

110TH CONGRESS  
1ST SESSION

# S. 40

To authorize the issuance of Federal charters and licenses for carrying on the sale, solicitation, negotiation, and underwriting of insurance or any other insurance operations, to provide a comprehensive system for the Federal regulation and supervision of national insurers and national agencies, to provide for policyholder protections in the event of an insolvency or the impairment of a national insurer, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 24, 2007

Mr. SUNUNU (for himself and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To authorize the issuance of Federal charters and licenses for carrying on the sale, solicitation, negotiation, and underwriting of insurance or any other insurance operations, to provide a comprehensive system for the Federal regulation and supervision of national insurers and national agencies, to provide for policyholder protections in the event of an insolvency or the impairment of a national insurer, 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; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “National Insurance Act of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

**TITLE I—OFFICE OF NATIONAL INSURANCE**

**Subtitle A—Establishment of Office of National Insurance**

- Sec. 1101. Establishment.
- Sec. 1102. Commissioner of National Insurance.
- Sec. 1103. Office personnel matters.
- Sec. 1104. Division of Insurance Fraud.
- Sec. 1105. Division of Consumer Affairs.
- Sec. 1106. Insurance self-regulatory organizations.
- Sec. 1107. Office of the Ombudsman.

**Subtitle B—Supervision of National Insurers and National Agencies**

- Sec. 1121. Examination of national insurers and national agencies.
- Sec. 1122. Examination fees and other assessments.
- Sec. 1123. Disclosure of information.
- Sec. 1124. Reporting requirement.
- Sec. 1125. Regulatory supervision and relationship to State law.
- Sec. 1126. Preservation of office records.
- Sec. 1127. Compliance with anti-money laundering requirements.

**Subtitle C—Enforcement of Federal Insurance Laws**

- Sec. 1141. National insurer license suspension, restriction, or revocation.
- Sec. 1142. Suspension, restriction, or revocation of Federal license of national agencies and federally licensed insurance producers.
- Sec. 1143. Cease-and-desist proceedings.
- Sec. 1144. Affirmative action to correct conditions resulting from violations or conduct.
- Sec. 1145. Suspension, removal, and prohibition authority.
- Sec. 1146. Suspension or prohibition based on criminal activity.
- Sec. 1147. Ancillary provisions.
- Sec. 1148. Hearings and judicial review of suspension, removal, or prohibition order.
- Sec. 1149. Civil and criminal penalties.
- Sec. 1150. Public disclosures of final orders and agreements.
- Sec. 1151. Foreign investigations.
- Sec. 1152. Action or proceeding against non-United States insurers.
- Sec. 1153. Cooperation between Commissioner and State commissioners.

**Subtitle D—Insurance Fraud**

- Sec. 1161. Investigation of insurance fraud.
- Sec. 1162. Penalties.
- Sec. 1163. Civil remedy.

## TITLE II—NATIONAL INSURANCE COMPANIES AND NATIONAL INSURANCE AGENCIES

### Subtitle A—Organization, Licensing, and Operations

- Sec. 1201. Organization, operation, and regulation of national insurance companies and national insurance agencies.
- Sec. 1202. United States branches of non-United States insurers.
- Sec. 1203. Federal licensing of national insurers.
- Sec. 1204. Corporate governance.
- Sec. 1205. Participating policy procedures.
- Sec. 1206. Conversion of State insurer to national insurer or State insurance agency to national agency.
- Sec. 1207. Conversion of national insurer to State insurer or national agency to State agency.
- Sec. 1208. Powers.
- Sec. 1209. Separate accounts of national life insurer.
- Sec. 1210. Protected cells.
- Sec. 1211. Chartering and licensing commencement date.

### Subtitle B—Financial, Product, and Market Regulations

- Sec. 1212. Transitional financial regulations.
- Sec. 1213. Other financial regulations.
- Sec. 1214. Product regulation for national life insurers.
- Sec. 1215. Product regulation for national property/casualty insurers.
- Sec. 1216. Regulation of sales and marketing.
- Sec. 1217. Prompt corrective action.

### Subtitle C—Reinsurance

- Sec. 1221. Federal licensing of reinsurers.
- Sec. 1222. Credit for insurance ceded by a national insurer or federally licensed reinsurer.
- Sec. 1223. Relationship to State law.
- Sec. 1224. Freedom of commercial contract.
- Sec. 1225. Review by the Commissioner.

### Subtitle D—Acquisitions of Control; Mergers; Bulk Transfers; Domestication

- Sec. 1231. Acquisition of control of national insurers.
- Sec. 1232. Mergers, consolidations, and acquisitions of national insurers.
- Sec. 1233. Bulk transfers.
- Sec. 1234. Domestication of United States branch of a non-United States insurer.
- Sec. 1235. Mergers, consolidations, and acquisitions of national agencies.

### Subtitle E—Conversions

- Sec. 1241. Definitions.
- Sec. 1242. Conversion of stock life insurer to national life insurer in mutual form.
- Sec. 1243. Conversion of mutual insurer to national insurer in stock form.

Subtitle F—State Taxation

- Sec. 1251. State taxation of national insurers.
- Sec. 1252. State taxation of national agencies.
- Sec. 1253. State taxation of non-admitted and surplus lines insurance.

TITLE III—INSURANCE PRODUCERS AND OTHER INSURANCE  
SERVICING PERSONS

- Sec. 1301. Federal licensing of insurance producers.
- Sec. 1302. Producer database.
- Sec. 1303. Supervision and oversight of federally licensed insurance producers.
- Sec. 1304. Relationship to State law.
- Sec. 1305. Licensing commencement date.

TITLE IV—HOLDING COMPANIES

- Sec. 1401. Definitions.
- Sec. 1402. Registration.
- Sec. 1403. Standards and management of a national insurer within an insurance holding company system.
- Sec. 1404. Relationship to State law.
- Sec. 1405. Conflict with other Federal laws.
- Sec. 1406. No delegation permitted.

TITLE V—RECEIVERSHIP

- Sec. 1501. Appointment of Office as receiver.
- Sec. 1502. Effect of receivership proceeding.
- Sec. 1503. Powers and duties.
- Sec. 1504. Rulemaking.
- Sec. 1505. Judicial review.

TITLE VI—INSOLVENCY PROTECTION

- Sec. 1601. Participation in guaranty associations.
- Sec. 1602. Qualified and nonqualified associations.
- Sec. 1603. Establishment of the National Insurance Guaranty Corporation.
- Sec. 1604. Benefits for policyholders of national life insurers.
- Sec. 1605. Claims covered for policyholders of national property/casualty insurers.
- Sec. 1606. Powers and duties of the Corporation.
- Sec. 1607. Subrogation.
- Sec. 1608. Assessments.
- Sec. 1609. Regulations.
- Sec. 1610. State taxation.
- Sec. 1611. Examination of the Corporation; annual report.
- Sec. 1612. Immunity.

TITLE VII—CONFORMING AMENDMENTS AND MISCELLANEOUS  
PROVISIONS

- Sec. 1701. Nondiscrimination.
- Sec. 1702. Application of the Federal antitrust laws to national insurers, national agencies, and federally licensed insurance producers.
- Sec. 1703. Application of State law and regulation to national insurers, national agencies, and federally licensed insurance producers.
- Sec. 1704. Federal court jurisdiction.

- Sec. 1705. Federal court venue.  
 Sec. 1706. Judicial review.  
 Sec. 1707. Amendment to the Freedom of Information Act.  
 Sec. 1708. Amendments to the Federal securities laws.  
 Sec. 1709. Amendments to the Employee Retirement Income Security Act of 1974.  
 Sec. 1710. Amendments to the Gramm-Leach-Bliley Act.  
 Sec. 1711. Amendments to the Federal Deposit Insurance Act.  
 Sec. 1712. Amendments to the Bank Holding Company Act of 1956.  
 Sec. 1713. Amendments to title 18 (crimes and criminal procedure).  
 Sec. 1714. Amendments to the Americans with Disabilities Act of 1990.  
 Sec. 1715. Amendment to the Age Discrimination in Employment Act.  
 Sec. 1716. Amendments to the Fair Credit Reporting Act.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

- 3 (1) to establish a comprehensive system of Fed-  
 4 eral chartering, licensing, regulation, and supervision  
 5 for insurers and insurance producers that is inde-  
 6 pendent of the State system of insurance licensing,  
 7 regulation, and supervision, yet that requires feder-  
 8 ally chartered and licensed insurers and producers to  
 9 comply with certain State laws, including State tax  
 10 laws;
- 11 (2) to provide for the creation of an Office of  
 12 National Insurance within the Department of the  
 13 Treasury that is funded by assessments imposed  
 14 upon federally chartered and licensed insurers and  
 15 insurance producers; and
- 16 (3) to provide for the appointment of a Com-  
 17 missioner of National Insurance, who, among other  
 18 duties, is authorized—

1 (A) to issue Federal charters and licenses  
2 to insurers and insurance producers;

3 (B) to exclusively regulate and supervise  
4 the operations and solvency of federally char-  
5 tered or licensed insurers and producers on a  
6 uniform, nationwide basis, including the con-  
7 duct of such insurers and producers with policy-  
8 holders; and

9 (C) to protect the interests of policyholders  
10 by establishing a comprehensive scheme for the  
11 receivership for federally chartered insurers  
12 that requires federally chartered insurers to  
13 participate in qualified State guaranty funds.

14 **SEC. 3. DEFINITIONS.**

15 In this Act, the following definitions shall apply:

16 (1) **AFFILIATE.**—The term “affiliate” means  
17 any person that controls, is controlled by, or is  
18 under common control with another person.

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

23 (3) **BUSINESS OF INSURANCE.**—The term  
24 “business of insurance” has the meaning given to

1 such term in section 1033(f) of title 18, United  
2 States Code.

3 (4) COMMISSIONER.—The term “Commis-  
4 sioner” means the Commissioner of National Insur-  
5 ance.

6 (5) CONTROL.—

7 (A) IN GENERAL.—The term “control”, in-  
8 cluding the terms “controlling”, “controlled  
9 by”, and “under common control with” means  
10 the possession, direct or indirect, of the power  
11 to direct or cause the direction of the manage-  
12 ment and policies of a person, whether through  
13 the ownership of voting securities, by contract  
14 or otherwise, unless the power is the result of  
15 an official position with or corporate office held  
16 by a person.

17 (B) SPECIAL RULE.—For purposes of sec-  
18 tions 1204(e), 1231, 1243(g), and title IV, con-  
19 trol shall be presumed to exist if any person, di-  
20 rectly or indirectly, owns, controls, holds with  
21 the power to vote, or holds proxies representing,  
22 10 percent or more of the voting securities of  
23 any other person.

1 (6) CORPORATE GOVERNANCE PROCEDURES.—

2 The term “corporate governance procedures” in-  
3 cludes rules governing—

4 (A) corporate finance;

5 (B) shareholders, members, policyholders,  
6 directors, and officers and meetings, elections,  
7 voting, and notice relating to such persons;

8 (C) indemnification of directors and offi-  
9 cers and insurance for indemnification of direc-  
10 tors and officers; and

11 (D) the duties of shareholders, directors,  
12 and officers (including any duty of care or duty  
13 of fair dealing and any business judgment rule).

14 (7) CORPORATION.—The term “Corporation”  
15 means the National Insurance Guaranty Corporation  
16 established under section 1603.

17 (8) FEDERAL BANKING AGENCIES.—The term  
18 “Federal banking agencies” means the Office of the  
19 Comptroller of the Currency, the Board of Gov-  
20 ernors of the Federal Reserve System, the Federal  
21 Deposit Insurance Corporation, and the Office of  
22 Thrift Supervision.

23 (9) FEDERALLY LICENSED INSURANCE PRO-  
24 DUCER.—The term “federally licensed insurance  
25 producer” means a person, including a national

1 agency and a natural person acting on behalf of a  
2 national agency, that is an insurance producer li-  
3 censed pursuant to section 1301.

4 (10) FRAUDULENT INSURANCE ACT.—The term  
5 “fraudulent insurance act” has the meaning given to  
6 such term in section 1037A(d)(3) of title 18, United  
7 States Code.

8 (11) FUNCTIONAL REGULATOR.—The term  
9 “functional regulator” means—

10 (A) in the case of a broker-dealer, invest-  
11 ment advisor or investment company, the Secu-  
12 rities and Exchange Commission;

13 (B) in the case of a State insurer or State  
14 insurance producer, the appropriate State in-  
15 surance regulator of a State that has jurisdic-  
16 tion over such insurer or insurance producer;

17 (C) in the case of a bank holding company  
18 or financial holding company, the Federal Re-  
19 serve Board;

20 (D) in the case of a savings and loan hold-  
21 ing company, the Office of Thrift Supervision;

22 (E) in the case of a national bank, the Of-  
23 fice of the Comptroller of the Currency;

1 (F) in the case of a Federal savings bank  
2 or Federal savings association, the Office of  
3 Thrift Supervision;

4 (G) in the case of a State bank, the appro-  
5 priate State banking authority for the State in  
6 which the bank is chartered or the Federal De-  
7 posit Insurance Corporation, in the case of a  
8 State bank that is not a member of the Federal  
9 Reserve System, or the Federal Reserve Board,  
10 in the case of a State bank that is a member  
11 of the Federal Reserve System;

12 (H) in the case of a State savings bank or  
13 State savings association, the appropriate bank-  
14 ing authority for the State in which the thrift  
15 is chartered; and

16 (I) in the case of a commodities company,  
17 the Commodities Exchange Commission.

18 (12) FUNCTIONALLY REGULATED AFFILIATE.—

19 The term “functionally regulated affiliate” means—

20 (A) a broker or dealer that is registered  
21 under the Securities Exchange Act of 1934;

22 (B) a registered investment adviser, reg-  
23 istered by or on behalf of either the Securities  
24 and Exchange Commission or any State;

1 (C) an investment company that is reg-  
2 istered under the Investment Company Act of  
3 1940;

4 (D) a State insurer or State insurance pro-  
5 ducer that is subject to supervision by a State  
6 insurance regulator;

7 (E) a bank holding company or financial  
8 holding company registered with or certified by  
9 the Federal Reserve Board;

10 (F) a national bank subject to the super-  
11 vision of the Office of the Comptroller of the  
12 Currency;

13 (G) a State bank subject to the supervision  
14 of a State banking regulator;

15 (H) a Federal savings bank or Federal  
16 savings association subject to the supervision of  
17 the Office of Thrift Supervision;

18 (I) a State savings bank or State savings  
19 association subject to the supervision of a State  
20 banking regulator; and

21 (J) a business entity that is subject to reg-  
22 ulation by the Commodity Futures Trading  
23 Commission, with respect to commodities activi-  
24 ties of such entity and activities incidental to  
25 such commodities activities.

1 (13) INSOLVENCY; INSOLVENT.—

2 (A) IN GENERAL.—The term “insolvency”  
3 or “insolvent” means the inability of an insurer  
4 to pay its obligations when they are due or  
5 when the assets do not exceed liabilities plus  
6 the greater of—

7 (i) any capital and surplus required  
8 by law for its organization; or

9 (ii) the total par or stated value of its  
10 authorized and issued capital stock.

11 (B) LIABILITIES.—In this paragraph, the  
12 term “liabilities” shall include reserves required  
13 by statute or by rule or specific requirements  
14 imposed by the Commissioner upon an insurer.

15 (14) INSURANCE OPERATIONS.—The term “in-  
16 surance operations” includes—

17 (A) the business of insurance;

18 (B) all acts and transactions relating to  
19 the sale, solicitation, negotiation, and under-  
20 writing of insurance;

21 (C) all acts and transactions relating to  
22 claims adjustment and settlement;

23 (D) all acts and transactions relating to  
24 the establishment of rates, rules, risk classifica-  
25 tions, rating classifications, rating territories,

1 and forms (including, endorsements,  
2 addendums, and policy language) for insurance;

3 (E) all acts and transactions relating to  
4 marketing and sales practices;

5 (F) financial condition and solvency;

6 (G) holding company transactions; and

7 (H) corporate governance.

8 (15) INSURANCE PERSON.—The term “insur-  
9 ance person” has the same meaning as in section  
10 1037A(d)(4) of title 18, United States Code.

11 (16) INSURANCE PRODUCER.—The term “in-  
12 surance producer”—

13 (A) means any person, including a national  
14 agency and a natural person acting on behalf of  
15 a national agency, that sells, solicits, or nego-  
16 tiates policies of insurance, non-admitted insur-  
17 ance, and surplus lines of insurance; and

18 (B) does not include—

19 (i) a national insurer;

20 (ii) an officer, director, or employee of  
21 a national insurer or of an insurance pro-  
22 ducer—

23 (I) if the officer, director, or em-  
24 ployee does not receive any commis-  
25 sion or other compensation on insur-

1           ance policies written or sold by the  
2           national insurer or insurance pro-  
3           ducer, which commission or other  
4           compensation is directly dependent  
5           upon the amount of insurance policies  
6           written or sold; and

7                   (II) if—

8                           (aa) the activities of the offi-  
9                           cer, director, or employee are ex-  
10                           ecutive, administrative, manage-  
11                           rial, clerical, or a combination  
12                           thereof, and are only indirectly  
13                           related to the sale, solicitation, or  
14                           negotiation of insurance;

15                           (bb) the functions of the of-  
16                           ficer, director, or employee relate  
17                           to underwriting, loss control, in-  
18                           spection, or the processing, ad-  
19                           justing, investigating, or settling  
20                           of a claim on a policy of insur-  
21                           ance; or

22                           (cc) the officer, director, or  
23                           employee is acting in the capacity  
24                           of a special agent or agency su-  
25                           pervisor assisting insurance pro-

1                   ducers where the person’s activi-  
2                   ties are limited to providing tech-  
3                   nical advice and assistance to  
4                   federally licensed insurance pro-  
5                   ducers, and do not include the  
6                   sale, solicitation, or negotiation  
7                   of insurance;

8                   (iii) a person who secures and fur-  
9                   nishes information for the purpose of  
10                  group insurance policies, or for the pur-  
11                  pose of enrolling individuals under plans,  
12                  or issuing certificates under plans, or oth-  
13                  erwise assisting in administering plans,  
14                  where no commission or other compensa-  
15                  tion directly dependent upon the amount of  
16                  insurance policies written or sold is paid to  
17                  the person for the service;

18                  (iv) an employer or association or its  
19                  officers, directors, employees, or the trust-  
20                  ees of an employee trust plan, to the extent  
21                  that the employer, association, officer, di-  
22                  rector, employee, or trustee is engaged in  
23                  the administration or operation of a pro-  
24                  gram of employee benefits for the employ-  
25                  er’s or association’s own employees or the

1 employees of its subsidiaries or affiliates,  
2 which program involves the use of insur-  
3 ance written by the national insurer, as  
4 long as the employer, association, officer,  
5 director, employee, or trustee is not in any  
6 manner compensated, directly or indirectly,  
7 by the national insurer;

8 (v) an employee of a national insurer  
9 or an organization employed by a national  
10 insurer that is engaging in the inspection,  
11 rating, or classification of risks, or in the  
12 supervision of the training of insurance  
13 producers and that is not individually en-  
14 gaged in the sale, solicitation, or negotia-  
15 tion of insurance;

16 (vi) a person whose activities are lim-  
17 ited to advertising without the intent to so-  
18 licit insurance through communications in  
19 printed publications or other forms of elec-  
20 tronic mass media, provided that the per-  
21 son does not sell, solicit, or negotiate in-  
22 surance;

23 (vii) a salaried full-time employee who  
24 counsels or advises his or her employer rel-  
25 ative to the insurance interests of the em-

1            employer or of the subsidiaries or business af-  
2            filiates of the employer provided that the  
3            employee does not sell or solicit insurance  
4            or receive a commission or other com-  
5            pensation directly dependent upon the  
6            amount of insurance policies written or  
7            sold;

8            (viii) a person that sells, solicits, or  
9            negotiates a funding agreement; or

10            (ix) any other kind of person identi-  
11            fied by the Commissioner, by regulation, as  
12            not being an insurance producer for pur-  
13            poses of this Act.

14            (17) INSURANCE SECURITIZATION.—The term  
15            “insurance securitization” means the issuance of  
16            debt instruments by a national insurer, the proceeds  
17            from which support the exposures attributed to a  
18            protected cell, where repayment of principal or inter-  
19            est, or both, to investors under the transaction terms  
20            is contingent upon the occurrence or nonoccurrence  
21            of an event with respect to which the national in-  
22            surer is exposed to loss under insurance policies or  
23            reinsurance contracts it has written.

