
19 casualty insurance, if a notification is made in
20 accordance with paragraph (6)(B); and

21 (C) does not include—

22 (i) Federal crop insurance issued or
23 reinsured under the Federal Crop Insur-
24 ance Act (7 U.S.C. 1501 et seq.); or

1 (ii) private mortgage insurance, as
2 that term is defined in section 2 of the
3 Homeowners Protection Act of 1998 (12
4 U.S.C. 4901).

5 (11) SECRETARY.—The term “Secretary”
6 means the Secretary of the Treasury.

7 (12) STATE.—The term “State” means any
8 State of the United States, the District of Columbia,
9 the Commonwealth of Puerto Rico, the Common-
10 wealth of the Northern Mariana Islands, American
11 Samoa, Guam, and each of the United States Virgin
12 Islands.

13 (13) UNITED STATES.—The term “United
14 States” means all States of the United States.

15 **SEC. 4. TERRORISM INSURED LOSS SHARED COMPENSA-**
16 **TION PROGRAM.**

17 (a) ESTABLISHMENT OF PROGRAM.—

18 (1) IN GENERAL.—There is established in the
19 Department of the Treasury the Terrorism Insured
20 Loss Shared Compensation Program.

21 (2) AUTHORITY OF THE SECRETARY.—Notwith-
22 standing any other provision of State or Federal
23 law, the Secretary shall administer the Program,
24 and shall pay the Federal share of compensation for
25 insured losses in accordance with subsection (e).

1 (b) CONDITIONS FOR FEDERAL PAYMENTS.—No
2 payment may be made by the Secretary under subsection
3 (e), unless—

4 (1) a person that suffers an insured loss, or a
5 person acting on behalf of that person, files a claim
6 with a participating insurance company;

7 (2) the participating insurance company pro-
8 vides clear and conspicuous disclosure to the policy-
9 holder of the premium charged for insured losses
10 covered by the Program and the Federal share of
11 compensation for insured losses under the
12 Program—

13 (A) in the case of any policy covering an
14 insured loss that is issued on or after the date
15 of enactment of this Act, in the policy, at the
16 time of offer, purchase, and renewal of the pol-
17 icy; and

18 (B) in the case of any policy that is issued
19 before the date of enactment of this Act, not
20 later than 90 days after that date of enactment;

21 (3) the participating insurance company proc-
22 esses the claim for the insured loss in accordance
23 with its standard business practices, and any reason-
24 able procedures that the Secretary may prescribe;
25 and

1 (4) the participating insurance company sub-
2 mits to the Secretary, in accordance with such rea-
3 sonable procedures as the Secretary may establish—

4 (A) a claim for payment of the Federal
5 share of compensation for insured losses under
6 the Program;

7 (B) written verification and certification—

8 (i) of the underlying claim; and

9 (ii) of all payments made for insured
10 losses; and

11 (C) certification of its compliance with the
12 provisions of this subsection.

13 (c) MANDATORY PARTICIPATION; MANDATORY
14 AVAILABILITY.—Each insurance company that meets the
15 definition of a participating insurance company under sec-
16 tion 3—

17 (1) shall participate in the Program;

18 (2) shall make available in all of its property
19 and casualty insurance policies (in all of its partici-
20 pating lines), coverage for insured losses; and

21 (3) shall make available property and casualty
22 insurance coverage for insured losses that does not
23 differ materially from the terms, amounts, and other
24 coverage limitations applicable to losses arising from
25 events other than acts of terrorism.

1 (d) PARTICIPATION BY SELF INSURED ENTITIES.—

2 (1) DETERMINATION BY THE SECRETARY.—

3 The Secretary may, in consultation with the NAIC,
4 establish procedures to allow participation in the
5 Program by municipalities and other governmental
6 or quasi-governmental entities (and by any other en-
7 tity, as the Secretary deems appropriate) operating
8 through self insurance arrangements that were in
9 existence on September 11, 2001, but only if the
10 Secretary makes a determination with regard to par-
11 ticipation by any such entity before the occurrence
12 of an act of terrorism in which the entity incurs an
13 insured loss.

14 (2) PARTICIPATION.—If the Secretary makes a

15 determination to allow an entity described in para-
16 graph (1) to participate in the Program, all reports,
17 conditions, requirements, and standards established
18 by this Act for participating insurance companies
19 shall apply to any such entity, as determined to be
20 appropriate by the Secretary.

21 (e) SHARED INSURANCE LOSS COVERAGE.—

22 (1) FEDERAL SHARE.—

23 (A) IN GENERAL.—Subject to the cap on
24 liability under paragraph (2) and the limitation
25 under paragraph (6), the Federal share of com-

1 pensation under the Program to be paid by the
2 Secretary for insured losses resulting from an
3 act of terrorism occurring during the period be-
4 ginning on the date of enactment of this Act
5 and ending at midnight on December 31,
6 2002—

7 (i) shall be equal to 80 percent of that
8 portion of the amount of aggregate insured
9 losses that—

10 (I) exceeds the participating in-
11 surance company deductibles required
12 to be paid for those insured losses;
13 and

14 (II) does not exceed
15 \$10,000,000,000; and

16 (ii) shall be equal to 90 percent of
17 that portion of the amount of aggregate in-
18 sured losses that—

19 (I) exceeds the participating in-
20 surance company deductibles required
21 to be paid for those insured losses;
22 and

23 (II) exceeds \$10,000,000,000.

24 (B) EXTENSION PERIOD.—If the Program
25 is extended in accordance with section 6, the

1 Federal share of compensation under the Pro-
2 gram to be paid by the Secretary for insured
3 losses resulting from an act of terrorism occur-
4 ring during the period beginning on January 1,
5 2003 and ending at midnight on December 31,
6 2003, shall be calculated in accordance with
7 clauses (i) and (ii) of subparagraph (A), subject
8 to the cap on liability in paragraph (2) and the
9 limitation under paragraph (6).

10 (C) PRO RATA SHARE.—If, during the pe-
11 riod described in subparagraph (A) (or during
12 the period described in subparagraph (B), if the
13 Program is extended in accordance with section
14 6), the aggregate insured losses for that period
15 exceed \$10,000,000,000, the Secretary shall de-
16 termine the pro rata share for each partici-
17 pating insurance company of the Federal share
18 of compensation for insured losses calculated
19 under subparagraph (A).

20 (2) CAP ON ANNUAL LIABILITY.—Notwith-
21 standing paragraph (1), or any other provision of
22 Federal or State law, if the aggregate insured losses
23 exceed \$100,000,000,000 during any period referred
24 to in subparagraph (A) or (B) of paragraph (1)—

1 (A) the Secretary shall not make any pay-
2 ment under this Act for any portion of the
3 amount of such losses that exceeds
4 \$100,000,000,000; and

5 (B) participating insurance companies
6 shall not be liable for the payment of any por-
7 tion of the amount that exceeds
8 \$100,000,000,000.

9 (3) NOTICE TO CONGRESS.—The Secretary
10 shall notify the Congress if estimated or actual ag-
11 gregate insured losses exceed \$100,000,000,000 in
12 any period described in paragraph (1), and the Con-
13 gress shall determine the procedures for and the
14 source of any such excess payments.

15 (4) FINAL NETTING.—The Secretary shall have
16 sole discretion to determine the time at which claims
17 relating to any insured loss or act of terrorism shall
18 become final.

19 (5) DETERMINATIONS FINAL.—Any determina-
20 tion of the Secretary under this subsection shall be
21 final, and shall not be subject to judicial review.

22 (6) IN-FORCE REINSURANCE AGREEMENTS.—
23 For policies covered by reinsurance contracts in
24 force on the date of enactment of this Act, until the
25 in-force reinsurance contract is renewed, amended,

1 or has reached its 1-year anniversary date, any Fed-
2 eral share of compensation due to a participating in-
3 surance company for insured losses during the effec-
4 tive period of the Program shall be shared—

5 (A) with all reinsurance companies to
6 which the participating insurance company has
7 ceded some share of the insured loss pursuant
8 to an in-force reinsurance contract; and

9 (B) in a manner that distributes the Fed-
10 eral share of compensation for insured losses
11 between the participating insurance company
12 and the reinsurance company or companies in
13 the same proportion as the insured losses would
14 have been distributed if the Program did not
15 exist.

16 **SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF**
17 **CLAIMS.**

18 (a) GENERAL AUTHORITY.—The Secretary shall have
19 the powers and authorities necessary to carry out the Pro-
20 gram, including authority—

21 (1) to investigate and audit all claims under the
22 Program; and

23 (2) to prescribe regulations and procedures to
24 implement the Program.