24            (18) INSURER-AFFILIATED PARTY.—The term  
25            “insurer-affiliated party” means—

1 (A) any director, officer, employee, or con-  
2 trolling shareholder of, or agent for, a national  
3 insurer or a national agency;

4 (B) any other person who has filed or is  
5 required to file a statement with the Commis-  
6 sioner under section 1231;

7 (C) any shareholder, consultant, joint ven-  
8 ture partner, and any other person as deter-  
9 mined by the Commissioner (by regulation or  
10 order) who participates in the conduct of the af-  
11 fairs of a national insurer or a national agency;  
12 and

13 (D) any independent contractor (including  
14 any attorney, actuary, or accountant) of a na-  
15 tional insurer or a national agency who in that  
16 capacity knowingly or recklessly participates in  
17 any violation of any law or regulation, any  
18 breach of fiduciary duty, or any conduct that  
19 involves an undue risk of loss to the policy-  
20 holders of a national insurer as a whole, and  
21 which violation, breach, or conduct caused or is  
22 likely to cause more than a minimal financial  
23 loss to, or a significant adverse effect on, a na-  
24 tional insurer or the policyholders as a whole of  
25 a national insurer.

1           (19) INSURER IN FRATERNAL FORM.—The  
2 term “insurer in fraternal form” means an incor-  
3 porated society, order, or supreme lodge, without  
4 capital stock (generally known as a fraternal benefit  
5 society), that—

6           (A) is conducted solely for the benefit of  
7 its members and their beneficiaries and not for  
8 profit;

9           (B) is operated on a lodge system with rit-  
10 ualistic form of work;

11           (C) has a representative form of govern-  
12 ment;

13           (D) provides benefits to members and their  
14 dependents; and

15           (E) operates for 1 or more social, intellec-  
16 tual, educational, charitable, benevolent, moral,  
17 fraternal, patriotic, or religious purposes for the  
18 benefit of its members, which may also be ex-  
19 tended to others.

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

22           (21) NATIONAL AGENCY.—The term “national  
23 agency” means a national insurance agency char-  
24 tered under section 1201.

1           (22) NATIONAL INSURER.—The term “national  
2 insurer” means a national insurance company char-  
3 tered under section 1201.

4           (23) NATIONAL LIFE INSURER.—The term “na-  
5 tional life insurer” means a national insurer that  
6 holds a Federal license to sell, solicit, negotiate, and  
7 underwrite 1 or both of life insurance and annuities,  
8 provided that a national life insurer may also sell,  
9 solicit, negotiate, and underwrite disability income  
10 insurance, long-term care insurance, and funding  
11 agreements.

12           (24) NATIONAL PROPERTY/CASUALTY IN-  
13 SURER.—The term “national property/casualty in-  
14 surer” means a national insurer that holds a Fed-  
15 eral license to sell, solicit, negotiate, and underwrite  
16 any combination of lines of property/casualty insur-  
17 ance.

18           (25) NEGOTIATE.—The term “negotiate”, in  
19 the context of negotiating insurance, means the act  
20 of conferring directly with or offering advice directly  
21 to a purchaser or prospective purchaser of a par-  
22 ticular policy of insurance concerning any of the  
23 substantive benefits, terms, or conditions of the con-  
24 tract, provided that the person engaged in that act

1 either sells insurance to or obtains insurance cov-  
2 erage for purchasers.

3 (26) NON-ADMITTED INSURANCE.—The term  
4 “non-admitted insurance” means any property/cas-  
5 ualty insurance permitted to be placed directly or  
6 through an insurance producer with a non-admitted  
7 insurer eligible to accept such insurance.

8 (27) NON-ADMITTED INSURER.—The term  
9 “non-admitted insurer” means an insurer that is not  
10 licensed to engage in the business of insurance in a  
11 State and that—

12 (A) satisfies the eligibility requirements of  
13 the State in which an insured maintains its  
14 principal place of business, or, in the case of an  
15 individual, maintains a principal residence; and

16 (B) is not a national insurer.

17 (28) NON-UNITED STATES INSURER.—The term  
18 “non-United States insurer” means a business entity  
19 that is organized under the law of a foreign country  
20 to sell, solicit, negotiate, and underwrite insurance,  
21 but is not so organized under the laws of a State,  
22 and is not a national insurer.

23 (29) OFFICE.—The term “Office” means the  
24 Office of National Insurance.

1           (30) PARTICIPATING POLICY PROCEDURES.—

2           The term “participating policy procedures”—

3                   (A) means the rules applicable to a life in-  
4                   surer in mutual form, by which the insurer as-  
5                   certains divisible surplus and apportions an  
6                   amount of divisible surplus to participating in-  
7                   surance policies; and

8                   (B) does not include any limitation on the  
9                   amount of surplus that may be retained by a  
10                  life insurer in mutual form.

11           (31) PERSON.—The term “person” means any  
12           natural person, business entity, governmental body  
13           or entity, voluntary organization, or similar organi-  
14           zation.

15           (32) POLICY OF INSURANCE; INSURANCE POL-  
16           ICY.—The term “policy of insurance” or “insurance  
17           policy” means a policy, contract, certificate, or other  
18           evidence of insurance. “Policy of insurance” or “in-  
19           surance policy” includes an annuity contract and a  
20           funding agreement, but does not include a reinsur-  
21           ance contract.

22           (33) POLICYHOLDER.—The term “policyholder”  
23           of an insurance policy means the person who is iden-  
24           tified as the legal owner under the terms of the in-  
25           surance policy or who is otherwise vested with legal

1 title to the insurance policy. An assignment, absolute  
 2 on its face, completed in accordance with the terms  
 3 of the insurance policy and properly recording the  
 4 assignee as the policyholder on the books of the in-  
 5 surer vests legal title in the name of the assignee.  
 6 The term “policyholder” does not include a person  
 7 with a mere beneficial interest in an insurance policy  
 8 or a person to whom an insurance policy is assigned  
 9 for collateral security purposes.

10 (34) PROPERTY/CASUALTY INSURANCE.—The  
 11 term “property/casualty insurance”—

12 (A) means a product that insures, guaran-  
 13 tees, or indemnifies against liability, loss of life,  
 14 loss of health, or loss through damage to or de-  
 15 struction of property, including surety bonds,  
 16 private passenger or commercial automobile,  
 17 homeowners, mortgage guaranty, financial  
 18 guaranty, commercial multiperil, general liabil-  
 19 ity, professional liability, workers’ compensa-  
 20 tion, fire and allied lines, farm or ranch owners  
 21 multiperil, aircraft, fidelity, surety, medical  
 22 malpractice, ocean marine, inland marine, and  
 23 boiler and machinery insurance; and

24 (B) does not include life insurance, dis-  
 25 ability income insurance, long-term care insur-

1           ance, health insurance, annuities, a funding  
2           agreement, or title insurance.

3           (35) PROTECTED CELL.—The term “protected  
4           cell” means an identified pool of assets and liabil-  
5           ities of a national insurer segregated and insulated  
6           from the remainder of the national insurer’s assets  
7           and liabilities. The remainder of the national insur-  
8           er’s assets and liabilities includes general account  
9           assets and liabilities, separate account assets and li-  
10          abilities, and assets and liabilities of other protected  
11          cells.

12          (36) PROTECTED CELL ACCOUNT.—The term  
13          “protected cell account” means a specifically identi-  
14          fied bank or custodial account established by a na-  
15          tional insurer for the purpose of segregating the pro-  
16          tected cell assets of 1 protected cell from the pro-  
17          tected cell assets of other protected cells and from  
18          the assets of the national insurer’s general account  
19          and separate accounts.

20          (37) SELL.—The term “sell”, in the context of  
21          selling a policy of insurance, includes exchanging a  
22          policy of insurance by any means, for money or any  
23          other valuable consideration, on behalf of an insurer.

24          (38) SEPARATE ACCOUNT.—The term “separate  
25          account” means an account established and main-

1       tained by a national life insurer under which income,  
2       gains, and losses, whether or not realized, from as-  
3       sets allocated to such account, are, in accordance  
4       with the applicable contract, credited to or charged  
5       against such account without regard to other in-  
6       come, gains, or losses of the national life insurer.

7           (39) SOLICIT.—The term “solicit”, in the con-  
8       text of soliciting a policy of insurance, means at-  
9       tempting to sell insurance or asking or urging a per-  
10      son to apply for a particular kind of insurance from  
11      a particular insurer.

12          (40) STATE.—The term “State” means each of  
13      the 50 States, the District of Columbia, the Com-  
14      monwealth of Puerto Rico, any territory of the  
15      United States, Guam, American Samoa, the Trust  
16      Territory of the Pacific Islands, the United States  
17      Virgin Islands, and the Commonwealth of the North-  
18      ern Mariana Islands.

19          (41) STATE INSURANCE AGENCY.—The term  
20      “State insurance agency” means an insurance pro-  
21      ducer that is organized under the laws of a State.

22          (42) STATE INSURER.—The term “State in-  
23      surer” means an insurer incorporated or organized  
24      under the laws of a State.

1           (43) SUBSIDIARY.—The term “subsidiary”  
2 means a business entity controlled, directly or indi-  
3 rectly, by another business entity. For purposes of  
4 this definition—

5           (A) a business entity is conclusively pre-  
6 sumed to be controlled by a person that, di-  
7 rectly or indirectly, with power to vote, owns,  
8 controls, or holds a majority of the outstanding  
9 voting securities of such business entity;

10          (B) no presumption, either of control or of  
11 absence of control, arises if such ownership,  
12 control, or holding of voting securities is less  
13 than a majority but more than 5 percent;

14          (C) absence of control is presumed if such  
15 ownership, control or holding of voting securi-  
16 ties is 5 percent or less; and

17          (D) in determining control, voting securi-  
18 ties held in separate accounts of a business en-  
19 tity shall be deemed to be owned by the busi-  
20 ness entity, but voting securities in an invest-  
21 ment advisory account that are not owned by a  
22 business entity but are held in an account as to  
23 which the business entity is an investment ad-  
24 viser shall not be deemed to be controlled or  
25 held by such business entity.

1           (44) SURPLUS LINES OF INSURANCE.—The  
2 term “surplus lines of insurance” means insurance  
3 on properties, risks, or exposures located or to be  
4 performed in a State with a non-admitted insurer  
5 that is sold, solicited, or negotiated by a national  
6 agency, federally licensed insurance producer, or  
7 other insurance producer.

8           (45) TITLE INSURANCE.—The term “title in-  
9 surance” or “business of title insurance” means any  
10 of the following:

11           (A) A contract insuring or indemnifying  
12 the owners of real or personal property, or  
13 other persons lawfully interested therein,  
14 against loss or damage arising from any of the  
15 following conditions, or the reinsurance thereof:

16           (i) Defects in or any liens or encum-  
17 brances on the insured title.

18           (ii) Unmarketability of the insured  
19 title.

20           (iii) Invalidity, lack of priority, or un-  
21 enforceability of any liens or encumbrances  
22 on the stated property.

23           (iv) Lack of legal right of access to  
24 the land.

1 (v) Unenforceability of rights in title  
2 to the real or personal property.

3 (B) Insuring the correctness of searches  
4 and examinations of all instruments, liens, or  
5 charges affecting the title to real or personal  
6 property.

7 (C) Procuring and furnishing information  
8 relative to the title to real or personal property,  
9 including abstracting, searching, and examining  
10 titles.

11 (D) Handling escrows, settlements, or clos-  
12 ings done in conjunction with subparagraph  
13 (A), (B), (C), (E), or (F).

14 (E) Any product or service defined by the  
15 laws of any State, whether by statute, regula-  
16 tion, or administrative determination, as title  
17 insurance.

18 (F) Doing or proposing to do any business  
19 substantially equivalent to any of the activities  
20 described in this paragraph, in a manner de-  
21 signed to evade the provisions of this Act.

22 (46) TITLE INSURER.—The term “title insurer”  
23 means a company organized under the laws of a  
24 State for the purpose of conducting the business of  
25 title insurance.

1           (47) TRUSTEED ASSETS.—The term “trusteed  
2 assets” means, with respect to a United States  
3 branch, assets required or permitted by this title to  
4 be deposited by a non-United States insurer with a  
5 qualified trustee for the security of its policyholders  
6 and creditors in the United States.

7           (48) TRUSTEED SURPLUS.—The term “trusteed  
8 surplus” means, with respect to a United States  
9 branch, the value of the insurer’s trustee assets de-  
10 posited with a trustee under section 1202(b), plus  
11 accrued investment income thereon where such in-  
12 come is collectible by the trustee, less the aggregate  
13 net amount of all of its reserves and other liabilities  
14 in the United States as determined under section  
15 1202(b).

16           (49) UNITED STATES BRANCH.—The term  
17 “United States branch” means the business unit  
18 through which business is transacted within the  
19 United States by a non-United States insurer and  
20 the assets and liabilities of the insurer within the  
21 United States pertaining to such business.

22           (50) UNITED STATES HOLDING COMPANY.—  
23 The term “United States holding company” means,  
24 with respect to a national insurer, a person orga-

1 nized or incorporated in a State that directly or indi-  
2 rectly controls a national insurer.

3 (51) VIOLATION.—The term “violation” in-  
4 cludes any action or inaction (alone or with another  
5 or others) for or toward causing, bringing about,  
6 participating in, counseling, or aiding or abetting a  
7 violation.

8 (52) VOTING SECURITIES.—The term “voting  
9 securities” means securities of any class or any own-  
10 ership interest having voting power for the election  
11 of directors, trustees, or management of a business  
12 entity, other than securities having such power only  
13 by reason of the happening of a contingency.

14 **TITLE I—OFFICE OF NATIONAL**  
15 **INSURANCE**  
16 **Subtitle A—Establishment of Office**  
17 **of National Insurance**

18 **SEC. 1101. ESTABLISHMENT.**

19 (a) IN GENERAL.—There is established, in the De-  
20 partment of the Treasury, the Office of National Insur-  
21 ance, which shall be headed by the Commissioner of Na-  
22 tional Insurance.

23 (b) OFFICES.—The Commissioner shall establish a  
24 main office in Washington, D.C., not fewer than 6 regional  
25 offices, and such additional offices, within or outside the

1 United States, as the Commissioner determines to be nec-  
2 essary to carry out the provisions of this Act.

3 (c) FUNDING.—The operations of the Office, includ-  
4 ing the compensation of the Commissioner and all employ-  
5 ees of the Office, shall be paid from fees and assessments  
6 imposed under the terms of section 1122.

7 (d) APPLICABILITY OF ADMINISTRATIVE PROCE-  
8 DURES ACT.—The Office shall be an agency of the United  
9 States for purposes of subchapter II of chapter 5 and  
10 chapter 6 of title 5, United States Code.

11 (e) ANNUAL REPORT.—The Commissioner shall pre-  
12 pare and submit to Congress an annual report on the ac-  
13 tivities of the Office.

14 **SEC. 1102. COMMISSIONER OF NATIONAL INSURANCE.**

15 (a) APPOINTMENT.—

16 (1) IN GENERAL.—The Commissioner of Na-  
17 tional Insurance shall be appointed by the President,  
18 by and with the advice and consent of the Senate,  
19 from among individuals who are citizens of the  
20 United States.

21 (2) TERM.—The Commissioner shall be ap-  
22 pointed for a term of 5 years.

23 (3) VACANCY.—A vacancy in the position of the  
24 Commissioner, which occurs before the expiration of  
25 the term for which the Commissioner was appointed

1 shall be filled in the manner established under para-  
2 graph (1). The Commissioner appointed to fill the  
3 vacancy shall be appointed only for the remainder of  
4 the term of the preceding Commissioner.

5 (4) SERVICE AFTER TERM.—An individual may  
6 serve as the Commissioner after the expiration of  
7 the term for which appointed until the earlier of—

8 (A) such time as a successor has been ap-  
9 pointed; or

10 (B) 1 year after the expiration of the indi-  
11 vidual's term.

12 (5) PROHIBITION ON FINANCIAL INTERESTS.—  
13 The Commissioner may not have a direct or indirect  
14 financial interest in any national insurer, national  
15 agency, or other federally licensed insurance pro-  
16 ducer, except that the Commissioner may own, di-  
17 rectly or indirectly, or may have a direct or indirect  
18 beneficial interest in any insurance policy written or  
19 sold by a national insurer or national agency.

20 (6) OVERSIGHT.—The Commissioner shall be  
21 subject to the general oversight of the Secretary of  
22 the Treasury, who may not intervene in any matter  
23 or proceeding before the Commissioner unless other-  
24 wise specifically provided by law.

25 (7) EXECUTIVE SCHEDULE.—

1           (A) IN GENERAL.—The Commissioner  
2 shall receive compensation at the rate pre-  
3 scribed by law under section 5314 of title 5,  
4 United States Code, for positions at level III of  
5 the Executive Schedule.

6           (B) TECHNICAL AMENDMENT.—Section  
7 5314 of title 5, United States Code, is amended  
8 by inserting “Commissioner of National Insur-  
9 ance, Department of the Treasury.” as a new  
10 item after “Administrator, Pipeline and Haz-  
11 arduous Materials Safety Administration.”.

12 (b) POWERS OF THE COMMISSIONER.—

13 (1) IN GENERAL.—

14 (A) POWERS.—The Commissioner shall—

15 (i) oversee the organization, incorpo-  
16 ration, operation, regulation, and super-  
17 vision of national insurers and national  
18 agencies;

19 (ii) issue charters and licenses for na-  
20 tional insurers and national agencies;

21 (iii) license, regulate, and supervise  
22 federally licensed insurance producers  
23 other than national agencies; and

24 (iv) have exclusive authority to deter-  
25 mine whether a person subject to this Act

1           has complied with the Act or the applica-  
2           tion of any State law to matters regulated  
3           under this Act, including the determination  
4           of any complaint raised by any person.

5           (B) FINAL AGENCY ACTION.—A deter-  
6           mination of the Commissioner under subpara-  
7           graph (A)(iv) shall be the final agency action  
8           for purposes of judicial review of that action.

9           (2) RULEMAKING.—

10           (A) ISSUANCE OF REGULATIONS AND  
11           OTHER ACTIONS.—The Commissioner may issue  
12           such rules, regulations, orders, and interpreta-  
13           tions as the Commissioner determines to be  
14           necessary to carry out the purposes of this Act.

15           (B) AUTONOMY.—The Secretary of the  
16           Treasury may not delay or prevent the issuance  
17           of any rule, regulation, order, or interpretation  
18           by the Commissioner, unless otherwise specifi-  
19           cally authorized by law.

20           (C) NO DELEGATION PERMITTED.—The  
21           Commissioner may not delegate any authority  
22           conferred under subparagraph (A) to any insur-  
23           ance self-regulatory organization.

24           (3) LITIGATION AUTHORITY.—

1 (A) IN GENERAL.—The Commissioner may  
2 sue and be sued, complain and defend, and oth-  
3 erwise litigate, in the Commissioner’s name and  
4 through the Commissioner’s own attorney, in  
5 any Federal or State court, other than the Su-  
6 preme Court of the United States in which the  
7 Commissioner shall be represented by the Solic-  
8 itor General of the United States.

9 (B) ENFORCEMENT.—The Commissioner  
10 may apply to the United States district court  
11 for the jurisdiction in which the main office of  
12 a national insurer or national agency is located,  
13 or in which any other federally licensed insur-  
14 ance producer or other person is located, for the  
15 enforcement of any effective and outstanding  
16 rule, regulation, order, or interpretation issued  
17 pursuant to this Act.

18 (4) CONSULTATION WITH STATE INSURANCE  
19 REGULATORS.—The Commissioner may, as appro-  
20 priate, consult with State insurance regulators re-  
21 sponsible for the supervision of States insurers,  
22 State insurance agencies, and State licensed insur-  
23 ance producers regarding regulatory and supervisory  
24 matters of common interest.

1           (5) INTERNATIONAL COORDINATION AND CO-  
2 OPERATION.—

3           (A) IN GENERAL.—The Commissioner may  
4 engage in international efforts to secure bilat-  
5 eral and multilateral cooperation and agree-  
6 ments, as appropriate, with respect to insurance  
7 regulation in global markets in order to pro-  
8 mote open and fair competition in such markets  
9 and to improve the quality and uniformity of in-  
10 surance regulation in all countries.

11           (B) FOREIGN INSURANCE REGULATORS.—  
12 The Commissioner may provide appropriate  
13 technical assistance to, and cooperation with,  
14 individual foreign insurance regulators and re-  
15 gional and global regulatory organizations in in-  
16 surance matters affecting international com-  
17 merce, including—

18           (i) the development and implementa-  
19 tion of international regulatory standards;  
20 and

21           (ii) the development and implementa-  
22 tion of bilateral and multilateral mutual  
23 recognition agreements on the licensing of  
24 insurance companies and insurance pro-  
25 ducers.

1 (C) CONSULTATION AND COOPERATION.—

2 In exercising the authority granted under sub-  
3 paragraphs (A) and (B), the Commissioner—

4 (i) shall consult and cooperate with  
5 the Executive Office of the President and  
6 the United States Trade Representative;  
7 and

8 (ii) may include a representative of  
9 any interested State insurance regulators  
10 as the Commissioner determines to be ap-  
11 propriate.

12 (6) INDEPENDENCE IN CONGRESSIONAL TESTI-  
13 MONY AND RECOMMENDATIONS.—Section 111 of  
14 Public Law 93–495 (12 U.S.C. 250) is amended by  
15 inserting “the Commissioner of National Insurance,”  
16 after “the Director of the Office of Thrift Super-  
17 vision,”.