1 (b) INTERIM RULES AND PROCEDURES.—The Sec-
2 retary shall issue interim final rules or procedures speci-
3 fying the manner in which—

4 (1) participating insurance companies may file,
5 verify, and certify claims under the Program;

6 (2) the Secretary shall publish or otherwise
7 publicly announce the applicable percentage of in-
8 sured losses that is the responsibility of participating
9 insurance companies and the percentage that is the
10 responsibility of the Federal Government under the
11 Program;

12 (3) the Federal share of compensation for in-
13 sured losses will be paid under the Program, includ-
14 ing payments based on estimates of or actual aggre-
15 gate insured losses;

16 (4) the Secretary may, at any time, seek repay-
17 ment from or reimburse any participating insurance
18 company, based on estimates of insured losses under
19 the Program, to effectuate the insured loss sharing
20 provisions contained in section 4;

21 (5) each participating insurance company that
22 incurs insured losses shall pay its pro rata share of
23 insured losses, in accordance with section 4; and

24 (6) the Secretary will determine any final net-
25 ting of payments for actual insured losses under the

1 Program, including payments owed to the Federal
2 Government from any participating insurance com-
3 pany and any Federal share of compensation for in-
4 sured losses owed to any participating insurance
5 company, to effectuate the insured loss sharing pro-
6 visions contained in section 4.

7 (c) SUBROGATION RIGHTS.—The United States shall
8 have the right of subrogation with respect to any payment
9 made by the United States under the Program.

10 (d) CONTRACTS FOR SERVICES.—The Secretary may
11 employ persons or contract for services as may be nec-
12 essary to implement the Program.

13 (e) CIVIL PENALTIES.—The Secretary may assess
14 civil money penalties for violations of this Act or any rule,
15 regulation, or order issued by the Secretary under this Act
16 relating to the submission of false or misleading informa-
17 tion for purposes of the Program, or any failure to repay
18 any amount required to be reimbursed under regulations
19 or procedures described in section 5(b). The authority
20 granted under this subsection shall continue during any
21 period in which the Secretary's authority under section
22 6(d) is in effect.

23 **SEC. 6. TERMINATION OF PROGRAM; DISCRETIONARY EX-**
24 **TENSION.**

25 (a) TERMINATION OF PROGRAM.—

1 (1) IN GENERAL.—The Program shall termi-
2 nate at midnight on December 31, 2002, unless the
3 Secretary—

4 (A) determines, after considering the re-
5 port and finding required by this section, that
6 the Program should be extended for one addi-
7 tional year, until midnight on December 31,
8 2003; and

9 (B) promptly notifies the Congress of such
10 determination and the reasons therefor.

11 (2) DETERMINATION FINAL.—The determina-
12 tion of the Secretary under paragraph (1) shall be
13 final, and shall not be subject to judicial review.

14 (3) TERMINATION AFTER EXTENSION.—If the
15 Program is extended under paragraph (1), the Pro-
16 gram shall terminate at midnight on December 31,
17 2003.

18 (b) REPORT TO CONGRESS.—Not later than 9
19 months after the date of enactment of this Act, the Sec-
20 retary shall submit a report to Congress—

21 (1) regarding—

22 (A) the availability of insurance coverage
23 for acts of terrorism;

1 (B) the affordability of such coverage, in-
2 cluding the effect of such coverage on pre-
3 miums; and

4 (C) the capacity of the insurance industry
5 to absorb future losses resulting from acts of
6 terrorism, taking into account the profitability
7 of the insurance industry; and

8 (2) that considers—

9 (A) the impact of the Program on each of
10 the factors described in paragraph (1); and

11 (B) the probable impact on such factors
12 and on the United States economy if the Pro-
13 gram terminates at midnight on December 31,
14 2002.

15 (c) FINDING REQUIRED.—A determination under
16 subsection (a) to extend the Program shall be based on
17 a finding by the Secretary that—

18 (1) widespread market uncertainties con-
19 tinue to disrupt the ability of insurance compa-
20 nies to price insurance coverage for losses re-
21 sulting from acts of terrorism, thereby resulting
22 in the continuing unavailability of affordable in-
23 surance for consumers; and

24 (2) extending the Program for an addi-
25 tional year would likely encourage economic sta-

1 bilization and facilitate a transition to a viable
2 market for private terrorism risk insurance.