18 (c) GAO AUDIT.—The Commissioner shall make  
19 available to the Comptroller General of the United States  
20 all books and records necessary to audit all of the activities  
21 of the Office.

22 **SEC. 1103. OFFICE PERSONNEL MATTERS.**

23 (a) IN GENERAL.—The Commissioner may employ  
24 such examiners, lawyers, accountants, actuaries, and other

1 employees as are necessary to carry out the provisions of  
2 this Act.

3 (b) COMPENSATION.—The Commissioner shall fix the  
4 compensation and number of employees of the Office with-  
5 out regard to chapter 51 or subchapter III of chapter 53  
6 of title 5, United States Code.

7 (c) ADDITIONAL COMPENSATION.—The Commis-  
8 sioner may provide additional compensation and benefits  
9 to employees of the Office if the same type of compensa-  
10 tion or benefits are then being provided by any Federal  
11 banking agency or, if not then being provided, could be  
12 provided by any such agency under applicable provisions  
13 of law or regulation. In setting and adjusting the total  
14 amount of compensation and benefits for employees of the  
15 Office, the Commissioner shall consult, and seek to main-  
16 tain comparability with, the Federal banking agencies.

17 (d) ACTING COMMISSIONER.—The Commissioner  
18 shall designate an employee of the Office to serve as the  
19 Acting Commissioner during the absence or disability of  
20 the Commissioner.

21 (e) DELEGATION OF POWERS.—

22 (1) EMPLOYEES AND OTHERS.—Unless other-  
23 wise prohibited by this Act, the Commissioner may  
24 delegate to any employee, representative, or agent  
25 any power of the Commissioner.

1           (2) SELF-REGULATORY ORGANIZATIONS.—Un-  
2           less otherwise prohibited by this Act, the Commis-  
3           sioner may, by regulation, delegate to any insurance  
4           self-regulatory organization any power of the Com-  
5           missioner in accordance with the terms of section  
6           1106.

7 **SEC. 1104. DIVISION OF INSURANCE FRAUD.**

8           (a) ESTABLISHMENT.—There is established, within  
9           the Office, a Division of Insurance Fraud.

10          (b) AUTHORITY.—The Division of Insurance Fraud  
11          shall have all powers necessary to enforce the terms of  
12          subtitle D, other than the power to execute search and  
13          arrest warrants.

14 **SEC. 1105. DIVISION OF CONSUMER AFFAIRS.**

15          (a) ESTABLISHMENT.—There is established, within  
16          the Office, a Division of Consumer Affairs.

17          (b) AUTHORITY.—The Division of Consumer Affairs  
18          shall support the Commissioner in the implementation and  
19          enforcement of the market conduct regulations issued pur-  
20          suant to section 1216.

21 **SEC. 1106. INSURANCE SELF-REGULATORY ORGANIZA-**  
22 **TIONS.**

23          (a) AUTHORITY OF THE COMMISSIONER.—Subject to  
24          the terms of this section, and the regulations issued pursu-

1 ant to this section, the Commissioner shall have the au-  
 2 thority to—

3 (1) provide for the registration of an insurance  
 4 self-regulatory organization; and

5 (2) supervise and regulate any registered insur-  
 6 ance self-regulatory organization, which shall include  
 7 the authority to—

8 (A) review, approve, abrogate, modify, or  
 9 add to the operating rules of an insurance self-  
 10 regulatory organization;

11 (B) review, approve, abrogate, or modify  
 12 any disciplinary action taken by an insurance  
 13 self-regulatory organization;

14 (C) remove, suspend, or bar an individual  
 15 from serving as an officer or director of an in-  
 16 surance self-regulatory organization;

17 (D) remove or suspend a member of an in-  
 18 surance self-regulatory organization; and

19 (E) suspend or revoke the registration of  
 20 an insurance self-regulatory organization.

21 (b) **AUTHORITY OF REGISTERED INSURANCE SELF-**  
 22 **REGULATORY ORGANIZATIONS.**—An insurance self-regu-  
 23 latory organization that is registered by the Commissioner  
 24 shall have the authority to—

25 (1) carry out the purpose of this Act; and

1           (2) enforce compliance by its members with the  
2           provisions of this Act, applicable regulations issued  
3           by the Commissioner, and the rules of the organiza-  
4           tion.

5           (c) MEMBERSHIP.—An insurance self-regulatory or-  
6           ganization may be formed by, and consist exclusively of—

7           (1) national insurers;

8           (2) national agencies;

9           (3) federally licensed insurance producers; or

10          (4) any combination of national insurers, na-  
11          tional agencies, and federally licensed insurance pro-  
12          ducers.

13          (d) REGULATIONS.—Not later than 2 years after the  
14          date of enactment of this Act, the Commissioner shall  
15          issue regulations governing the registration and operations  
16          of insurance self-regulatory organizations. Such regula-  
17          tions shall establish—

18          (1) the procedures insurance self-regulatory or-  
19          ganizations must follow to be registered by the Com-  
20          missioner, which shall provide for public notice and  
21          an opportunity for public comment on the proposed  
22          registration;

23          (2) the standards that the Commissioner shall  
24          apply in reviewing a proposed registration, which

1 shall require an insurance self-regulatory organiza-  
2 tion to demonstrate that—

3 (A) it has the capacity to—

4 (i) carry out the purpose of this Act;

5 and

6 (ii) enforce compliance by its members  
7 with the provisions of this Act, applicable  
8 regulations, and the rules of the organiza-  
9 tion; and

10 (B) its operating rules—

11 (i) assure a fair representation of its  
12 members in the selection of its directors  
13 and the administration of its affairs;

14 (ii) provide for the equitable allocation  
15 of fees, dues, and other charges among its  
16 members;

17 (iii) provide for the organization to  
18 take appropriate disciplinary actions  
19 against members, including the revocation  
20 of membership status, for violations of this  
21 Act, the regulations issued pursuant to this  
22 Act, or the operating rules of the organiza-  
23 tion; and

24 (iv) include procedures for members  
25 that are subject to disciplinary actions to

1           obtain review of such actions by the Com-  
2           missioner;

3           (3) the procedures and standards the Commis-  
4           sioner shall follow in reviewing, approving, abro-  
5           gating, or modifying any new operating rule or any  
6           amendment to an existing operating rule that is pro-  
7           posed by an insurance self-regulatory organization,  
8           which shall include procedures for public notice and  
9           comment on such rule or amendment;

10          (4) the procedures and standards the Commis-  
11          sioner shall follow in abrogating, modifying, or add-  
12          ing to the operating rules of an insurance self-regu-  
13          latory organization;

14          (5) the procedures and standards the Commis-  
15          sioner shall follow in reviewing, approving, abro-  
16          gating, or modifying any disciplinary action by an  
17          insurance self-regulatory organization;

18          (6) the procedures and standards the Commis-  
19          sioner shall follow in removing, suspending, or bar-  
20          ing any individual from serving as an officer or di-  
21          rector of an insurance self-regulatory organization;

22          (7) the procedures and standards the Commis-  
23          sioner shall follow in suspending or revoking the reg-  
24          istration of an insurance self-regulatory organiza-  
25          tion; and

1           (8) such other matters as the Commissioner de-  
2           termines appropriate to ensure and protect the pub-  
3           lic interest and the interests of policyholders.

4 **SEC. 1107. OFFICE OF THE OMBUDSMAN.**

5           (a) ESTABLISHMENT OF THE OFFICE OF THE OM-  
6           BUDSMAN.—There is established within the Office, an Of-  
7           fice of the Ombudsman. The Commissioner shall appoint  
8           an Ombudsman to administer the Office of the Ombuds-  
9           man. The Ombudsman shall report directly to the Com-  
10          missioner.

11          (b) DUTIES OF THE OMBUDSMAN.—

12           (1) IN GENERAL.—The Ombudsman shall act  
13           as a liaison between the Office and any regulated  
14           person adversely affected by the supervisory or regu-  
15           latory activities of the Office, including the failure of  
16           the Office to take a requested action. The Ombuds-  
17           man shall assure that safeguards exist to encourage  
18           complainants to come forward and preserve con-  
19           fidentiality.

20           (2) DEFINITION.—For purposes of this section  
21           the term, a “regulated person” means a national in-  
22           surer, a national agency, a federally licensed insur-  
23           ance producer, or an insurer-affiliated party.

24           (c) POWERS OF THE OMBUDSMAN.—The Ombuds-  
25          man—

1           (1) with the prior consent of the Commissioner,  
2           may stay any appealable decision or action during  
3           the resolution of an appealable matter; and

4           (2) shall review and report any weakness in pol-  
5           icy or procedures to the Commissioner, and make  
6           recommendations to the Commissioner regarding  
7           changes in such policies or procedures.

8           (d) APPEALABLE MATTERS.—Any regulated person  
9           adversely affected by an Office decision or action may seek  
10          Ombudsman review of such decision or action, other  
11          than—

12           (1) the appointment of a receiver or conser-  
13          vator;

14           (2) any preliminary examination conclusions  
15          communicated to the regulated person before a final  
16          examination report is issued;

17           (3) any formal enforcement-related action or  
18          decision, including the issuance of a cease-and-desist  
19          order, assessment of a civil money penalty, or com-  
20          mencement of a formal investigation;

21           (4) any formal or informal rulemaking pursuant  
22          to subchapter II of chapter 5 of title 5, United  
23          States Code;

24           (5) any decision or recommended decision fol-  
25          lowing a formal adjudication conducted pursuant to

1 subchapter II of chapter 5 of title 5, United States  
2 Code; or

3 (6) any request for agency records pursuant to  
4 section 552 of title 5, United States Code (com-  
5 monly referred to as the Freedom of Information  
6 Act).

7 (e) PROCEDURES FOR FILING AN APPEAL TO THE  
8 OMBUDSMAN.—A regulated person may seek review of an  
9 appealable matter by filing a written appeal with the Of-  
10 fice of the Ombudsman. In the case of a regulated person  
11 that is an entity, the appeal shall be signed by the Presi-  
12 dent or Chief Executive Officer of the regulated person.  
13 The appeal shall set forth all of the reasons for the appeal  
14 and supporting documentation. The Ombudsman may ar-  
15 range for a meeting of Office personnel and the complain-  
16 ants to discuss the appeal.

17 (f) DECISIONS OF THE OMBUDSMAN.—After a thor-  
18 ough investigation of the matter, and after considering all  
19 relevant information provided by the complainant and the  
20 Office, the Ombudsman shall issue a written determina-  
21 tion of the appeal. Such determination shall become the  
22 final decision of the Office, unless reversed, modified, or  
23 stayed by the Commissioner.

24 (g) RETALIATION PROHIBITED.—The Office and its  
25 staff may not take any adverse action against a complain-

1 ant for appealing any decision or action to the Ombuds-  
 2 man. Upon learning of any possible retaliatory actions, the  
 3 Ombudsman shall investigate the matter, and if the Om-  
 4 budsman determines that reasonable grounds exist to con-  
 5 clude that retaliation has taken place, shall refer the mat-  
 6 ter to the Commissioner.

7 **Subtitle B—Supervision of Na-**  
 8 **tional Insurers and National**  
 9 **Agencies**

10 **SEC. 1121. EXAMINATION OF NATIONAL INSURERS AND NA-**  
 11 **TIONAL AGENCIES.**

12 (a) IN GENERAL.—

13 (1) EXAMINATION.—The Commissioner shall  
 14 provide for examinations of national insurers and  
 15 national agencies.

16 (2) REGULAR AND SPECIAL EXAMINATIONS OF  
 17 NATIONAL INSURERS.—Not less than once during  
 18 each 36-month period, the Commissioner shall con-  
 19 duct an on-site examination of each national insurer,  
 20 and may conduct a special examination of a national  
 21 insurer whenever the Commissioner determines that  
 22 a special examination is necessary.

23 (3) EXAMINATION OF NATIONAL AGENCIES.—  
 24 The Commissioner may examine a national agency  
 25 only in response to a complaint or any other evi-

1        dence that the national agency has violated or is  
2        about to violate—

3                (A) a law, rule, or regulation;

4                (B) any condition imposed in writing by  
5        the Commissioner in connection with issuing a  
6        license for a federally licensed insurance pro-  
7        ducer; or

8                (C) any written agreement entered into  
9        with the Commissioner.

10        (4) AFFILIATES.—

11                (A) IN GENERAL.—In making examina-  
12        tions of national insurers or national agencies,  
13        the Commissioner may, to the extent necessary  
14        to discover information concerning activities of  
15        an affiliate that may have a materially adverse  
16        effect on the operations, management, or finan-  
17        cial condition of the national insurer or national  
18        agency—

19                        (i) require an affiliate to make such  
20                        reports and provide such material as the  
21                        Commissioner may direct; and

22                        (ii) conduct an examination of the af-  
23                        fairs of an affiliate, if—

24                                        (I) the Commissioner has reason-  
25                                        able cause to believe that the activities

1 of the affiliate may have such an ef-  
2 fect;

3 (II) the examination is limited to  
4 the extent necessary to disclose infor-  
5 mation related to such effect; and

6 (III) the Commissioner is unable  
7 to obtain the necessary information  
8 from the national insurer or national  
9 agency.

10 (B) ACCEPTANCE OF AVAILABLE INFORMA-  
11 TION.—To the extent that the Commissioner re-  
12 quires an affiliate to make reports or provide  
13 material under subparagraph (A), the Commis-  
14 sioner shall, to the fullest extent possible, ac-  
15 cept—

16 (i) reports that the affiliate has pro-  
17 vided or been required to provide to other  
18 Federal or State regulatory authorities or  
19 appropriate self-regulatory organizations;

20 (ii) information that is otherwise re-  
21 quired to be reported publicly; and

22 (iii) audited financial statements.

23 (C) USE OF REGULATORY REPORTS.—If  
24 the Commissioner determines to conduct an ex-  
25 amination of an affiliate under subparagraph

1 (B) and such affiliate is a functionally regu-  
2 lated affiliate, the Commissioner shall, to the  
3 fullest extent possible, rely on the examination  
4 reports made by the functional regulator of  
5 such affiliate.

6 (b) ACCESS TO PEOPLE AND RECORDS.—

7 (1) IN GENERAL.—In the course of examining  
8 a national insurer, national agency, or affiliate of a  
9 national insurer or national agency, the Commis-  
10 sioner, upon request, shall be given prompt and rea-  
11 sonable access to officers, employees, agents, books,  
12 records, and documents of such insurer, agency, or  
13 affiliate.

14 (2) COURT ORDER.—If prompt and reasonable  
15 access is not given as required under paragraph (1),  
16 the Commissioner may apply to the United States  
17 district court for the judicial district in which the  
18 main office of the national insurer or the national  
19 agency is located, or in which the affiliate or person  
20 denying such access resides or conducts business, for  
21 an order requiring that such information be prompt-  
22 ly provided.

23 (3) SUBPOENA POWER.—In connection with ex-  
24 aminations of national insurers, national agencies, or  
25 affiliates under this section and the examination of

1 federally licensed insurance producers under section  
2 1301, the Commissioner may—

3 (A) administer oaths and affirmations;

4 (B) examine, take, and preserve testimony  
5 under oath as to any matter in respect of the  
6 affairs or ownership of any such national in-  
7 surer, national agency, affiliate, or federally li-  
8 censed insurance producer;

9 (C) issue subpoenas; and

10 (D) in order to enforce a subpoena issued  
11 under subparagraph (C), apply to the United  
12 States district court for the judicial district—

13 (i) in which the main office of the na-  
14 tional insurer, national agency, or affiliate  
15 is located;

16 (ii) in which the federally licensed in-  
17 surance producer is located; or

18 (iii) in which the witness resides or  
19 carries on business.

20 **SEC. 1122. EXAMINATION FEES AND OTHER ASSESSMENTS.**

21 (a) EXAMINATION FEE.—

22 (1) NATIONAL INSURERS, NATIONAL AGENCIES,  
23 AND FEDERALLY LICENSED INSURANCE PRO-  
24 DUCERS.—The Commissioner shall assess the cost of  
25 conducting examinations of national insurers, na-

1 tional agencies, and federally licensed insurance pro-  
2 ducers against each such insurer, agency, or pro-  
3 ducer, as the Commissioner determines to be appro-  
4 priate.

5 (2) AFFILIATES.—The Commissioner shall as-  
6 sess the cost of conducting examinations of affiliates  
7 against each such affiliate, as the Commissioner de-  
8 termines to be appropriate.

9 (3) REFUSAL TO PAY.—

10 (A) IN GENERAL.—Subject to subpara-  
11 graph (B), if any affiliate refuses to pay an as-  
12 sessment imposed pursuant to paragraph (2),  
13 the Commissioner may assess such cost against  
14 the affiliated national insurer or national agen-  
15 cy.

16 (B) SHARED AFFILIATES.—If an affiliate  
17 is an affiliate of more than 1 national insurer  
18 or national agency, the assessment with respect  
19 to that affiliate may be assessed against, and  
20 collected from, any affiliated national insurer or  
21 national agency, in such proportions as the  
22 Commissioner may prescribe.

23 (b) PROCESSING FEE.—The Commissioner may as-  
24 sess a fee against any person who submits to the Office

1 an application, filing, statement, notice, or request for ap-  
2 proval to cover the cost of processing such submission.

3 (c) OTHER ASSESSMENTS.—The Commissioner may  
4 assess against national insurers, national agencies, and  
5 federally licensed insurance producers such additional fees  
6 as the Commissioner determines to be necessary and ap-  
7 propriate to fund the expenses of the Office.

8 (d) NOTICE.—The Commissioner shall notify na-  
9 tional insurers, national agencies, and federally licensed  
10 insurance producers of—

11 (1) the initial fees and assessments imposed  
12 under this section; and

13 (2) any change in fees and assessments.

14 (e) TREATMENT OF FEES AND ASSESSMENTS.—

15 (1) DEPOSITS.—Amounts received by the Com-  
16 missioner from fees and assessments imposed under  
17 this section shall be deposited in the manner pro-  
18 vided for in section 5234 of the Revised Statutes of  
19 the United States (12 U.S.C. 192) with respect to  
20 assessments by the Comptroller of the Currency.

21 (2) GOVERNMENT FUNDS; APPORTIONMENT.—  
22 Notwithstanding any other provision of law,  
23 amounts received by the Commissioner from any fee  
24 or assessment imposed under this section—

1 (A) shall not be considered Government or  
2 public funds or appropriated money; and

3 (B) shall not be subject to apportionment  
4 for purpose of chapter 15 of title 31, United  
5 States Code, or under any other authority.

6 (f) WORKING CAPITAL FUND.—

7 (1) IN GENERAL.—The Commissioner may im-  
8 pose fees and assessments pursuant to subsections  
9 (a), (b), and (c), in excess of actual expenses for any  
10 given year, to maintain an appropriate working cap-  
11 ital fund.

12 (2) REFUNDS.—The Commissioner shall remit  
13 to the payers of such fees and assessments any  
14 funds collected in excess of what the Commissioner  
15 determines to be necessary to maintain such working  
16 capital fund.

17 (g) USE OF FUNDS.—The Commissioner may use the  
18 combined resources collected through fees and assess-  
19 ments imposed pursuant to this section to pay all direct  
20 and indirect operating costs of the Office, including the  
21 salary and administrative expenses of the Office.

22 (h) APPROPRIATIONS DURING START-UP PERIOD.—

23 (1) AUTHORIZATION.—The Commissioner may  
24 borrow from the Secretary of the Treasury such  
25 funds as the Commissioner determines to be nec-

1       essary and appropriate to organize and begin oper-  
2       ations of the Office.

3           (2) PAYMENT.—Any loan extended pursuant to  
4       paragraph (1) shall be repaid, in full (with interest  
5       at a rate set by the Secretary of the Treasury),  
6       within 30 years following the date of enactment of  
7       this Act, with individual payments on any loan to be  
8       made in such amounts and at such times as the  
9       Commissioner determines to be appropriate.

10       (i) RULEMAKING.—The Commissioner shall promul-  
11      gate regulations with respect to the computation, assess-  
12      ment, notice, and collection of the fees and assessments  
13      provided for in this section.

14      **SEC. 1123. DISCLOSURE OF INFORMATION.**

15       (a) REGULATIONS REQUIRED.—The Commissioner  
16      shall, by regulation, establish standards for the disclosure  
17      of examination reports, other reports, applications, filings,  
18      correspondence, records, and other information prepared  
19      by, reported to, obtained by, or submitted to, the Commis-  
20      sioner. The regulation shall exclude matters to be ad-  
21      dressed under regulations required under section 1161.

22       (b) SUPERVISORY PRIVILEGE.—The regulation  
23      issued pursuant to subsection (a) shall prohibit the disclo-  
24      sure of confidential supervisory information, as such infor-  
25      mation is defined by the Commissioner in such regulation.

1       (c) OTHER PRIVILEGES.—The submission by any  
2 person of any information to the Commissioner for any  
3 purpose in the course of any supervisory or regulatory  
4 process of the Commissioner shall not be construed as  
5 waiving, destroying, or otherwise affecting any privilege  
6 that such person may claim with respect to such informa-  
7 tion under Federal or State law as to any person or entity  
8 other than the Commissioner.

9 **SEC. 1124. REPORTING REQUIREMENT.**

10       (a) GENERAL AUTHORITY.—The Commissioner is  
11 authorized to require national insurers and national agen-  
12 cies to make such reports, containing such information  
13 and in such form, as the Commissioner may prescribe by  
14 regulation.

15       (b) FINANCIAL STATEMENTS.—Each national in-  
16 surer holding a Federal license shall submit annual and  
17 quarterly financial statements, in compliance with the ac-  
18 counting principles and auditing standards specified under  
19 section 1211, to the Commissioner at such times and in  
20 such form as the Commissioner may require under regula-  
21 tions promulgated pursuant to subsection (c).

22       (c) REGULATIONS.—The Commissioner shall promul-  
23 gate regulations that—

1           (1) specify the information that shall be dis-  
2           closed in the financial statements required under  
3           subsection (b); and

4           (2) specify any additional financial schedules  
5           that national insurers shall make available for exam-  
6           ination by the Commissioner upon request.

7   **SEC. 1125. REGULATORY SUPERVISION AND RELATIONSHIP**  
8                           **TO STATE LAW.**

9           (a) **IN GENERAL.**—Except as authorized by this Act  
10          or otherwise authorized under Federal law, national insur-  
11          ers, national agencies, and federally licensed insurance  
12          producers shall not be subject to any form of licensing,  
13          examination, reporting, regulation, or other supervision  
14          relating to—

15                 (1) the sale, solicitation, or negotiation of insur-  
16          ance;

17                 (2) the underwriting of insurance; or

18                 (3) any other insurance operations.

19          (b) **APPLICABLE STATE LAWS.**—Notwithstanding  
20          subsection (a), national insurers, national agencies, and  
21          federally licensed insurance producers shall be subject  
22          to—

23                 (1) applicable State unclaimed property and es-  
24          cheat laws;

1           (2) applicable tax laws of a State, in accordance  
2 with sections 1251, 1252, and 1253;

3           (3) applicable State law relating to participa-  
4 tion in an assigned risk plan, mandatory joint un-  
5 derwriting association, or any other mandatory re-  
6 sidual market mechanism designed to make insur-  
7 ance available to those unable to obtain insurance in  
8 the voluntary market, except to the extent that such  
9 State law—

10           (A) relates to participation in any vol-  
11 untary joint underwriting association or similar  
12 arrangement;

13           (B) results in rates in effect for an as-  
14 signed risk plan, mandatory joint underwriting  
15 association, or any other mandatory residual  
16 market mechanism that fail to cover the ex-  
17 pected value of all future costs associated with  
18 insurance policies written by such residual mar-  
19 ket mechanism;

20           (C) requires a national insurer to use any  
21 particular rate, rating element, price, or form;  
22 or

23           (D) is inconsistent with any provision of  
24 this Act;

1           (4) applicable State insurance law that pre-  
2           scribes the compulsory coverage requirements for  
3           workers' compensation or motor vehicle insurance,  
4           or both, that every insurer must provide if the in-  
5           surer issues insurance policies in such State, except  
6           to the extent that such State law requires a national  
7           insurer to use any particular rate, rating element,  
8           price, or form;

9           (5) applicable State insurance law mandating  
10          the participation of insurers in an advisory or statis-  
11          tical organization, except to the extent that such  
12          State law requires a national insurer to use any par-  
13          ticular rate, rating element, price, or form; and

14          (6) applicable State law relating to participa-  
15          tion in a workers' compensation administration  
16          mechanism, except to the extent that such State law  
17          is inconsistent with any provision of this Act.

18          (c) TERMS.—For purposes of this section, the term—

19               (1) “advisory or statistical organization” does  
20               not include the National Association of Insurance  
21               Commissioners;

22               (2) “compulsory coverage” does not include any  
23               State statutory requirement other than those pre-  
24               scribing the minimum extent of insurance protection  
25               afforded by a policy of insurance; and

1           (3) “mandatory residual market” means a facil-  
2           ity, entity, or plan required by and established pur-  
3           suant to State law to provide coverage for persons  
4           that cannot obtain insurance in the private market.

5 **SEC. 1126. PRESERVATION OF OFFICE RECORDS.**

6           (a) IN GENERAL.—The Commissioner may cause any  
7           and all records, papers, or documents kept by the Office  
8           or in the possession or custody of the Office to be—

9                   (1) photographed or microphotographed or oth-  
10                  erwise reproduced upon film; or

11                  (2) preserved in any electronic medium or for-  
12                  mat which is capable of—

13                           (A) being read or scanned by computer;  
14                           and

15                           (B) being reproduced from such electronic  
16                           medium or format by printing any other form  
17                           or reproduction of electronically stored data.

18           (b) TREATMENT AS ORIGINAL RECORDS.—Any pho-  
19           tographs, microphotographs, or photographic film or cop-  
20           ies thereof described in subsection (a)(1) or reproduction  
21           or electronically stored data described in subsection (a)(2)  
22           shall be deemed to be an original record for all purposes,  
23           including introduction in evidence in all State and Federal  
24           courts or administrative agencies, and shall be admissible

1 to prove any act, transaction, occurrence, or event therein  
2 recorded.

3 (c) **AUTHORITY OF THE COMMISSIONER.**—Any pho-  
4 tographs, microphotographs, or photographic film or cop-  
5 ies thereof described in subsection (a)(1) or reproduction  
6 of electronically stored data described in subsection (a)(2)  
7 shall be preserved in such manner as the Commissioner  
8 shall prescribe, and the original records, papers, or docu-  
9 ments may be destroyed or otherwise disposed of, as the  
10 Commissioner may direct.

11 **SEC. 1127. COMPLIANCE WITH ANTI-MONEY LAUNDERING**  
12 **REQUIREMENTS.**

13 (a) **COMPLIANCE REQUIRED.**—The Commissioner  
14 shall prescribe regulations requiring national life insurers  
15 to establish and maintain procedures reasonably designed  
16 to assure and monitor compliance with the requirements  
17 of subchapter II of chapter 53 of title 31, United States  
18 Code, to the extent applicable.

19 (b) **EXAMINATIONS.**—Each examination of a national  
20 life insurer shall include a review of the procedures re-  
21 quired to be established and maintained under subsection  
22 (a).

23 (c) **ORDER.**—The Commissioner shall issue an order,  
24 in the manner prescribed in subsection (c) or (d) of section  
25 1142, requiring such insurer to cease and desist from a

1 violation of this section or regulations prescribed under  
 2 this section, if the Commissioner determines that a na-  
 3 tional life insurer—

4 (1) has failed to establish and maintain the pro-  
 5 cedures described in subsection (a); or

6 (2) has failed to correct any problem with the  
 7 procedures maintained by such national life insurer  
 8 which was previously reported to such insurer by the  
 9 Commissioner.

## 10 **Subtitle C—Enforcement of** 11 **Federal Insurance Laws**

### 12 **SEC. 1141. NATIONAL INSURER LICENSE SUSPENSION, RE-** 13 **STRICTION, OR REVOCATION.**

14 (a) IN GENERAL.—In accordance with the conditions  
 15 under this section, the Commissioner may revoke or re-  
 16 strict the Federal license of a national insurer if the Com-  
 17 missioner determines that the national insurer—

18 (1) has engaged in conduct that is hazardous to  
 19 the national insurer and that involves an undue risk  
 20 to the policyholders of the national insurer, as a  
 21 whole;

22 (2) is in a financial or other condition that is  
 23 not consistent with the continuation of existing oper-  
 24 ations; or

25 (3) has violated any—

1 (A) applicable law or regulation;

2 (B) order or condition imposed in writing  
3 by the Commissioner in connection with the ap-  
4 proval of an application, filing, statement, no-  
5 tice, or other request by the national insurer; or

6 (C) written agreement entered into be-  
7 tween the national insurer and the Commis-  
8 sioner.

9 (b) NOTICE TO NATIONAL INSURER.—

10 (1) IN GENERAL.—If the Commissioner deter-  
11 mines under subsection (a) that the Federal license  
12 of a national insurer should be revoked or restricted,  
13 the Commissioner shall—

14 (A) serve the national insurer with written  
15 notice of the intent of the Commissioner to re-  
16 voke or restrict such Federal license;

17 (B) provide the national insurer with a  
18 statement of the basis for the determination to  
19 revoke or restrict such Federal license; and

20 (C) notify, not less than 30 days before a  
21 hearing under subsection (c), the date and place  
22 of the hearing.

23 (2) NOTICE OF SERVICE.—Any service required  
24 or authorized to be made by the Commissioner  
25 under this section may be made by registered mail,

1 or in such other manner reasonably calculated to  
2 give actual notice as the Commissioner may by regu-  
3 lation or otherwise provide.

4 (c) REVOCATION OR RESTRICTION HEARING.—

5 (1) IN GENERAL.—Before revoking or restrict-  
6 ing a Federal license, the Commissioner shall con-  
7 duct a hearing in accordance with section 554 of  
8 title 5, United States Code, to determine if the con-  
9 ditions described in subsection (a) exist.

10 (2) AUTHORITY TO REVOKE OR RESTRICT FED-  
11 ERAL LICENSE.—If, on the basis of the evidence pre-  
12 sented at the hearing under paragraph (1) and the  
13 written findings of the Commissioner with respect to  
14 such evidence, the Commissioner establishes the ex-  
15 istence of any conduct, condition, or violation speci-  
16 fied in the notice sent to a national insurer under  
17 subsection (b), the Commissioner may issue an order  
18 revoking or restricting the Federal license of the na-  
19 tional insurer, which shall be effective as of a date  
20 subsequent to such finding.

21 (3) CONSENT TO REVOCATION OR RESTRIC-  
22 TION.—If a duly authorized representative of the na-  
23 tional insurer fails to appear at the hearing under  
24 this subsection, the national insurer shall be deemed  
25 to have consented to the revocation or restriction of

1 its Federal license, and the Commissioner may im-  
2 mediately revoke or restrict such Federal license.

3 (d) NOTICE OF REVOCATION OR RESTRICTION RE-  
4 QUIRED.—

5 (1) NOTICE BY NATIONAL INSURER.—

6 (A) IN GENERAL.—The national insurer  
7 shall give notice of a revocation or restriction of  
8 its Federal license under this section to each  
9 policyholder affected by the revocation or re-  
10 striction.

11 (B) TYPE OF NOTICE.—Notice under this  
12 paragraph shall be sent to the last address of  
13 record of the policyholder on the books of the  
14 national insurer, in such manner and at such  
15 time as the Commissioner determines to be nec-  
16 essary for the protection of policyholders.

17 (2) NOTICE BY COMMISSIONER.—

18 (A) IN GENERAL.—The Commissioner  
19 shall publish notice of a revocation or restric-  
20 tion under this section. If the Commissioner de-  
21 termines that a national insurer has not given  
22 notice of an order under this subsection in ac-  
23 cordance with the requirements of the Commis-  
24 sioner, the Commissioner may provide such no-

1           tice in such manner as the Commissioner may  
2           find to be necessary and proper.

3           (B) COSTS.—The cost of any notice pro-  
4           vided under subparagraph (A) shall be paid by  
5           the national insurer.

6           (e) TEMPORARY SUSPENSION OR RESTRICTION.—

7           (1) IN GENERAL.—If the Commissioner, in the  
8           course of a revocation proceeding under this section,  
9           finds that the national insurer poses an immediate  
10          threat to the interests of its policyholders as a whole  
11          or to the public, the Commissioner may issue an  
12          order temporarily suspending or restricting the Fed-  
13          eral license of the national insurer.

14          (2) NOTICE OF TEMPORARY ORDER.—A na-  
15          tional insurer whose Federal license is temporarily  
16          suspended or restricted under this subsection shall  
17          give notice of an order issued under this paragraph  
18          to each affected policyholder in such manner and at  
19          such times as the Commissioner may find to be nec-  
20          essary and may order for the protection of policy-  
21          holders and the public.

22          (3) EFFECTIVE PERIOD OF TEMPORARY  
23          ORDER.—A temporary order issued under paragraph  
24          (1) shall—

1 (A) become effective not earlier than 10  
2 days from the date of service upon the national  
3 insurer; and

4 (B) unless set aside, limited, or suspended  
5 by a court in proceedings authorized under  
6 paragraph (4), remain effective and enforceable  
7 until the earlier of—

8 (i) the effective date of an order under  
9 subsection (c)(2); or

10 (ii) the date on which the Commis-  
11 sioner determines that there is insufficient  
12 evidence to revoke or restrict a Federal li-  
13 cense under this subsection.

14 (4) JUDICIAL REVIEW.—

15 (A) IN GENERAL.—During the 10-day pe-  
16 riod beginning on the date on which a tem-  
17 porary order has been issued under paragraph  
18 (1), the national insurer may apply to a court  
19 described in subparagraph (B) for an injunction  
20 setting aside, limiting, or suspending the en-  
21 forcement, operation, or effectiveness of such  
22 order.

23 (B) JURISDICTION.—The United States  
24 District Court for the District of Columbia and  
25 the United States district court for the judicial

1 district in which the main office of the national  
2 insurer is located shall have jurisdiction to issue  
3 an injunction under this paragraph.

4 (f) DECISION TO SUSPEND, RESTRICT, OR RE-  
5 VOKE.—

6 (1) IN GENERAL.—Except as provided under  
7 paragraph (2), any decision by the Commissioner to  
8 suspend, restrict, or revoke a Federal license under  
9 this section shall be made by the Commissioner and  
10 may not be delegated.

11 (2) EXCEPTION.—The Commissioner may, by  
12 order, designate an employee of the Office who may  
13 make a decision described in paragraph (1), if the  
14 Commissioner is not able to act by reason of recusal  
15 or is otherwise disqualified from acting.

16 (g) JUDICIAL REVIEW.—Any national insurer whose  
17 Federal license has been revoked or restricted by order  
18 of the Commissioner under this section shall have the  
19 right of judicial review of such order only to the same ex-  
20 tent as provided for the review of orders under section  
21 1148.

1 **SEC. 1142. SUSPENSION, RESTRICTION, OR REVOCATION OF**  
2 **FEDERAL LICENSE OF NATIONAL AGENCIES**  
3 **AND FEDERALLY LICENSED INSURANCE PRO-**  
4 **DUCERS.**

5 (a) IN GENERAL.—In accordance with the provisions  
6 of this section, the Commissioner may revoke or restrict  
7 the Federal producer license, including lines of insurance  
8 covered by such license, of a national agency or other fed-  
9 erally licensed insurance producer if the Commissioner de-  
10 termines that the Agency or producer has—

11 (1) violated any applicable law, regulation,  
12 order, condition imposed in writing by the Commis-  
13 sioner in connection with the approval of an applica-  
14 tion, filing, statement, notice or other request by the  
15 producer, or written agreement entered into between  
16 the producer and the Commissioner;

17 (2) provided incorrect, misleading, incomplete,  
18 or materially untrue information in an application  
19 for a Federal charter or a Federal producer license;

20 (3) used fraudulent, coercive, or dishonest prac-  
21 tices; or

22 (4) demonstrated incompetence,  
23 untrustworthiness, or financial irresponsibility as an  
24 insurance producer.

25 (b) NOTICE TO FEDERALLY LICENSED INSURANCE  
26 PRODUCER.—If the Commissioner determines that any

1 conduct, breach, or violation specified in subsection (a) re-  
2 quires revocation or restriction of the Federal producer li-  
3 cense of a national agency or other federally licensed in-  
4 surance producer, the Commissioner shall—

5 (1) serve written notice on the national agency  
6 or other federally licensed insurance producer of the  
7 Commissioner’s intention to revoke or restrict the  
8 Federal producer license;

9 (2) provide the national agency or other feder-  
10 ally licensed insurance producer with a statement of  
11 the basis for the determination to revoke or restrict  
12 the Federal producer license; and

13 (3) notify the national agency or other federally  
14 licensed insurance producer, not less than 30 days  
15 before a hearing under subsection (c), of the date  
16 and place of the hearing.

17 (c) REVOCATION OR RESTRICTION HEARING.—

18 (1) IN GENERAL.—Before revoking or restrict-  
19 ing a Federal producer license, the Commissioner  
20 shall conduct a hearing in accordance with section  
21 554 of title 5, United States Code, to determine if  
22 the conditions described in subsection (a) exist.

23 (2) AUTHORITY TO REVOKE OR RESTRICT FED-  
24 ERAL LICENSE.—If, on the basis of the evidence pre-  
25 sented at the hearing under paragraph (1) and the

1 written findings of the Commissioner with respect to  
2 such evidence, the Commissioner finds any conduct,  
3 condition, or violation specified in the notice sent to  
4 a national agency or other federally licensed insur-  
5 ance producer under subsection (b), the Commis-  
6 sioner may issue an order revoking or restricting the  
7 Federal producer license of the national agency or  
8 other federally licensed insurance producer, which  
9 shall be effective as of a date subsequent to such  
10 finding.

11 (3) CONSENT TO REVOCATION OR RESTRIC-  
12 TION.—If a duly authorized representative of the na-  
13 tional agency or other federally licensed insurance  
14 producer fails to appear at the hearing under this  
15 subsection, the national agency or other federally li-  
16 censed insurance producer shall be deemed to have  
17 consented to the revocation or restriction of its Fed-  
18 eral producer license, and the Commissioner may im-  
19 mediately revoke or restrict such Federal producer  
20 license.

21 (d) NOTICE OF REVOCATION OR RESTRICTION RE-  
22 QUIRED.—

23 (1) NOTICE BY FEDERALLY LICENSED INSUR-  
24 ANCE PRODUCER.—Each national agency or other  
25 federally licensed insurance producer shall give writ-

1 ten notice of revocation or restriction under this sec-  
2 tion to each national insurer or State insurer for  
3 which such agency or producer acts as an insurance  
4 producer.

5 (2) NOTICE BY COMMISSIONER.—

6 (A) IN GENERAL.—The Commissioner  
7 shall publish notice of a revocation or restric-  
8 tion under this section. If the Commissioner de-  
9 termines that a national agency or other feder-  
10 ally licensed insurance producer has not given  
11 notice of an order under this subsection in ac-  
12 cordance with the requirements of the Commis-  
13 sioner, the Commissioner may provide such no-  
14 tice in any manner that the Commissioner de-  
15 termines to be necessary and proper.

16 (B) COSTS.—The cost of any notice pro-  
17 vided under subparagraph (A) shall be paid by  
18 the national agency or other federally licensed  
19 insurance producer.

20 (e) TEMPORARY SUSPENSION OR RESTRICTION.—

21 (1) IN GENERAL.—If the Commissioner, in the  
22 course of a revocation or restriction proceeding  
23 under this section, finds that the national agency or  
24 other federally licensed insurance producer poses an  
25 immediate threat to the interests of the policyholders

1 of a national insurer or a State insurer as a whole,  
2 or to the public, the Commissioner may issue a tem-  
3 porary order suspending or restricting the Federal  
4 producer license of the agency or other producer.

5 (2) NOTICE OF TEMPORARY ORDER.—The na-  
6 tional agency or other federally licensed insurance  
7 producer shall give notice of a temporary order  
8 issued under this paragraph in such manner and at  
9 such times as the Commissioner may find to be nec-  
10 essary and may order for the protection of policy-  
11 holders and the public.

12 (3) EFFECTIVE PERIOD OF TEMPORARY  
13 ORDER.—Any temporary order issued under para-  
14 graph (1) shall—

15 (A) become effective not earlier than 10  
16 days from the date of service upon the national  
17 agency or other federally licensed insurance  
18 producer; and

19 (B) unless set aside, limited, or suspended  
20 by a court under paragraph (4), remain effec-  
21 tive and enforceable until an order of the Com-  
22 missioner under subsection (c) becomes final or  
23 until the Commissioner dismisses the pro-  
24 ceedings under paragraph (4).

25 (4) JUDICIAL REVIEW.—

1 (A) IN GENERAL.—During the 10-day pe-  
2 riod beginning on the date on which a tem-  
3 porary order has been issued under paragraph  
4 (1), the national agency or other federally li-  
5 censed insurance producer may apply to a court  
6 described in subparagraph (B) for an injunction  
7 setting aside, limiting, or suspending the en-  
8 forcement, operation, or effectiveness of such  
9 order.

10 (B) JURISDICTION.—The United States  
11 District Court for the District of Columbia and  
12 the United States district court for the judicial  
13 district in which the federally licensed insurance  
14 producers (or the main office of the national  
15 agency) is located shall have jurisdiction to  
16 issue an injunction under this paragraph.

17 (f) JUDICIAL REVIEW.—Any national agency or other  
18 federally licensed insurance producer whose Federal pro-  
19 ducer license has been revoked or restricted by order of  
20 the Commissioner under this subsection shall have the  
21 right of judicial review of such order only to the same ex-  
22 tent as provided for the review of orders under section  
23 1148.