3 (d) CONTINUING AUTHORITY TO PAY OR ADJUST
4 COMPENSATION.—Following the termination of the Pro-
5 gram under subsection (a), the Secretary may take such
6 actions as may be necessary to ensure payment, reim-
7 bursement, or adjustment of compensation for insured
8 losses arising out of any act of terrorism occurring during
9 the period in which the Program was in effect under this
10 Act, in accordance with the provisions of section 4 and
11 regulations promulgated thereunder.

12 (e) REPEAL; SAVINGS CLAUSE.—This Act is repealed
13 at midnight on the final termination date of the Program
14 under subsection (a), except that such repeal shall not be
15 construed—

16 (1) to prevent the Secretary from taking, or
17 causing to be taken, such actions under subsection
18 (d) of this section and sections 4(e)(4), 4(e)(5),
19 5(a)(1), 5(c), and 5(e) (as in effect on the day be-
20 fore the date of such repeal), and applicable regula-
21 tions promulgated thereunder, during any period in
22 which the authority of the Secretary under sub-
23 section (d) of this section is in effect; or

24 (2) to prevent the availability of funding under
25 section 10(b) during any period in which the author-

1 ity of the Secretary under subsection (d) of this sec-
2 tion is in effect.

3 (f) SENSE OF THE CONGRESS.—It is the sense of the
4 Congress that the Secretary should make any determina-
5 tion under subsection (a) in sufficient time to enable par-
6 ticipating insurance companies to include coverage for acts
7 of terrorism in their policies for 2003.

8 (g) STUDY AND REPORT ON SCOPE OF THE PRO-
9 GRAM.—

10 (1) STUDY.—The Secretary, after consultation
11 with the NAIC, representatives of the insurance in-
12 dustry, and other experts in the insurance field,
13 shall conduct a study of the potential effects of acts
14 of terrorism on the availability of life insurance and
15 other lines of insurance coverage.

16 (2) REPORT.—Not later than 9 months after
17 the date of enactment of this Act, the Secretary
18 shall submit a report to the Congress on the results
19 of the study conducted under paragraph (1).

20 (h) REPORTS REGARDING TERRORISM RISK INSUR-
21 ANCE PREMIUMS.—

22 (1) REPORT TO THE NAIC.—Beginning 6
23 months after the date of enactment of this Act, and
24 every 6 months thereafter, each participating insur-
25 ance company shall submit a report to the NAIC

1 that states the premium rates charged by that par-
2 ticipating insurance company during the preceding
3 6-month period for insured losses covered by the
4 Program, and includes an explanation of and jus-
5 tification for those rates.

6 (2) REPORTS FORWARDED.—The NAIC shall
7 promptly forward copies of each report submitted
8 under paragraph (1) to the Secretary, the Secretary
9 of Commerce, the Chairman of the Federal Trade
10 Commission, and the Comptroller General of the
11 United States.

12 (3) AGENCY REPORTS TO CONGRESS.—

13 (A) IN GENERAL.—The Secretary, the Sec-
14 retary of Commerce, and the Chairman of the
15 Federal Trade Commission shall submit joint
16 reports to Congress and the Comptroller Gen-
17 eral of the United States summarizing and eval-
18 uating the reports forwarded under paragraph
19 (2).

20 (B) TIMING.—The reports required under
21 subparagraph (A) shall be submitted—

22 (i) 9 months after the date of enact-
23 ment of this Act; and

24 (ii) 12 months after the date of sub-
25 mission of the first report under clause (i).

1 (4) GAO EVALUATION AND REPORT.—

2 (A) EVALUATION.—The Comptroller Gen-
3 eral of the United States shall evaluate each re-
4 port submitted under paragraph (3), and upon
5 request, the Secretary, the Secretary of Com-
6 merce, the Chairman of the Federal Trade
7 Commission, and the NAIC shall provide to the
8 Comptroller all documents, records, and any
9 other information that the Comptroller deems
10 necessary to carry out such evaluation.

11 (B) REPORT TO CONGRESS.—Not later
12 than 90 days after receipt of each report sub-
13 mitted under paragraph (3), the Comptroller
14 General of the United States shall submit to
15 Congress a report of the evaluation required by
16 subparagraph (A).

17 **SEC. 7. PRESERVATION OF STATE LAW.**

18 Nothing in this Act shall affect the jurisdiction or
19 regulatory authority of the insurance commissioner (or
20 any agency or office performing like functions) of any
21 State over any participating insurance company or other
22 person—

23 (1) except as specifically provided in this Act;

24 and

25 (2) except that—

1 (A) the definition of the term “act of ter-
2 rorism” in section 3 shall be the exclusive defi-
3 nition of that term for purposes of compensa-
4 tion for insured losses under this Act, and shall
5 preempt any provision of State law that is in-
6 consistent with that definition, to the extent
7 that such provision of law would otherwise
8 apply to any type of insurance covered by this
9 Act;

10 (B) during the period beginning on the
11 date of enactment of this Act and ending at
12 midnight on December 31, 2002, rates for ter-
13 rorism risk insurance covered by this Act and
14 filed with any State shall not be subject to prior
15 approval or a waiting period, under any law of
16 a State that would otherwise be applicable, ex-
17 cept that nothing in this Act affects the ability
18 of any State to invalidate a rate as excessive,
19 inadequate, or unfairly discriminatory; and

20 (C) during the period beginning on the
21 date of enactment of this Act and for so long
22 as the Program is in effect, as provided in sec-
23 tion 6 (including any period during which the
24 authority of the Secretary under section 6(d) is
25 in effect), books and records of any partici-

1 pating insurance company that are relevant to
2 the Program shall be provided, or caused to be
3 provided, to the Secretary or the designee of the
4 Secretary, upon request by the Secretary or
5 such designee, notwithstanding any provision of
6 the laws of any State prohibiting or limiting
7 such access.

8 **SEC. 8. SENSE OF THE CONGRESS REGARDING CAPACITY**
9 **BUILDING.**

10 It is the sense of the Congress that the insurance in-
11 dustry should build capacity and aggregate risk to provide
12 affordable property and casualty insurance coverage for
13 terrorism risk.

14 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS; PAYMENT**
15 **AUTHORITY.**

16 (a) ADMINISTRATIVE EXPENSES.—There are author-
17 ized to be appropriated to the Secretary, out of funds in
18 the Treasury not otherwise appropriated, such sums as
19 may be necessary for administrative expenses of the Pro-
20 gram, to remain available until expended.

21 (b) PAYMENT AUTHORITY.—This Act constitutes
22 payment authority in advance of appropriation Acts, and
23 represents the obligation of the Federal Government to
24 provide for the Federal share of compensation for insured
25 losses under the Program.

1 **SEC. 10. PROCEDURES FOR CIVIL ACTIONS.**

2 (a) FEDERAL CAUSE OF ACTION.—

3 (1) IN GENERAL.—There shall exist a Federal
4 cause of action for property damage, personal injury,
5 or death arising out of or resulting from an act of
6 terrorism, which shall be the exclusive cause of ac-
7 tion and remedy for claims for such property dam-
8 age, personal injury, or death, except as provided in
9 subsection (d).

10 (2) PREEMPTION OF STATE ACTIONS.—All
11 State causes of action of any kind for property dam-
12 age, personal injury, or death arising out of or re-
13 sulting from an act of terrorism that are otherwise
14 available under State law, are hereby preempted, ex-
15 cept as provided in subsection (d).

16 (b) GOVERNING LAW.—The substantive law for deci-
17 sion in an action described in subsection (a)(1) shall be
18 derived from the law, including applicable choice of law
19 principles, of the State in which the act of terrorism giving
20 rise to the action occurred, except to the extent that—

21 (1) the law, including choice of law principles,
22 of another State is determined to be applicable to
23 the action by the district court hearing the action;
24 or

1 (2) otherwise applicable State law (including
2 that determined pursuant to paragraph (1), is incon-
3 sistent with or otherwise preempted by Federal law.

4 (c) PUNITIVE DAMAGES.—Any amounts awarded in
5 a civil action described in subsection (a)(1) that are attrib-
6 utable to punitive damages shall not count as insured
7 losses for purposes of this Act.

8 (d) CLAIMS AGAINST TERRORISTS.—Nothing in this
9 section shall in any way be construed to limit the ability
10 of any plaintiff to seek any form of recovery from any per-
11 son, government, or other entity that was a participant
12 in, or aider and abettor of, any act of terrorism.

13 (e) EFFECTIVE PERIOD.—This section shall apply
14 only to actions described in subsection (a)(1) arising out
15 of or resulting from acts of terrorism that occur during
16 the effective period of the Program, including, if applica-
17 ble, any extension period provided for under section 6.

Calendar No. 410

107TH CONGRESS
2^D SESSION

S. 2600

A BILL

To ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

JUNE 10, 2002

Read the second time and placed on the calendar