24 **SEC. 1143. CEASE-AND-DESIST PROCEEDINGS.**

25 (a) NOTICE.—

1           (1) ISSUANCE.—The Commissioner may issue  
2           and serve upon a national insurer, national agency,  
3           federally licensed insurance producer, or insurer-af-  
4           filiated party a notice of charges if the Commis-  
5           sioner determines that such insurer, agency, pro-  
6           ducer, or party—

7                   (A) has engaged, or is about to engage, in  
8                   conduct that is hazardous to a national insurer  
9                   or a State insurer and involves an undue risk  
10                  to the policyholders as a whole of a national in-  
11                  surer or a State insurer; or

12                  (B) has violated, or is about to violate—

13                          (i) a law, rule, or regulation;

14                          (ii) any condition imposed in writing  
15                          by the Commissioner in connection with  
16                          the granting of any application, filing,  
17                          statement, notice, or other request by the  
18                          national insurer, national agency, federally  
19                          licensed insurance producer, or party; or

20                          (iii) any written agreement entered  
21                          into with the Commissioner by such in-  
22                          surer, agency, producer, or party.

23           (2) CONTENTS.—The notice issued under para-  
24           graph (1) shall—

1 (A) contain a statement of the facts consti-  
2 tuting the alleged violations; and

3 (B) state the time and place at which a  
4 hearing will be held to determine whether an  
5 order to cease and desist should be issued  
6 against the national insurer, national agency,  
7 federally licensed insurance producer, or in-  
8 surer-affiliated party.

9 (b) HEARING.—

10 (1) TIMING.—A hearing under this section shall  
11 be scheduled for a date which is not earlier than 30  
12 days nor later than 60 days after the service of no-  
13 tice under subsection (a) unless another date is set  
14 by the Commissioner at the request of any party so  
15 served.

16 (2) CONSENT.—If a duly authorized representa-  
17 tive of a party served notice under subsection (a)  
18 fails to appear at a hearing under this section, the  
19 party shall be deemed to have consented to the  
20 issuance of the cease-and-desist order.

21 (c) CEASE-AND-DESIST ORDER.—

22 (1) IN GENERAL.—If the Commissioner finds,  
23 upon the record made at a hearing under this sec-  
24 tion, that any violation or conduct specified in the  
25 notice of charges has been established, or if the

1 party consents, the Commissioner may issue and  
2 serve upon the national insurer, national agency,  
3 federally licensed insurance producer, or insurer-af-  
4 filiated party, an order to cease and desist from any  
5 such violation or conduct.

6 (2) CONTENTS.—A cease-and-desist order  
7 issued under this subsection may—

8 (A) require the national insurer, national  
9 agency, federally licensed insurance producer,  
10 or insurer-affiliated party to cease and desist  
11 from the alleged violation or conduct; and

12 (B) take affirmative action to correct the  
13 conditions resulting from any such violation or  
14 conduct.

15 (3) EFFECTIVE DATE.—A cease-and-desist  
16 order issued under this subsection shall—

17 (A) take effect on the expiration of the  
18 date which is 30 days after the service of such  
19 order upon the party or on another date, if  
20 issued upon consent; and

21 (B) remain in effect and enforceable as  
22 provided therein, unless stayed, modified, termi-  
23 nated, or set aside by action of the Commis-  
24 sioner or a reviewing court.

1           (4) AUTHORITY TO LIMIT ACTIVITIES.—The au-  
2           thority to issue an order under this section includes  
3           the authority to place limitations on the activities or  
4           functions of a national insurer, national agency, a  
5           federally licensed insurance producer, or an insurer-  
6           affiliated party.

7           (5) STANDARD FOR CERTAIN ORDERS.—No au-  
8           thority under this section to prohibit any insurer-af-  
9           filiated party from withdrawing, transferring, remov-  
10          ing, dissipating, or disposing of any funds, assets, or  
11          other property may be exercised, unless the Commis-  
12          sioner meets the standards of Rule 65 of the Federal  
13          Rules of Civil Procedure, without regard to the re-  
14          quirement of such rule that the applicant show that  
15          the injury, loss, or damage is irreparable and imme-  
16          diate.

17          (d) TEMPORARY CEASE-AND-DESIST ORDERS.—

18               (1) IN GENERAL.—If the Commissioner deter-  
19               mines that the violation, threatened violation, or  
20               conduct specified in the notice of charges served  
21               under subsection (c)(1) is likely to cause insolvency  
22               or significant dissipation of assets or earnings of a  
23               national insurer or a State insurer, or is likely to  
24               weaken the condition of a national insurer or a State  
25               insurer or otherwise prejudice the interests of the

1 policyholders, as a whole, of a national insurer or a  
 2 State insurer before the completion of the pro-  
 3 ceedings conducted under subsection (c)(1), the  
 4 Commissioner may issue a temporary order requir-  
 5 ing the national insurer, national agency, producer,  
 6 or party to—

7 (A) cease and desist from any such viola-  
 8 tion or conduct; and

9 (B) take affirmative action to prevent or  
 10 remedy such insolvency, dissipation, condition,  
 11 or prejudice pending completion of such pro-  
 12 ceedings.

13 (2) CONTENTS OF ORDER; EFFECTIVE DATE.—

14 A temporary cease-and-desist order issued under  
 15 paragraph (1)—

16 (A) may include any action authorized  
 17 under section 1144(2);

18 (B) shall become effective upon service to  
 19 the national insurer, national agency, producer,  
 20 or party; and

21 (C) unless set aside, limited, or suspended  
 22 by a court under paragraph (3), shall remain in  
 23 effect and enforceable until the date on which—

24 (i) administrative proceedings pursu-  
 25 ant to such order are completed;

1 (ii) the Commissioner dismisses the  
2 charges specified in such order; or

3 (iii) if a cease-and-desist order is  
4 issued against such national insurer, na-  
5 tional agency, producer, or party, such  
6 order is effective.

7 (3) INJUNCTION.—

8 (A) IN GENERAL.—A national insurer, na-  
9 tional agency, federally licensed insurance pro-  
10 ducer, or insurer-affiliated party that has been  
11 served with a temporary cease-and-desist order  
12 under this subsection may, not later than 10  
13 days after the date of such service, apply to a  
14 court described in subparagraph (B) for an in-  
15 junction setting aside, limiting, or suspending  
16 the enforcement, operation, or effectiveness of  
17 such order until the completion of administra-  
18 tive proceedings under this section.

19 (B) JURISDICTION.—The United States  
20 District Court for the District of Columbia and  
21 the United States district court for the judicial  
22 district in which the producer, party, or main  
23 office of the national insurer or national agency  
24 is located shall have jurisdiction to issue an in-  
25 junction under this paragraph.

1 (4) INCOMPLETE OR INACCURATE RECORDS.—

2 (A) TEMPORARY ORDER.—If a notice of  
3 charges served under subsection (a) specifies,  
4 on the basis of particular facts and cir-  
5 cumstances, that the books and records of a na-  
6 tional insurer are so incomplete or inaccurate  
7 that the Commissioner is unable, through the  
8 normal supervisory process, to determine the fi-  
9 nancial condition of that national insurer or the  
10 details or purpose of any transaction or trans-  
11 actions that may have a material effect on the  
12 financial condition of that national insurer, the  
13 Commissioner may issue a temporary order re-  
14 quiring—

15 (i) the cessation of any activity or  
16 practice which gave rise to the incomplete  
17 or inaccurate state of the books or records;  
18 or

19 (ii) affirmative action to restore such  
20 books or records to a complete and accu-  
21 rate state.

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

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

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

5 (I) the completion of the pro-  
6 ceeding initiated under subsection (a)  
7 in connection with the notice of  
8 charges; or

9 (II) the date the Commissioner  
10 determines, by examination or other-  
11 wise, that the books and records of  
12 the national insurer accurately reflect  
13 the financial condition of the national  
14 insurer.

15 **SEC. 1144. AFFIRMATIVE ACTION TO CORRECT CONDITIONS**  
16 **RESULTING FROM VIOLATIONS OR CONDUCT.**

17 The authority granted to the Commissioner under  
18 this subtitle to issue an order that requires a national in-  
19 surer, national agency, federally licensed insurance pro-  
20 ducer, or insurer-affiliated party to take affirmative action  
21 to correct or remedy any condition resulting from any vio-  
22 lation or conduct with respect to which such order is  
23 issued includes the authority to require such national in-  
24 surer, national agency, producer, or party to—

25 (1) restrict the growth of the national insurer;

1           (2) dispose of any asset or insurance policy or  
2           reinsurance contract;

3           (3) rescind any other agreements or contracts,  
4           other than insurance policies or reinsurance con-  
5           tracts, to which the national insurer is the issuer;

6           (4) employ qualified officers or employees, sub-  
7           ject to approval by the Commissioner; and

8           (5) take such other action as the Commissioner  
9           determines to be appropriate if—

10           (A) such national insurer, national agency,  
11           producer, or party was unjustly enriched in con-  
12           nection with such violation or conduct; or

13           (B) the violation or conduct involved a  
14           reckless disregard for the law or any applicable  
15           regulations or prior order of the Commissioner.

16 **SEC. 1145. SUSPENSION, REMOVAL, AND PROHIBITION AU-**  
17 **THORITY.**

18           (a) **AUTHORITY TO ISSUE ORDER.**—The Commis-  
19 sioner may serve a written notice of the Commissioner’s  
20 intention to suspend or remove an insurer-affiliated party  
21 from office or to prohibit any further participation by such  
22 party in the conduct of the affairs of any national insurer  
23 or national agency, if the Commissioner determines that—

24           (1) an insurer-affiliated party has—

25           (A) violated—

- 1 (i) any law or regulation;
- 2 (ii) any final cease-and-desist order  
3 issued under section 1143;
- 4 (iii) any condition imposed in writing  
5 by the Commissioner in connection with  
6 the grant of any application, filing, state-  
7 ment, notice, or other request by such na-  
8 tional insurer or national agency; or
- 9 (iv) any written agreement between  
10 such national insurer or national agency  
11 and the Commissioner;
- 12 (B) engaged or participated in any conduct  
13 that—
- 14 (i) is hazardous to the national in-  
15 surer or national agency; and
- 16 (ii) involves an undue risk to the pol-  
17 icyholders of such national insurer, as a  
18 whole, or the policyholders, as a whole,  
19 serviced by such national agency; or
- 20 (C) committed or engaged in any act,  
21 omission, or practice, which constitutes a  
22 breach of the fiduciary duty of such party;
- 23 (2) through any violation, conduct, practice, or  
24 breach described in paragraph (1)—

1 (A) such national insurer or national agen-  
 2 cy has suffered, or will probably suffer, finan-  
 3 cial loss or other damage;

4 (B) the interests of the policyholders of the  
 5 national insurer or the policyholders serviced by  
 6 the national agency have been, or could be,  
 7 prejudiced; or

8 (C) such party has received financial gain  
 9 or other benefit by reason of such violation,  
 10 practice, or breach; and

11 (3) the violation, conduct, practice, or breach—

12 (A) involves personal dishonesty on the  
 13 part of such party; or

14 (B) demonstrates willful or continuing dis-  
 15 regard by such party for the condition of such  
 16 national insurer or national agency or the inter-  
 17 ests of the national insurer's policyholders or  
 18 the policyholders serviced by the national agen-  
 19 cy.

20 (b) TEMPORARY SUSPENSION ORDER.—

21 (1) SUSPENSION OR PROHIBITION AUTHOR-  
 22 IZED.—If the Commissioner serves written notice  
 23 under subsection (a) on any insurer-affiliated party  
 24 of the Commissioner's intention to issue an order  
 25 under such subsection, the Commissioner may issue

1 a temporary order suspending such party from office  
2 or prohibiting such party from further participation  
3 in any manner in the conduct of the affairs of the  
4 national insurer or national agency, if the Commis-  
5 sioner—

6 (A) determines that such action is nec-  
7 essary for the protection of the national insurer  
8 or its policyholders or the national agency or  
9 the policyholders serviced by such Agency; and

10 (B) serves such party with the temporary  
11 order of suspension or prohibition.

12 (2) EFFECTIVE PERIOD.—Any temporary order  
13 issued under paragraph (1)—

14 (A) shall become effective upon service;  
15 and

16 (B) unless a court issues a stay of such  
17 order under subsection (e), shall remain in ef-  
18 fect and enforceable until—

19 (i) the date the Commissioner dis-  
20 misses the charges contained in the notice  
21 served under subsection (a) with respect to  
22 such party; or

23 (ii) the effective date of an order  
24 issued by the Commissioner to such party  
25 under subsection (a).

1           (3) COPY OF ORDER.—If the Commissioner  
2 issues a temporary order under paragraph (1) to any  
3 insurer-affiliated party, the Commissioner shall serve  
4 a copy of such order on any national insurer or na-  
5 tional agency with which such party is affiliated at  
6 the time such order is issued.

7           (c) PROCEDURES.—

8           (1) CONTENTS OF NOTICE.—A notice served  
9 under subsection (a) shall include—

10                   (A) a statement of the grounds for facts  
11                   underlying such notice; and

12                   (B) the time and place of a hearing to be  
13                   held thereon.

14           (2) HEARING.—The hearing referred to in  
15 paragraph (1)(B) shall take place not earlier than  
16 30 days nor later than 60 days after the date of  
17 service of notice under subsection (a), unless another  
18 date is set by the Commissioner at the request of  
19 such party.

20           (3) SUSPENSION OR REMOVAL.—

21                   (A) FAILURE TO APPEAR.—If a duly au-  
22                   thorized representative of the party receiving  
23                   notice of a hearing under this subsection fails  
24                   to appear at such hearing, such party shall be

1           deemed to have consented to the issuance of an  
2           order of such removal or prohibition.

3           (B) **SUSPENSION OR REMOVAL.**—In the  
4           event of such consent, or if upon the record  
5           made at any hearing under this subsection the  
6           Commissioner finds that any of the grounds  
7           specified in such notice have been established,  
8           the Commissioner may issue such orders of sus-  
9           pension or removal from office, or prohibition  
10          from participation in the conduct of the affairs  
11          of the national insurer or national agency, as  
12          the Commissioner determines to be appropriate.

13          (C) **EFFECTIVE DATE.**—Any order issued  
14          under subparagraph (B) shall become effective  
15          on the expiration of 30 days after service upon  
16          the national insurer or national agency and  
17          such party (except in the case of an order  
18          issued upon consent, which shall become effec-  
19          tive at the time specified in such order). Such  
20          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 ac-  
23          tion of the Commissioner or a reviewing court.

24          (d) **INDUSTRYWIDE PROHIBITION.**—

1           (1) IN GENERAL.—Except as provided under  
2 paragraph (2), any person who, pursuant to any  
3 order issued under this section or section 1146, has  
4 been removed or suspended from office in a national  
5 insurer or national agency or prohibited from par-  
6 ticipating in the conduct of the affairs of a national  
7 insurer or national agency may not, while such order  
8 is in effect—

9           (A) continue or commence to hold any of-  
10 fice in, or participate in any manner in the con-  
11 duct of the affairs of any national insurer or  
12 national agency;

13           (B) solicit, procure, transfer, attempt to  
14 transfer, vote, or attempt to vote any proxy,  
15 consent, or authorization with respect to any  
16 voting rights in any national insurer or national  
17 agency;

18           (C) act as an insurer-affiliated party; or

19           (D) act as a federally licensed insurance  
20 producer.

21           (2) EXCEPTION.—If, on or after the date on  
22 which an order is issued under this subsection that  
23 removes or suspends from office any insurer-affili-  
24 ated party or prohibits such party from participating  
25 in the conduct of the affairs of a national insurer or

1 national agency, such party receives the written con-  
2 sent of the Commissioner, paragraph (1) shall, to  
3 the extent of such consent, cease to apply to such  
4 party with respect to the national insurer or national  
5 agency described in each written consent.

6 (3) VIOLATION OF ORDER.—Any violation of  
7 paragraph (1) by any person who is subject to an  
8 order described in such subparagraph shall be treat-  
9 ed as a violation of the order.

10 (e) STAY OF SUSPENSION OR PROHIBITION.—Not  
11 later than 10 days after any insurer-affiliated party has  
12 been suspended from office or prohibited from participa-  
13 tion in the conduct of the affairs of a national insurer or  
14 national agency by a temporary order issued under sub-  
15 section (b), such party may apply to the United States  
16 district court for the judicial district in which the main  
17 office of the national insurer or national agency is located,  
18 or the United States District Court for the District of Co-  
19 lumbia, for a stay of such suspension or prohibition pend-  
20 ing the completion of the administrative proceedings pur-  
21 suant to the notice served upon such party under sub-  
22 section (a), and such court shall have jurisdiction to stay  
23 such suspension or prohibition.

1 **SEC. 1146. SUSPENSION OR PROHIBITION BASED ON CRIMI-**  
2 **NAL ACTIVITY.**

3 (a) SUSPENSION OR PROHIBITION.—

4 (1) IN GENERAL.—The Commissioner may sus-  
5 pend an insurer-affiliated party from office or pro-  
6 hibit such party from further participation in any  
7 manner in the conduct of the affairs of a national  
8 insurer or national agency, by written notice served  
9 upon such party and the national insurer or national  
10 agency, if—

11 (A) continued service or participation by  
12 such party may pose a threat to the national in-  
13 surer or national agency or the interests of the  
14 policyholders of the national insurer, as a  
15 whole, or the policyholders, as a whole, serviced  
16 by the national agency; and

17 (B) such party is charged in any informa-  
18 tion, indictment, or complaint, with the commis-  
19 sion of or participation in—

20 (i) a crime involving dishonesty or  
21 breach of trust which is punishable by im-  
22 prisonment for a term exceeding 1 year  
23 under Federal or State law; or

24 (ii) a criminal violation of section  
25 1956, 1957, or 1960 of title 18, United

1 States Code, or section 5322 or 5324 of  
2 title 31, United States Code.

3 (2) EFFECTIVE PERIOD.—A suspension or pro-  
4 hibition under paragraph (1) shall remain in effect  
5 until the information, indictment, or complaint re-  
6 ferred to in paragraph (1)(B) is resolved or other-  
7 wise terminated by the Commissioner.

8 (b) REMOVAL OR PROHIBITION.—

9 (1) IN GENERAL.—If a judgment of conviction  
10 or an agreement to enter a pretrial diversion or  
11 other similar program is entered against an insurer-  
12 affiliated party in connection with a crime described  
13 in subsection (a)(1)(B)(i), the Commissioner may  
14 issue and serve upon such party and the national in-  
15 surer or national agency an order removing such  
16 party from office or prohibiting such party from fur-  
17 ther participation in any manner in the conduct of  
18 the affairs of the national insurer or national agency  
19 without the prior written consent of the Commis-  
20 sioner if—

21 (A) such judgment is not subject to further  
22 appellate review; and

23 (B) continued service or participation by  
24 such party may pose a threat to the national in-  
25 surer or the interests of the policyholders of the

1 national insurer or a national agency or the pol-  
2 icyholders serviced by such agency.

3 (2) REQUIRED FOR CERTAIN OFFENSES.—In  
4 the case of a judgment of conviction or agreement  
5 against an insurer-affiliated party in connection with  
6 a violation described in subsection (a)(1)(B)(ii), the  
7 Commissioner shall issue and serve upon such party  
8 and the national insurer or national agency an order  
9 removing such party from office or prohibiting such  
10 party from further participation in any manner in  
11 the conduct of the affairs of the national insurer or  
12 national agency without the prior written consent of  
13 the Commissioner.

14 (3) EFFECT ON DIRECTOR OR OFFICER.—An  
15 insurer-affiliated party who is a director or officer  
16 and who is subject to an order under this subsection,  
17 shall cease to be a director or officer of such na-  
18 tional insurer or national agency.

19 (4) EFFECT OF ACQUITTAL.—A finding of not  
20 guilty or other disposition of the charge shall not  
21 preclude the Commissioner from instituting pro-  
22 ceedings after such finding or disposition to remove  
23 such party from office or to prohibit further partici-  
24 pation in national insurer or national agency affairs  
25 under subsection (a) or (b) of section 1145.

1           (5) EFFECTIVE PERIOD.—A notice of suspen-  
2           sion or order of removal issued under this subsection  
3           shall remain effective and outstanding until the com-  
4           pletion of any hearing or appeal under subsection (c)  
5           or unless the suspension or order of removal is oth-  
6           erwise terminated by the Commissioner.

7           (c) ADMINISTRATIVE HEARING.—

8           (1) REQUEST.—Not later than 30 days after  
9           the date on which a notice of suspension or order of  
10          removal is received by an insurer-affiliated party  
11          under this subsection, such party may submit a writ-  
12          ten request to the Commissioner for an opportunity  
13          to appear before the Commissioner to show that the  
14          continued service to, or participation in, the conduct  
15          of the affairs of the national insurer or national  
16          agency by such party will not pose a threat to the  
17          national insurer or to the interests of its policy-  
18          holders or to a national agency or the policyholders  
19          serviced by such Agency.

20          (2) TIME AND PLACE.—Upon receipt of a re-  
21          quest under paragraph (1), the Commissioner shall  
22          set a time and place at which the requesting party  
23          may appear, personally or through counsel, before 1  
24          or more designated employees of the Commissioner  
25          to submit written materials or, at the discretion of

1 the Commissioner, oral testimony, and oral argu-  
2 ment. A hearing under this subsection shall take  
3 place not later than 30 days after the receipt of a  
4 request under paragraph (1), unless extended at the  
5 request of the party.

6 (3) NOTIFICATION OF DECISION.—Not later  
7 than 60 days after a hearing under this subsection,  
8 the Commissioner shall provide written notification  
9 to the insurer-affiliated party that indicates—

10 (A) whether the suspension or prohibition  
11 from participation in any manner in the con-  
12 duct of the affairs of the national insurer or na-  
13 tional agency will be continued, terminated, or  
14 otherwise modified;

15 (B) whether the order removing such party  
16 from office or prohibiting such party from fur-  
17 ther participation in any manner in the conduct  
18 of the affairs of the national insurer or national  
19 agency will be rescinded or otherwise modified;  
20 and

21 (C) the basis for any decision by the Com-  
22 missioner that is adverse to such party.

23 **SEC. 1147. ANCILLARY PROVISIONS.**

24 (a) POWERS RELATED TO HEARINGS.—In the course  
25 of or in connection with any proceeding or other action

1 under this subtitle, the Commissioner, and any person des-  
2 ignated to conduct any hearing under this section, may—

3 (1) administer oaths and affirmations;

4 (2) take depositions or cause depositions to be  
5 taken; and

6 (3) issue, revoke, quash, or modify subpoenas  
7 and subpoenas duces tecum.

8 (b) SUBPOENA POWER.—

9 (1) IN GENERAL.—The Commissioner, or des-  
10 ignee of the Commissioner, may require the attend-  
11 ance of witnesses and the production of documents  
12 provided for in this section from any place in any  
13 State or other place subject to the jurisdiction of the  
14 United States at any designated place where such  
15 proceeding or other action is being conducted.

16 (2) ENFORCEMENT.—The Commissioner or any  
17 party to proceedings under this section may apply  
18 for the enforcement of any subpoena or subpoena  
19 duces tecum issued under this section to—

20 (A) the United States District Court for  
21 the District of Columbia; or

22 (B) the United States district court for the  
23 judicial district in which—

24 (i) such proceeding or other action is  
25 being conducted; or

1 (ii) the witness resides or conducts  
2 business.

3 (3) JURISDICTION.—The courts described under  
4 paragraph (2) shall have jurisdiction and power to  
5 order and require compliance with any subpoena or  
6 subpoena duces tecum issued under this section.

7 (4) FEES AND MILEAGE.—Any witness subpoenaed  
8 under this subsection shall be paid the same  
9 fees and mileage that are paid witnesses in the dis-  
10 trict courts of the United States.

11 (5) PENALTY FOR NONCOMPLIANCE.—Any per-  
12 son who willfully fails or refuses to attend and tes-  
13 tify or to answer any lawful inquiry or to produce  
14 books, papers, correspondence, memoranda, con-  
15 tracts, agreements, or other records, if in such per-  
16 son's power so to do, in obedience to the subpoena  
17 of the Commissioner, shall be guilty of a mis-  
18 demeanor and, upon conviction, shall be subject to  
19 a fine of not more than \$1,000 or to imprisonment  
20 for a term of not more than 1 year or both.

21 (c) EXPENSES AND ATTORNEY FEES.—

22 (1) IN GENERAL.—Any court having jurisdic-  
23 tion of any proceeding or other action instituted  
24 under this section by a national insurer or national  
25 agency, a federally licensed insurance producer, or

1 an insurer-affiliated party may allow any such in-  
2 surer, agency, producer, or party to receive such rea-  
3 sonable expenses and attorney fees, as it determines  
4 to be just and proper.

5 (2) PAYMENT OF EXPENSES AND FEES.—Ex-  
6 penses and fees awarded under paragraph (1) shall  
7 be paid by the national insurer or national agency,  
8 the federally licensed insurance producer, or the in-  
9 surer-affiliated party from the assets of such in-  
10 surer, agency, producer, or party.

11 (d) RULEMAKING.—The Commissioner may promul-  
12 gate such regulations as may be necessary with respect  
13 to any proceedings, claims, examinations, investigations,  
14 or other actions authorized by this subtitle.

15 (e) EFFECT ON BOARD OF DIRECTORS.—

16 (1) LACK OF QUORUM.—If the suspension of 1  
17 or more directors under this subtitle reduces the  
18 board of directors of a national insurer or national  
19 agency below a quorum, all powers and functions  
20 vested in or exercisable by such board shall vest in,  
21 and be exercisable by, the director or directors on  
22 the board not so suspended, until a quorum is rees-  
23 tablished.

24 (2) TEMPORARY APPOINTMENTS.—If all of the  
25 directors of a national insurer or national agency are

1       suspended under this subtitle, the Commissioner  
 2       shall appoint persons to serve temporarily as direc-  
 3       tors in their place until the earlier of the date on  
 4       which—

5               (A) the suspensions are terminated; or

6               (B) the suspended directors are replaced  
 7               on the board of directors of the national insurer  
 8               or national agency.

9       (f) NOTICE AFTER SEPARATION FROM SERVICE.—

10   The resignation, termination of employment or participa-  
 11   tion, or separation of an insurer-affiliated party (including  
 12   a separation caused by the closing of a national insurer  
 13   or national agency) shall not affect the jurisdiction and  
 14   authority of the Commissioner to issue any notice against  
 15   any such party under this subtitle if such notice is served  
 16   before the end of the 6-year period beginning on the date  
 17   on which such party ceased to be an insurer-affiliated  
 18   party with respect to such national insurer or national  
 19   agency.

20   **SEC. 1148. HEARINGS AND JUDICIAL REVIEW OF SUSPEN-**  
 21               **SION, REMOVAL, OR PROHIBITION ORDER.**

22       (a) JUDICIAL HEARING.—

23               (1) IN GENERAL.—A hearing under this subtitle  
 24       (except for a hearing under section 1146(c))—

1 (A) shall be conducted in accordance with  
2 the provisions of chapter 5 of title 5, United  
3 States Code; and

4 (B) shall be held in the Federal judicial  
5 district in which the main office of the national  
6 insurer or national agency is located or in  
7 which the federally licensed insurance producer  
8 or the insurer-affiliated party is located, unless  
9 the party afforded the hearing consents to an-  
10 other place.

11 (2) JUDGMENT.—After a hearing under this  
12 subsection and not later than 90 days after the  
13 Commissioner has notified the parties that the case  
14 has been submitted to the Commissioner for final  
15 decision, the Commissioner shall—

16 (A) render a decision;

17 (B) issue and serve upon each party to the  
18 proceeding an order or orders consistent with  
19 the provisions of this subtitle; and

20 (C) include findings of fact upon which the  
21 decision of the Commissioner is predicated.

22 (b) JUDICIAL REVIEW.—

23 (1) IN GENERAL.—Judicial review of any order  
24 under this subtitle shall be limited to the provisions  
25 under this section.

1           (2) MODIFICATION OR TERMINATION OF ORDER  
2 BY COMMISSIONER.—

3           (A) BEFORE APPEAL.—Until a petition for  
4 review is timely filed in a court of appeals of  
5 the United States, in accordance with para-  
6 graph (3), the Commissioner may modify, ter-  
7minate, or set aside any order under this sec-  
8tion.

9           (B) AFTER APPEAL.—After an appeal de-  
10scribed under subparagraph (A) is filed, the  
11Commissioner may not modify, terminate, or  
12set aside any order under this section without  
13the permission of the court.

14           (3) FILING OF PETITION.—

15           (A) IN GENERAL.—Except as provided  
16under subparagraph (B), any party to a pro-  
17ceeding under this section may obtain judicial  
18review of any order served under subsection (a)  
19by filing a written petition in a court of appeals  
20described in subparagraph (C) not later than  
2130 days after the date of service of such order,  
22requesting that the order of the Commissioner  
23be modified, terminated, or set aside.

24           (B) EXCEPTION.—Judicial review shall not  
25be available for an order issued under sub-

1 section (d) with the consent of the national in-  
2 surer or national agency, the federally licensed  
3 insurance producer, or the insurer-affiliated  
4 party.

5 (C) JURISDICTION.—After a petition is  
6 filed under this paragraph, the following courts  
7 shall have exclusive jurisdiction to modify, ter-  
8minate, or set aside, in whole or in part, the  
9 order of the Commissioner:

10 (i) The court of appeals of the United  
11 States for the circuit in which—

12 (I) the main office of the national  
13 insurer or national agency is located;  
14 or

15 (II) the federally licensed insur-  
16 ance producer or the insurer-affiliated  
17 party is located.

18 (ii) The United States Court of Ap-  
19 peals for the District of Columbia circuit.

20 (4) FILING OF RECORD.—The clerk of the court  
21 shall transmit a copy of the petition filed under  
22 paragraph (3) to the Commissioner, who shall file in  
23 the court the record in the proceeding, in accordance  
24 with section 2112 of title 28, United States Code.

1           (5) EFFECT OF REVIEW PROCEEDINGS.—The  
2 commencement of proceedings for judicial review  
3 under this subsection shall not, unless specifically  
4 ordered by the court, operate as a stay of any order  
5 issued by the Commissioner.

6           (6) FINAL JUDGMENT.—Judicial review under  
7 this section shall be subject to chapter 7 of title 5,  
8 United States Code. The judgment and decree of the  
9 court shall be final, except that the same shall be  
10 subject to review by the Supreme Court upon certio-  
11 rari, as provided in section 1254 of title 28, United  
12 States Code.

13       (c) ENFORCEMENT OF COMMISSIONER ORDER.—

14           (1) APPLICATION.—The Commissioner may  
15 submit an application, to enforce any effective and  
16 outstanding notice or order issued under this sec-  
17 tion, to the United States district court for the judi-  
18 cial district in which—

19               (A) the main office of the national insurer  
20 or national agency is located;

21               (B) the federally licensed insurance pro-  
22 ducer is located; or

23               (C) the insurer-affiliated party is located.

24           (2) JURISDICTION.—The courts described in  
25 paragraph (1)—

1 (A) shall have jurisdiction and power to  
2 order and require compliance with an order of  
3 the Commissioner under this subtitle; and

4 (B) except as otherwise provided in this  
5 subtitle, shall not have jurisdiction to affect, by  
6 injunction or otherwise, the issuance or enforce-  
7 ment of any notice or order under this subtitle,  
8 or to review, modify, suspend, terminate, or set  
9 aside any such notice or order.

10 **SEC. 1149. CIVIL AND CRIMINAL PENALTIES.**

11 (a) CIVIL MONEY PENALTY.—

12 (1) FIRST TIER.—A national insurer or na-  
13 tional agency, federally licensed insurance producer,  
14 or insurer-affiliated party shall pay a civil penalty of  
15 not more than \$5,000 for each day during which  
16 such person—

17 (A) violates any law or regulation;

18 (B) violates any final order or temporary  
19 order issued pursuant to section 1143, 1144,  
20 1145, or 1146;

21 (C) violates any condition imposed in writ-  
22 ing by the Commissioner in connection with the  
23 grant of any application or other request by  
24 such national insurer or national agency, pro-  
25 ducer or party; or

1 (D) violates any written agreement be-  
2 tween such national insurer or national agency,  
3 producer, or party and the Commissioner.

4 (2) SECOND TIER.—Notwithstanding paragraph  
5 (1), a national insurer, national agency, federally li-  
6 censed insurance producer, or insurer-affiliated  
7 party shall pay a civil penalty of not more than  
8 \$25,000 for each day—

9 (A) during which such person—

10 (i) commits any violation described in  
11 any clause of paragraph (1);

12 (ii) recklessly engages in any conduct  
13 that is hazardous to a national insurer,  
14 State insurer, or national agency and that  
15 involves an undue risk to the policyholders,  
16 as a whole, of such national insurer or  
17 State insurer, or the policyholders, as a  
18 whole, serviced by such national agency; or

19 (iii) breaches any fiduciary duty; and

20 (B) for which such violation, conduct, or  
21 breach—

22 (i) is part of a pattern of misconduct;

23 (ii) causes or is likely to cause more  
24 than a minimal loss to such national in-  
25 surer or State insurer; or

1 (iii) results in pecuniary gain or other  
2 benefit to such national agency, producer,  
3 or affiliated party.

4 (3) THIRD TIER.—Notwithstanding paragraphs  
5 (1) and (2), a national insurer, national agency, fed-  
6 erally licensed insurance producer, or any insurer-af-  
7 filiated party shall pay a civil penalty in an amount  
8 not to exceed the applicable maximum amount deter-  
9 mined under paragraph (4) for each day during  
10 which such person—

11 (A) knowingly—

12 (i)(I) commits any violation described  
13 in any clause of paragraph (1); or

14 (II) engages in any conduct that is  
15 hazardous to a national insurer, State in-  
16 surer, or national agency and that involves  
17 an undue risk to the policyholders, as a  
18 whole, of such national insurer, State in-  
19 surer, or the policyholders, as a whole,  
20 serviced by such national agency; and

21 (ii) breaches any fiduciary duty; and

22 (B) knowingly or recklessly causes a sub-  
23 stantial loss to such national insurer, State in-  
24 surer, or national agency or a substantial pecu-  
25 niary gain or other benefit to such producer or

1 affiliated party by reason of such violation, con-  
2 duct, or breach.

3 (4) MAXIMUM AMOUNTS OF PENALTIES FOR  
4 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—  
5 The maximum daily amount of any civil penalty  
6 which may be assessed under paragraph (3) for any  
7 violation, practice, or breach described in such para-  
8 graph is \$1,000,000.

9 (5) ASSESSMENT.—

10 (A) WRITTEN NOTICE.—Any penalty im-  
11 posed under paragraph (1), (2), or (3) may be  
12 assessed and collected by the Commissioner by  
13 written notice, which shall contain a statement  
14 of the facts constituting the basis for the as-  
15 sessment of any penalty imposed under para-  
16 graph (1), (2), or (3).

17 (B) FINALITY OF ASSESSMENT.—If, with  
18 respect to any assessment under subparagraph  
19 (A), a hearing is not requested under para-  
20 graph (8) within the period of time allowed  
21 under such paragraph, the assessment shall  
22 constitute a final and unappealable order.

23 (6) AUTHORITY TO MODIFY OR REMIT PEN-  
24 ALTY.—The Commissioner may compromise, modify,  
25 or remit any penalty which the Commissioner may

1 assess or had already assessed under paragraph (1),  
2 (2), or (3).

3 (7) MITIGATING FACTORS.—In determining the  
4 amount of any penalty imposed under paragraph  
5 (1), (2), or (3), the Commissioner shall take into ac-  
6 count the appropriateness of the penalty in relation  
7 to—

8 (A) the size of financial resources and good  
9 faith of the national insurer, national agency, or  
10 other person charged;

11 (B) the gravity of the violation;

12 (C) the history of previous violations; and

13 (D) such other matters as justice may re-  
14 quire.

15 (8) HEARING.—The national insurer, national  
16 agency, or other person against whom any penalty is  
17 assessed under this paragraph shall be afforded a  
18 hearing by the Commissioner if such national in-  
19 surer, national agency, or person submits a request  
20 for such hearing within 20 days after the issuance  
21 of the notice of assessment.

22 (9) COLLECTION.—

23 (A) REFERRAL.—If any national insurer,  
24 national agency, or other person fails to pay an  
25 assessment after any penalty assessed under

1           this paragraph has become final, the Commis-  
2           sioner shall recover the amount assessed by ac-  
3           tion in the appropriate United States district  
4           court.

5           (B) APPROPRIATENESS OF PENALTY NOT  
6           REVIEWABLE.—In any civil action under sub-  
7           paragraph (A), the validity and appropriateness  
8           of the penalty shall not be subject to review.

9           (10) DISBURSEMENT AND USE.—All penalties  
10          collected under authority of this paragraph shall be  
11          deposited into the Treasury, and shall not be used  
12          to fund the compensation of the Commissioner or  
13          employees of the Office or the expenses of the Of-  
14          fice.

15          (b) PREJUDGMENT ATTACHMENT.—

16               (1) IN GENERAL.—In any action brought by the  
17          Commissioner under this section, or in actions  
18          brought in aid of, or to enforce an order in, any ad-  
19          ministrative or other civil action for money damages,  
20          restitution, or civil money penalties brought by the  
21          Commissioner, the court may, upon application of  
22          the Commissioner, issue a restraining order that—

23                       (A) prohibits any person subject to the  
24          proceeding from withdrawing, transferring, re-

1 moving, dissipating, or disposing of any funds,  
2 assets, or other property; and

3 (B) appoints a temporary receiver to ad-  
4 minister the restraining order.

5 (2) STANDARD.—

6 (A) SHOWING.—Rule 65 of the Federal  
7 Rules of Civil Procedure shall apply with re-  
8 spect to any proceeding under paragraph (1),  
9 without regard to the requirement of such rule  
10 that the applicant show that the injury, loss, or  
11 damage is irreparable and immediate.

12 (B) STATE PROCEEDING.—If, in the case  
13 of any proceeding in a State court, the court  
14 determines that rules of civil procedure avail-  
15 able under the laws of such State provide sub-  
16 stantially similar protections to a party's right  
17 to due process as rule 65, the relief sought  
18 under paragraph (1) may be requested under  
19 the laws of such State.

20 (c) CRIMINAL PENALTY.—

21 (1) IN GENERAL.—Chapter 21 of title 18,  
22 United States Code, is amended by adding at the  
23 end the following:

1 **“§ 404. Violation of order by Commissioner of Na-**  
 2 **tional Insurance**

3 “Any person who, being subject to an order under  
 4 section 1145 or 1146 of the National Insurance Act of  
 5 2007, without the prior written approval of the Commis-  
 6 sioner of National Insurance, knowingly participates, di-  
 7 rectly or indirectly, in any manner (including by engaging  
 8 in an activity specifically prohibited in such an order) in  
 9 the conduct of the affairs of any national insurer or na-  
 10 tional agency shall be fined not more than \$1,000,000,  
 11 imprisoned for not more than 5 years, or both.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-  
 13 tions at the beginning of chapter 21 of title 18,  
 14 United States Code, is amended by adding at the  
 15 end the following:

“Sec. 404. Violation of order by Commissioner of National Insurance.”.

16 **SEC. 1150. PUBLIC DISCLOSURES OF FINAL ORDERS AND**  
 17 **AGREEMENTS.**

18 (a) IN GENERAL.—Unless the Commissioner deter-  
 19 mines that publication of any such agreement, statement,  
 20 order, modification, or termination would be contrary to  
 21 the public interest, the Commissioner shall, on a monthly  
 22 basis, publish and make publicly available—

23 (1) any written agreement or other written  
 24 statement for which a violation may be enforced by  
 25 the Commissioner;

1           (2) any final order issued with respect to any  
2           administrative enforcement proceeding initiated by  
3           the Commissioner under this section or any other  
4           law; and

5           (3) any modification to or termination of any  
6           order or agreement made public pursuant to this  
7           paragraph.

8           (b) HEARINGS.—All hearings on the record with re-  
9           spect to any notice of charges issued by the Commissioner  
10          shall be open to the public, unless the Commissioner deter-  
11          mines that holding an open hearing would be contrary to  
12          the public interest.

13          (c) TRANSCRIPT OF HEARING.—A transcript con-  
14          taining all testimony and other documentary evidence shall  
15          be prepared for all hearings commenced pursuant to sec-  
16          tion 1148. A transcript of public hearings shall be made  
17          available to the public pursuant to section 552 of title 5,  
18          United States Code.

19          (d) DOCUMENTS FILED UNDER SEAL.—

20                 (1) IN GENERAL.—The Commissioner may file  
21                 any document or part of a document under seal in  
22                 any administrative hearing commenced by the Com-  
23                 missioner if the Commissioner determines that dis-  
24                 closure of all or part of the document would be con-  
25                 trary to the public interest.

1           (2) WRITTEN REPORT.—A written report shall  
2           be made part of any determination to withhold any  
3           part of a document from the transcript of the hear-  
4           ing required under subsection (b).

5           (e) RETENTION OF DOCUMENTS.—The Commis-  
6           sioner shall maintain a record for not less than 6 years  
7           of—

8           (1) all the documents described in subsection  
9           (a); and

10          (2) all informal enforcement agreements and  
11          other supervisory actions and supporting documents  
12          issued in connection with any administrative enforce-  
13          ment proceeding initiated by the Commissioner.

14          (f) DISCLOSURES TO CONGRESS.—No provision of  
15          this section may be construed to authorize the with-  
16          holding, or to prohibit the disclosure, of any information  
17          to Congress.

18       **SEC. 1151. FOREIGN INVESTIGATIONS.**

19          (a) REQUESTING ASSISTANCE FROM FOREIGN GOV-  
20          ERNMENTS.—In conducting any investigation, examina-  
21          tion, or enforcement action under this subtitle, the Com-  
22          missioner may request the assistance of any foreign gov-  
23          ernment.

24          (b) PROVIDING ASSISTANCE TO FOREIGN GOVERN-  
25          MENTS.—

1           (1) IN GENERAL.—The Commissioner may as-  
2           sist any foreign government that is conducting an  
3           investigation to determine whether any person has  
4           violated, is violating, or is about to violate any law  
5           or regulation relating to insurance matters or cur-  
6           rency transactions administered or enforced by such  
7           foreign government.

8           (2) INVESTIGATION BY COMMISSIONER.—The  
9           Commissioner may investigate and collect informa-  
10          tion and evidence pertinent to a request for assist-  
11          ance under paragraph (1). Any such investigation  
12          shall comply with the laws of the United States and  
13          the policies and procedures of the Commissioner.

14          (3) FACTORS TO CONSIDER.—In deciding  
15          whether to provide assistance under this section, the  
16          Commissioner shall consider—

17                 (A) whether the requesting authority has  
18                 agreed to provide reciprocal assistance with re-  
19                 spect to insurance matters within the jurisdic-  
20                 tion of the Commissioner; and

21                 (B) whether compliance with the request  
22                 would prejudice the public interest of the  
23                 United States.

24          (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
25          tion shall be construed to limit the authority of the Com-

1 missioner or any other Federal agency to provide or re-  
2 ceive assistance or information to or from any foreign gov-  
3 ernmental authority with respect to any matter.

4 **SEC. 1152. ACTION OR PROCEEDING AGAINST NON-UNITED**  
5 **STATES INSURERS.**

6 (a) IN GENERAL.—The Commissioner may not take  
7 any action under this subtitle against a non-United States  
8 insurer or any officer, director, employee, or agent of such  
9 insurer unless the Commissioner believes that conduct or  
10 practice of such insurer or individual has been, is, or is  
11 likely to be, carried on in connection with an act or prac-  
12 tice within 1 or more States, which constitutes an appro-  
13 priate basis for action by the Commissioner under this  
14 subtitle.

15 (b) REMOVAL OF OFFICER OR DIRECTOR.—If an of-  
16 ficer, director, or other person associated with a non-  
17 United States insurer fails to appear promptly as a party  
18 in any case in which an action or proceeding is brought,  
19 pursuant to an allegation under subsection (a), for the  
20 suspension or removal of such officer, director, or other  
21 person, or fails to comply with any effective order or judg-  
22 ment therein, any failure by the non-United States insurer  
23 to secure the removal of the officer, director, or other per-  
24 son from any office such person holds in such insurer and  
25 from any further participation in its affairs shall con-

1 stitute grounds for ordering the non-United States insurer  
2 to terminate the sale, solicitation, negotiation, and under-  
3 writing of insurance and all other insurance operations in  
4 the United States.

5 (c) VENUE.—

6 (1) IN GENERAL.—Except as provided under  
7 paragraph (2), if the venue of any judicial or admin-  
8 istrative proceeding under this section is to be deter-  
9 mined by reference to the location of the main office  
10 of a national insurer, the venue of such a proceeding  
11 shall be within the judicial district or other relevant  
12 jurisdiction in which the non-United States insurer  
13 has 1 or more offices.

14 (2) MULTIPLE JURISDICTIONS.—If a national  
15 insurer has offices in more than 1 jurisdiction, the  
16 venue of a proceeding under this section—

17 (A) shall be in the jurisdiction within  
18 which the office or offices involved in the pro-  
19 ceeding are located; and

20 (B) if there is more than 1 jurisdiction  
21 under subparagraph (A), shall be proper in any  
22 such jurisdiction in which the proceeding is  
23 brought or to which it may appropriately be  
24 transferred.

25 (d) SERVICE OF PROCESS.—

1           (1) IN GENERAL.—Any service required or au-  
2           thorized to be made on a non-United States insurer  
3           may be made on any office located within any State.

4           (2) EXCEPTION.—If any service of process  
5           under paragraph (1) is in connection with an action  
6           or proceeding involving 1 or more offices located in  
7           any State, service shall be made on at least 1 office  
8           so involved.

9   **SEC. 1153. COOPERATION BETWEEN COMMISSIONER AND**  
10                                   **STATE COMMISSIONERS.**

11           (a) NOTICE TO STATE COMMISSIONERS.—The Com-  
12           missioner shall notify the State commissioner in each  
13           State in which a national insurer or national agency is  
14           doing business not later than 30 days after the date of  
15           taking any of the following actions:

16           (1) Revocation, suspension, or restriction of the  
17           authority of the national insurer or national agency  
18           to transact insurance.

19           (2) The entry of a formal order that the na-  
20           tional insurer restrict its premium writing, obtain  
21           additional contributions to surplus, reinsure all or  
22           any part of its business, or increase capital, surplus,  
23           or any other account for the security of policyholders  
24           or creditors.

1           (3) The placement of a national insurer into re-  
2           ceivership.

### 3           **Subtitle D—Insurance Fraud**

#### 4   **SEC. 1161. INVESTIGATION OF INSURANCE FRAUD.**

5           (a) INVESTIGATIVE AUTHORITY OF COMMIS-  
6           SIONER.—The Commissioner may investigate suspected  
7           fraudulent insurance acts by insurance persons engaged  
8           in the business of insurance or by other persons.

9           (b) FRAUD WARNING REQUIRED.—The Commis-  
10          sioner, by regulation, shall require each national insurer  
11          to place a fraud warning on claim forms and applications  
12          for policies of insurance written, or to be written, by a  
13          national insurer, regardless of the form of transmission.

14          (c) MANDATORY REPORTING OF FRAUDULENT IN-  
15          SURANCE ACTS.—A national insurer, or an insurance per-  
16          son engaged in the business of insurance, that knows or  
17          reasonably believes that a fraudulent insurance act is  
18          being, will be, or has been committed, shall submit such  
19          information to the Commissioner in a form and manner  
20          prescribed by the Commissioner.

21          (d) IMMUNITY FROM LIABILITY.—

22                 (1) IN GENERAL.—Except as provided under  
23                 paragraphs (2) and (3), any person who furnishes  
24                 information concerning suspected, anticipated, or  
25                 completed fraudulent insurance acts shall not be lia-

1 ble to any person under any law or regulation of the  
2 United States, any constitution, law, or regulation of  
3 any State or political subdivision of any State, or  
4 under any contract or other legally enforceable  
5 agreement (including any arbitration agreement), for  
6 such act, if the information is provided to or re-  
7 ceived from—

8 (A) the Commissioner or any employee,  
9 agent, or representative of the Commissioner;

10 (B) Federal, State, or local enforcement or  
11 regulatory officials or their employees, agents,  
12 or representatives;

13 (C) a self-regulatory organization or its  
14 employees, agents, or representatives;

15 (D) a person involved in the prevention  
16 and detection of fraudulent insurance acts or  
17 that person's agents, employees, or representa-  
18 tives; or

19 (E) the NAIC or its employees, agents, or  
20 representatives.

21 (2) MALICE.—

22 (A) IN GENERAL.—Paragraph (1) shall not  
23 apply to false statements made with actual mal-  
24 ice.

1           (B) CONTENTS OF COMPLAINT.—In an ac-  
2           tion brought against a person for filing a report  
3           or furnishing other information concerning a  
4           fraudulent insurance act, the party bringing the  
5           action shall plead specifically any allegation  
6           that paragraph (1) does not apply because the  
7           person filed the report or furnished the infor-  
8           mation with actual malice.

9           (3) PRESERVATION OF PRIVILEGE AND IMMUNI-  
10          TIES.—This subsection does not abrogate or modify  
11          common law or statutory privileges or immunities  
12          enjoyed by a person described in paragraph (1).

13          (e) CONFIDENTIALITY REGULATIONS.—The Commis-  
14          sioner shall, by regulation, establish standards for the pro-  
15          tection of confidential information submitted or obtained  
16          in an investigation of a suspected or actual fraudulent in-  
17          surance act, the ability of the Commissioner to testify in  
18          private civil actions concerning any such confidential in-  
19          formation and the sharing by the Commissioner of any  
20          such confidential information with other regulators, self-  
21          regulatory organizations, and other persons.

22          **SEC. 1162. PENALTIES.**

23          If a person committing an offense under subsection  
24          (a) or (c) of section 1033 of title 18, United States Code,  
25          is a national insurer, a national agency, or other federally

1 licensed insurance producer, or an insurer-affiliated party,  
 2 the Commissioner may, in addition to the punishment set  
 3 forth in section 1034 of title 18, United States Code—

4 (1) revoke, suspend, or restrict the Federal li-  
 5 cense of such national insurer, national agency, or  
 6 other federally licensed insurance producer, or in-  
 7 surer-affiliated party pursuant to subtitle C; and

8 (2) order such national insurer, national agen-  
 9 cy, or other federally licensed insurance producer, or  
 10 insurer-affiliated party to make restitution to per-  
 11 sons aggrieved by such offenses.

12 **SEC. 1163. CIVIL REMEDY.**

13 (a) **RECOVERY AUTHORIZED.**—Any national insurer,  
 14 national agency, or federally licensed insurance producer  
 15 that is injured by reason of a fraudulent insurance act  
 16 may recover from the person committing the act—

17 (1) return of any profit, benefit, compensation,  
 18 or payment received by the person committing the  
 19 act;

20 (2) reasonable attorney fees, related legal ex-  
 21 penses, including internal legal expenses and court  
 22 costs; and

23 (3) all other economic damages directly result-  
 24 ing from the act.

25 (b) **LIMITATIONS.**—No action under this section—

1           (1) may be certified as a class action or made  
2 part of a class action; and

3           (2) may be maintained under this section if a  
4 court has ordered restitution to the injured national  
5 insurer, national agency, or federally licensed insur-  
6 ance producer upon criminal conviction of the person  
7 committing the fraudulent insurance act.

8           (c) **SOLE PRIVATE REMEDY.**—The remedy provided  
9 under this section shall be the only private remedy for  
10 commission of a fraudulent insurance act, and no addi-  
11 tional remedies shall be implied, nor shall the remedy pro-  
12 vided under this section be used in conjunction with or  
13 in addition to any other remedies available at law or in  
14 equity to duplicate recovery for the same element of eco-  
15 nomic damage.

16 **TITLE II—NATIONAL INSURANCE**  
17 **COMPANIES AND NATIONAL**  
18 **INSURANCE AGENCIES**

19 **Subtitle A—Organization,**  
20 **Licensing, and Operations**

21 **SEC. 1201. ORGANIZATION, OPERATION, AND REGULATION**  
22 **OF NATIONAL INSURANCE COMPANIES AND**  
23 **NATIONAL INSURANCE AGENCIES.**

24           (a) **AUTHORIZATION.**—

1           (1) IN GENERAL.—The Commissioner may, in  
2           accordance with the provisions of this Act, and  
3           under regulations prescribed by the Commissioner  
4           pursuant to paragraph (2)—

5                   (A) provide for the organization, incorpora-  
6                   tion, operation, and regulation of national in-  
7                   surance companies and national insurance  
8                   agencies; and

9                   (B) issue charters therefor.

10          (2) RULEMAKING.—The Commissioner shall  
11          issue regulations that permit the organization of na-  
12          tional insurers in stock, mutual, reciprocal, or fra-  
13          ternal form, and address such other matters related  
14          to the chartering and licensing of national insurers  
15          and national agencies, as the Commissioner deter-  
16          mines appropriate.

17          (3) ORGANIZATION.—The Commissioner shall  
18          require each national agency to be organized as a  
19          corporation, partnership, limited liability company,  
20          or in such other form as is recognized under State  
21          law.

22          (b) CHARTERING CRITERIA.—

23                  (1) FACTORS.—In determining whether to issue  
24                  a charter for a national insurer or national agency,  
25                  the Commissioner shall consider—

1 (A) the character and competency of the  
2 parties seeking the charter; and

3 (B) the financial resources and future  
4 prospects of the proposed national insurer or  
5 proposed national agency.

6 (2) INFORMATION.—The Commissioner shall re-  
7 quest such information from the applicant as the  
8 Commissioner determines necessary to make the  
9 evaluation required under paragraph (1).

10 (3) CORPORATE NAME.—

11 (A) NATIONAL INSURERS.—The corporate  
12 name of each national insurer shall include at  
13 the end the words “national insurer” or the ini-  
14 tials “N.I.”.

15 (B) NATIONAL AGENCIES.—The corporate  
16 name of each national agency shall include at  
17 the end the words “National Insurance Agency”  
18 or the initials “N.I.A.”.

19 (C) SAVINGS PROVISION.—Nothing in this  
20 Act shall preclude a State insurer or State in-  
21 surance agency from using the word “national”  
22 or “Federal” in its corporate name if such word  
23 was included in the corporate name of the State  
24 insurer or agency on or before the date of en-  
25 actment of this Act.

1 (c) ISSUANCE OR DENIAL OF CHARTER.—

2 (1) DETERMINATION.—Not later than 60 days  
3 after the receipt of the articles of incorporation or  
4 other organization document from a proposed na-  
5 tional insurer or national agency, and such other in-  
6 formation required under subsection (b)(2), the  
7 Commissioner shall—

8 (A) issue a charter certificate to the appli-  
9 cant; or

10 (B) provide the applicant with a written  
11 explanation of the grounds for denying a char-  
12 ter.

13 (2) FEDERAL PRODUCER LICENSE.—If the  
14 Commissioner issues a charter certificate to a na-  
15 tional agency, the Commissioner shall concurrently  
16 issue a Federal producer license to the applicant  
17 pursuant to section 1301. A national agency may  
18 not sell, solicit, or negotiate any line of insurance for  
19 which it does not hold a Federal producer license.

20 (3) GROUNDS FOR DENIAL.—The Commissioner  
21 shall not grant a charter to an applicant if—

22 (A) the applicant fails to—

23 (i) comply with all applicable forma-  
24 tion requirements; and

1 (ii) provide any information requested  
2 by the Commissioner under subsection  
3 (b)(2);

4 (B) the applicant lacks—

5 (i) the financial resources necessary to  
6 comply with the standards under this Act;  
7 or

8 (ii) the character or competence to op-  
9 erate the national insurer or national agen-  
10 cy in accordance with the standards under  
11 this Act; or

12 (C) the Commissioner determines that the  
13 national insurer or national agency is being  
14 formed for an illegitimate purpose.

15 (d) AMENDMENT OF CHARTER.—The Commissioner  
16 may, under such regulations as the Commissioner may  
17 prescribe, provide for the amendment of charters issued  
18 to national insurers and national agencies.

19 (e) NO DELEGATION PERMITTED.—The Commis-  
20 sioner may not delegate to any insurance self-regulatory  
21 organization any authority conferred under this section  
22 with respect to—

23 (1) the organization, incorporation, and powers  
24 of national insurers or national agencies; or

1           (2) the issuance and amendment of charters to  
2 a national insurer or national agency.

3 (f) MAIN OFFICE.—

4           (1) DESIGNATION.—Subject to the approval of  
5 the Commissioner, a national insurer or national  
6 agency may designate any office at which it conducts  
7 insurance operations as its main office.

8           (2) CHARTER TO SPECIFY MAIN OFFICE.—The  
9 charter of a national insurer or national agency shall  
10 specify the State in which its main office is located.

11           (3) CHANGE IN MAIN OFFICE.—With the ap-  
12 proval of the Commissioner, a national insurer or  
13 national agency may change the designation of its  
14 main office, including to another existing office of  
15 the national insurer or national agency.

16           (4) CITIZENSHIP.—For purposes of jurisdiction,  
17 a national insurer or national agency shall be  
18 deemed a citizen of the State in which its main of-  
19 fice is located and of the State in which it has its  
20 principal place of business.

21 (g) INSURER IN FRATERNAL FORM.—Any charter  
22 granted to a national insurer in fraternal form in connec-  
23 tion with a conversion from a State insurer shall include  
24 provisions that allow the national insurer to operate as

1 an insurer in fraternal form in a manner consistent with  
2 the requirements of its former State charter.

3 **SEC. 1202. UNITED STATES BRANCHES OF NON-UNITED**  
4 **STATES INSURERS.**

5 (a) AUTHORIZATION OF NON-UNITED STATES IN-  
6 SURER.—A non-United States insurer may transact insur-  
7 ance in the United States through a United States branch  
8 by qualifying and licensing the United States branch to  
9 do business as a national insurer under this Act, under  
10 such regulations as the Commissioner may prescribe.

11 (b) TRUST ACCOUNT.—

12 (1) IN GENERAL.—The Commissioner shall not  
13 license a United States branch until the non-United  
14 States insurer establishes a trust account, pursuant  
15 to a deed of trust that meets the requirements of  
16 this subsection.

17 (2) ASSETS.—The trusteed assets of a United  
18 States branch shall be held pursuant to a deed of  
19 trust with a United States bank that meets such re-  
20 quirements as the Commissioner may prescribe, in  
21 trust for the exclusive benefit, security, and protec-  
22 tion of the policyholders, or policyholders and credi-  
23 tors, of the United States branch in the United  
24 States maintained as long as there is outstanding

1 any liability of the United States branch arising out  
2 of its insurance transactions in the United States.

3 (3) SURPLUS.—The trustee surplus of a  
4 United States branch shall be subject to the same  
5 solvency standards required of national insurers, in-  
6 cluding the risk-based capital standards described in  
7 section 1212(a)(4).

8 (4) FILING.—The Commissioner may require a  
9 United States branch to file a statement, in such  
10 form as the Commissioner may prescribe, that has  
11 been certified by the trustee.

12 (c) SUBJECT TO APPLICABLE LAWS.—Except as oth-  
13 erwise provided under this section, a United States branch  
14 established under this section—

15 (1) shall be subject to all laws applicable to a  
16 national insurer; and

17 (2) shall be treated as a national insurer for all  
18 purposes of this Act.

19 **SEC. 1203. FEDERAL LICENSING OF NATIONAL INSURERS.**

20 (a) IN GENERAL.—A national insurer may not sell,  
21 solicit, negotiate, or underwrite any line of insurance for  
22 which it does not hold a Federal license.

23 (b) ISSUANCE OF FEDERAL LICENSES.—

1           (1) IN GENERAL.—The Commissioner shall,  
2           under such regulations as the Commissioner shall  
3           prescribe, issue Federal licenses that—

4                   (A) permit national insurers to sell, solicit,  
5                   negotiate, and underwrite lines of insurance;  
6                   and

7                   (B) specify the lines of insurance that each  
8                   national insurer may sell, solicit, negotiate, and  
9                   underwrite.

10          (2) RULEMAKING.—The regulations prescribed  
11          by the Commissioner pursuant to paragraph (1)  
12          shall provide that—

13                   (A) a national insurer may hold a license  
14                   to sell, solicit, negotiate, and underwrite prop-  
15                   erty/casualty insurance;

16                   (B) a national insurer that holds a license  
17                   to sell, solicit, negotiate, and underwrite life in-  
18                   surance may also sell, solicit, negotiate, and un-  
19                   derwrite disability income insurance, long-term  
20                   care insurance, annuities, and funding agree-  
21                   ments; and

22                   (C) no national insurer may obtain—

23                           (i) a Federal license to engage in the  
24                           sale, solicitation, negotiation, and under-  
25                           writing of property/casualty insurance; and

1 (ii) a Federal license to engage in the  
2 sale, solicitation, negotiation, and under-  
3 writing of life insurance, annuities, or  
4 funding agreements.

5 (3) AUTHORITY TO LIMIT SCOPE OF INSUR-  
6 ANCE.—Subject to paragraph (2), the regulations  
7 prescribed by the Commissioner pursuant to para-  
8 graph (1) may provide that a national insurer that  
9 holds a license to sell, solicit, negotiate, and under-  
10 write specified lines of insurance may not hold a li-  
11 cense to sell, solicit, negotiate, and underwrite other  
12 specified lines of insurance.

13 (4) TITLE INSURANCE.—The Commissioner  
14 shall not license any person to engage in the busi-  
15 ness of title insurance, except that nothing in this  
16 Act shall prevent a provider of title insurance from  
17 being affiliated with a national insurer or national  
18 agency.

19 (5) DURATION.—A Federal license issued by  
20 the Commissioner pursuant to this subsection shall  
21 remain in effect until the license is—

22 (A) surrendered by the national insurer; or  
23 (B) revoked or suspended by the Commis-  
24 sioner in accordance with the provisions of this  
25 Act.

1 (c) REINSURANCE.—A national insurer may—

2 (1) only reinsure the lines of insurance that the  
3 national insurer is—

4 (A) licensed to sell, solicit, negotiate, and  
5 underwrite under its Federal license; or

6 (B) otherwise permitted to reinsure by the  
7 terms of its Federal license; and

8 (2) confine its business to reinsurance.

9 (d) NONDISCRIMINATION.—

10 (1) IN GENERAL.—Except as provided in para-  
11 graph (2) and section 1202, the Commissioner may  
12 not impose any condition for the granting of a Fed-  
13 eral license to a national insurer under this section  
14 solely because the national insurer is—

15 (A) a subsidiary of a non-United States  
16 person;

17 (B) partially owned by a non-United States  
18 person; or

19 (C) a United States branch of a non-  
20 United States insurer.

21 (2) EXCEPTION.—Notwithstanding paragraph  
22 (1), the Commissioner may impose conditions for the  
23 granting of a Federal license that are different from  
24 those imposed on other national insurers—

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

4 (B) if the Commissioner makes a written  
5 finding that the conditions are related to the  
6 protection of policyholders and are the min-  
7 imum conditions necessary to achieve the pur-  
8 poses of this Act.

9 **SEC. 1204. CORPORATE GOVERNANCE.**

10 (a) COMPLIANCE WITH THIS ACT AND APPLICABLE  
11 REGULATIONS.—The corporate governance procedures of  
12 a national insurer and a national agency shall be con-  
13 sistent with the provisions of this Act and all regulations  
14 issued by the Commissioner under this Act.

15 (b) ADHERENCE TO STATE LAW.—

16 (1) IN GENERAL.—Except as provided under  
17 paragraph (3), and to the extent not inconsistent  
18 with the provisions of this Act or regulations issued  
19 by the Commissioner under this Act, each national  
20 insurer and national agency shall adhere to cor-  
21 porate governance procedures of the relevant State  
22 law of the State in which its main office is located  
23 or the State in which 1 of its United States holding  
24 companies is organized or incorporated.

1           (2) DESIGNATION.—Each national insurer and  
2 national agency shall designate in its bylaws the  
3 body of relevant State law selected for its corporate  
4 governance procedures.

5           (3) DISCRIMINATORY PROVISION.—If the Com-  
6 missioner determines that any provision of a State  
7 corporate governance law is discriminatory as ap-  
8 plied to national insurers or national agencies, such  
9 insurer or agency—

10                   (A) shall not be obligated to follow such a  
11 provision of the relevant State law; and

12                   (B) may follow such other provision of law  
13 as the Commissioner determines to be appro-  
14 priate.

15           (c) INDEPENDENT AUDIT COMMITTEE FOR NA-  
16 TIONAL INSURERS.—

17           (1) ESTABLISHMENT.—Each national insurer  
18 shall establish an audit committee of its board of di-  
19 rectors, which shall be composed entirely of outside  
20 directors who are independent of management of the  
21 national insurer.

22           (2) SATISFACTION.—The requirement described  
23 in paragraph (1) will be satisfied if—

24                   (A) any person that controls the national  
25 insurer has established an audit committee of

1 its board of directors entirely composed of out-  
2 side directors who are independent of manage-  
3 ment of such controlling person; and

4 (B) the role of the audit committee of the  
5 controlling person in subparagraph (A) includes  
6 review of financial statements of the national  
7 insurer.

8 **SEC. 1205. PARTICIPATING POLICY PROCEDURES.**

9 (a) CHOICE OF PROCEDURES.—A national life in-  
10 surer in mutual form shall, at the time of its initial char-  
11 tering and licensing under sections 1201 and 1203, or its  
12 conversion under section 1206, elect to either—

13 (1) adhere to participating policy procedures of  
14 the relevant law of the State in which its main office  
15 is located; or

16 (2) adhere to the participating policy proce-  
17 dures established by regulation of the Commissioner  
18 under subsection (b).

19 (b) REGULATIONS.—The Commissioner shall, by reg-  
20 ulation, establish participating policy procedures, as the  
21 Commissioner determines to be appropriate to carry out  
22 this Act.

23 (c) EXCEPTION.—No national life insurer in mutual  
24 form shall be subject to any limitation on the amount of  
25 surplus that it may retain.

1 **SEC. 1206. CONVERSION OF STATE INSURER TO NATIONAL**  
2 **INSURER OR STATE INSURANCE AGENCY TO**  
3 **NATIONAL AGENCY.**

4 (a) **AUTHORIZATION TO CONVERT.—**

5 (1) **IN GENERAL.—**Notwithstanding any other  
6 provision of law and subject to the approval of the  
7 Commissioner, a State insurer may convert to a na-  
8 tional insurer and a State insurance agency may  
9 convert to a national agency.

10 (2) **ORGANIZATIONAL FORM.—**A State insurer  
11 that converts to a national insurer under paragraph  
12 (1) may—

13 (A) retain an organizational form per-  
14 mitted under section 1201(a)(2); or

15 (B) change directly to another organiza-  
16 tional form that is permitted under section  
17 1201(a)(2).

18 (b) **CONVERSION PROCEDURES.—**

19 (1) **IN GENERAL.—**The Commissioner may,  
20 under such regulations as the Commissioner may  
21 prescribe, provide for—

22 (A) the conversion of State insurers into  
23 national insurers;

24 (B) the conversion of State insurance  
25 agencies to national agencies; and

1 (C) the issuance of charters to such con-  
2 verted insurers and agencies.

3 (2) RULEMAKING.—Regulations issued by the  
4 Commissioner under this section shall be consistent  
5 with—

6 (A) the regulations issued by the Commis-  
7 sioner under section 1201; and

8 (B) the provisions of section 1242 or 1243,  
9 as applicable, in the case of a change of form  
10 effected at the time of a conversion of a State  
11 insurer into a national insurer.

12 (c) EFFECT OF CONVERSION.—

13 (1) IN GENERAL.—Except as provided under  
14 paragraph (2), a State insurer or State insurance  
15 agency that converts under this section—

16 (A) shall be subject to the provisions of  
17 this Act and to examination and regulation as  
18 provided under this Act to the same extent as  
19 other national insurers and national agencies  
20 organized under this Act;

21 (B) shall be deemed to be a continuation  
22 of the corporate existence of the State insurer  
23 or State insurance agency, as applicable; and

24 (C) shall, by operation of law and without  
25 further action, hold and be subject to all rights,

1           privileges, liabilities, property interests, and  
2           other interests and obligations that the State  
3           insurer or State insurance agency held, or was  
4           subject to, immediately before the conversion.

5           (2) EXCEPTIONS.—Notwithstanding paragraph  
6           (1), a State insurer or State insurance agency that  
7           converts under this section—

8                   (A) shall not be subject to any requirement  
9                   to maintain deposits with State insurance regu-  
10                  latory authorities;

11                  (B) shall not hold any State license to sell,  
12                  solicit, negotiate, and underwrite insurance that  
13                  was held by the State insurer or State insur-  
14                  ance agency; and

15                  (C) shall obtain, in accordance with section  
16                  1203 or 1301, as applicable, a Federal license  
17                  for all lines of insurance that it sells, solicits,  
18                  negotiates, or underwrites.

19           (d) SPECIAL AUTHORITY.—The Commissioner may,  
20           subject to such conditions as the Commissioner may pre-  
21           scribe by regulation, permit a national insurer or national  
22           agency resulting from the conversion of a State insurer  
23           or State insurance agency, as applicable, to retain, hold,  
24           or exercise assets, liabilities, powers, and authorities that  
25           do not conform to the legal requirements otherwise appli-

1 cable to national insurers or national agencies to the ex-  
 2 tent the Commissioner determines is appropriate.

3 (e) MUTUAL HOLDING COMPANY CONTROLLING  
 4 STATE INSURERS IN STOCK FORM.—

5 (1) IN GENERAL.—If a State insurer converting  
 6 under this section is an insurer in stock form that  
 7 is controlled by a mutual holding company as a re-  
 8 sult of a previous conversion under State law from  
 9 an insurer in mutual form to an insurer in stock  
 10 form, and, after the conversion under this section,  
 11 the mutual holding company would not control any  
 12 other State insurers having policies in force that give  
 13 rise to membership in the mutual holding company,  
 14 then, notwithstanding any other provision of law, in  
 15 accordance with this section and regulations issued  
 16 by the Commissioner—

17 (A) upon the conversion under this section,  
 18 the mutual holding company may remain a cor-  
 19 poration organized under the law of the State  
 20 under which it was incorporated or may merge  
 21 into a mutual holding company incorporated  
 22 under the law of another State; and

23 (B) upon and after the conversion under  
 24 this section, the mutual holding company—

1 (i) shall, to the extent provided in reg-  
2 ulations issued by the Commissioner, be  
3 subject to—

4 (I) title V; and

5 (II) examination, reporting, regu-  
6 lation, and other supervision under  
7 this Act; and

8 (ii) shall not be subject to any form of  
9 licensing, examination, reporting, regula-  
10 tion, or other supervision by reason of  
11 being a mutual holding company or relat-  
12 ing to the rights of members, the sale, so-  
13 licitation, negotiation, or underwriting of  
14 insurance (including all products of na-  
15 tional insurers) or any other insurance op-  
16 erations except as authorized under Fed-  
17 eral law and except as provided in section  
18 1125(b), as if the mutual holding company  
19 were a national insurer under this Act.

20 (2) CONVERSION TO A CORPORATION IN STOCK  
21 FORM.—Notwithstanding any other provision of law  
22 and in accordance with this subsection and regula-  
23 tions issued by the Commissioner, a mutual holding  
24 company described in paragraph (1) may convert to  
25 a corporation in stock form in a manner that—

1 (A) is found by the Commissioner to be  
 2 fair and equitable to the mutual holding com-  
 3 pany and its members; and

4 (B) is generally similar to conversion of an  
 5 insurer in mutual form to a national insurer in  
 6 stock form pursuant to section 1243.

7 (f) NO DELEGATION PERMITTED.—The Commis-  
 8 sioner may not delegate any authority under this section  
 9 involving the conversion of a State insurer into a national  
 10 insurer or a State insurance agency into a national agency  
 11 to any insurance self-regulatory organization.

12 **SEC. 1207. CONVERSION OF NATIONAL INSURER TO STATE**  
 13 **INSURER OR NATIONAL AGENCY TO STATE**  
 14 **AGENCY.**

15 (a) IN GENERAL.—Subject to such notification proce-  
 16 dures as the Commissioner may prescribe by regulation,  
 17 a national insurer may convert into a State insurer and  
 18 a national agency may convert into a State insurance  
 19 agency, in accordance with applicable State law.

20 (b) SAVINGS PROVISION.—Nothing in this section or  
 21 in the conversion of a national insurer into a State insurer  
 22 or a national agency into a State insurance Agency shall  
 23 operate to abrogate any rights, privileges, liabilities, prop-  
 24 erty interests, or other interests or obligations that a na-

1 tional insurer or national agency held or was subject to  
2 immediately before the conversion.

3 **SEC. 1208. POWERS.**

4 (a) IN GENERAL.—Upon issuance of its charter, a  
5 national insurer or national agency shall have the power,  
6 subject to such regulations as the Commissioner may pre-  
7 scribe—

8 (1) to have, alter, use, and reproduce a cor-  
9 porate seal, or a facsimile of it;

10 (2) to have perpetual succession until such time  
11 as it is liquidated, dissolved, merged, or otherwise  
12 wound up in accordance with applicable law;

13 (3) to adopt, amend, and repeal by-laws;

14 (4) to sue or be sued, complain and defend, and  
15 otherwise litigate in any court and participate, as a  
16 party or otherwise, in any judicial, administrative,  
17 arbitral, or other proceeding, in its corporate name;

18 (5) to make contracts and guarantees, incur li-  
19 abilities, borrow money, issue notes, bonds, and  
20 other obligations (which may be convertible into or  
21 include the option to purchase other securities of the  
22 national insurer or national agency), and secure any  
23 of its obligations by mortgage or pledge of any of its  
24 property, franchises, or income;

1           (6) to purchase, receive, subscribe for, or other-  
2           wise acquire, own, hold, vote, improve, employ, use,  
3           and otherwise deal in and with real and personal  
4           property or other assets, or any interest therein, and  
5           sell, convey, mortgage, lease, exchange, transfer, or  
6           otherwise dispose of, or mortgage or pledge, all or  
7           any of its property and assets, or any interest there-  
8           in;

9           (7) to lend money, invest, and reinvest its funds  
10          and receive and hold real and personal property as  
11          security for repayment;

12          (8) to participate with others in any corpora-  
13          tion, partnership, limited partnership, joint venture,  
14          or other association, or in any transaction, under-  
15          taking, or arrangement, which the national insurer  
16          or national agency would have power to conduct by  
17          itself, whether or not such participation involves  
18          sharing or delegating control with or to others;

19          (9) to elect or appoint directors, officers, em-  
20          ployees, and agents of the national insurer or na-  
21          tional agency, define their duties, fix their com-  
22          pensation, and lend them money and credit;

23          (10) to pay pensions and establish pension  
24          plans, pension trusts, profit-sharing plans, share  
25          bonus plans, share option plans, and other benefit or

1 incentive plans for any or all current or former di-  
2 rectors, officers, employees, and agents of the na-  
3 tional insurer or national agency, its subsidiaries or  
4 its affiliates;

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

10 (12) in the case of a national life insurer—

11 (A) to establish and maintain 1 or more  
12 separate accounts and allocate amounts to such  
13 accounts (including any proceeds applied under  
14 optional modes of settlement or under dividend  
15 options) to provide for life insurance, annuities,  
16 disability income insurance, long-term care in-  
17 surance, or funding agreements (and incidental  
18 benefits), payable in fixed or variable amounts  
19 (or both) from such accounts or from the gen-  
20 eral account (or both);

21 (B) to hold and accumulate funds pursu-  
22 ant to funding agreements; and

23 (C) to provide investment advice and in-  
24 vestment management services;

25 (13) in the case of a national insurer—

1 (A) to engage in the sale, solicitation, ne-  
2 gotiation, and underwriting of insurance;

3 (B) to establish and maintain 1 or more  
4 protected cells in connection with an insurance  
5 securitization and attribute to such cells insur-  
6 ance and reinsurance obligations with respect to  
7 its general account, obligations relating to the  
8 insurance securitization, and assets to fund  
9 such obligations; and

10 (C) to engage in all other insurance oper-  
11 ations and exercise all such incidental powers as  
12 shall be necessary to carry on insurance oper-  
13 ations;

14 (14) in the case of a national agency—

15 (A) to engage in the sale, solicitation, and  
16 negotiation of—

17 (i) policies of insurance issued by any  
18 national insurer or State insurer; and

19 (ii) surplus lines insurance and non-  
20 admitted insurance for a non-admitted in-  
21 surer; and

22 (B) to exercise all such incidental powers  
23 as shall be necessary to carry out such activi-  
24 ties, including claims adjustment and settle-  
25 ment, risk management, employee benefits ad-

1 vice, retirement planning, and any other insur-  
2 ance-related consulting activities;

3 (15) to provide benefits or payments to its di-  
4 rectors, officers, and employees, subsidiaries or af-  
5 filiates, and to their estates, families, dependents, or  
6 beneficiaries, in recognition of the past services of  
7 the directors, officers, and employees to the national  
8 insurer or national agency or its subsidiaries or af-  
9 filiates;

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

14 (17) to serve as a promoter, partner, member,  
15 associate, or manager of any business entity;

16 (18) to provide loss control, advice, exposure  
17 identification, and reduction strategies, and rec-  
18 ommend and expedite risk financing alternatives;

19 (19) to engage in any other lawful activity that  
20 is necessary or convenient to further its activities  
21 and affairs; and

22 (20) to exercise the powers granted by this Act  
23 in any State and in any foreign jurisdiction.

24 (b) EFFECT ON STATE LAW.—No State may, by stat-  
25 ute, regulation, order, interpretation, or otherwise, prevent

1 or restrict a national insurer or national agency from exer-  
2 cising any power conferred by this section or by any regu-  
3 lation authorized by this section.

4 (c) SUBSIDIARIES.—

5 (1) NATIONAL INSURERS.—

6 (A) AUTHORIZATION.—

7 (i) IN GENERAL.—A national insurer  
8 may establish, invest in, or otherwise ac-  
9 quire 1 or more subsidiaries engaged or or-  
10 ganized to engage in any business lawful  
11 under the laws of the jurisdictions in which  
12 the subsidiaries are organized.

13 (ii) RESTRICTION.—Without the prior  
14 written approval of the Commissioner, not  
15 more than 20 percent of the national in-  
16 surer's assets may be invested in any 1  
17 subsidiary described in clause (i) and not  
18 more than 40 percent of a national insur-  
19 er's assets may be invested in 2 or more  
20 subsidiaries engaged in such other activi-  
21 ties.

22 (B) CALCULATION.—In calculating the  
23 amount invested by a national insurer in a sub-  
24 sidiary under subparagraph (A), there shall be  
25 included only the following:

1 (i) Total net monies or other consider-  
2 ation expended and obligations assumed by  
3 the national insurer in the acquisition or  
4 formation of the subsidiary, including all  
5 organizational expenses and contributions  
6 to capital and surplus of the subsidiary  
7 whether or not represented by the pur-  
8 chase of capital stock or issuance of other  
9 securities.

10 (ii) All amounts expended by the na-  
11 tional insurer in acquiring additional com-  
12 mon stock, preferred stock, debt obliga-  
13 tions, and other securities of the sub-  
14 sidiary.

15 (iii) All contributions by the national  
16 insurer to the capital or surplus of the sub-  
17 sidiary subsequent to its acquisition or for-  
18 mation.

19 (C) QUALIFICATION OF INVESTMENT;  
20 WHEN DETERMINED.—Whether any investment  
21 made pursuant to subparagraph (A) meets the  
22 applicable requirements of such subparagraph  
23 shall be determined before the investment is  
24 made by calculating the applicable investment  
25 limitations as though the investment had al-

1 ready been made, taking into account the then  
2 outstanding principal balance on all previous in-  
3 vestments in debt obligations, and the value of  
4 all previous investments in equity securities as  
5 of the day they were made, net of any return  
6 of capital invested, not including dividends.

7 (D) EXCEPTION.—The limitations provided  
8 for in subparagraph (A) shall not apply to in-  
9 vestments by a national insurer in—

10 (i) any subsidiary engaged primarily  
11 in the sale, solicitation, negotiation, and  
12 underwriting of any line of insurance that  
13 the national insurer is authorized to sell,  
14 solicit, negotiate, and underwrite; or

15 (ii) any subsidiary whose sole business  
16 function is to own assets (including other  
17 subsidiaries) that the national insurer  
18 itself is authorized to own.

19 (E) NOTICE.—A national insurer shall no-  
20 tify the Commissioner, in writing, not later  
21 than 20 calendar days after establishing, invest-  
22 ing in, or acquiring a subsidiary, unless the  
23 transaction requires the prior written approval  
24 of the Commissioner under subparagraph (A).

25 (2) NATIONAL AGENCIES.—

1           (A) AUTHORIZATION.—A national agency  
2           may establish, invest in, or otherwise acquire 1  
3           or more subsidiaries engaged or organized to  
4           engage in any business activity that is lawful  
5           for a national agency under this Act.

6           (B) NOTICE.—A national agency shall no-  
7           tify the Commissioner, in writing, not later  
8           than 30 calendar days after establishing, invest-  
9           ing in, or acquiring a subsidiary.

10       (d) DIVIDENDS AND DISTRIBUTIONS TO SHARE-  
11       HOLDERS.—

12           (1) SHAREHOLDER DIVIDENDS AND DISTRIBU-  
13           TIONS PERMITTED.—A national insurer may declare  
14           and pay dividends or make other distributions in  
15           cash, bonds, or property on its outstanding shares,  
16           unless—

17           (A) the national insurer is insolvent or  
18           would be made insolvent by such payment; or

19           (B) the declaration, payment, or distribu-  
20           tion would be contrary to any restrictions con-  
21           tained in the charter of the national insurer.

22           (2) SOURCE OF SHAREHOLDER DIVIDENDS AND  
23           DISTRIBUTIONS.—A national insurer may only de-  
24           clare and pay dividends or make other distributions  
25           out of surplus if the assets of the national insurer

1 after such declaration, payment, or distribution is  
2 not less than the amount of its capital.

3 (3) OTHER PROVISIONS.—Shareholder divi-  
4 dends and distributions made pursuant to this sub-  
5 section shall be subject to—

6 (A) the standards set forth in section  
7 1403(a)(1)(E); and

8 (B) the notice requirements of section  
9 1403(b).

10 **SEC. 1209. SEPARATE ACCOUNTS OF NATIONAL LIFE IN-**  
11 **SURER.**

12 (a) OWNERSHIP.—Any amount allocated by a na-  
13 tional life insurer to a separate account shall be owned  
14 by the national life insurer, the assets therein shall be the  
15 property of the national life insurer, and no national life  
16 insurer by reason of such account shall be or hold itself  
17 out to be a trustee.

18 (b) LIABILITIES.—Assets allocated by a national life  
19 insurer to a separate account shall not be chargeable with  
20 liabilities arising out of any other business of the national  
21 life insurer to the extent so provided in the applicable  
22 agreements.

23 (c) SECURITY INTERESTS PERMITTED.—A national  
24 life insurer may allow for a security interest to attach to  
25 assets allocated to a separate account if the security inter-

1 est is in favor of a creditor of the separate account and  
2 otherwise allowed under applicable law.

3 **SEC. 1210. PROTECTED CELLS.**

4 (a) ESTABLISHMENT.—A national insurer may, in  
5 connection with an insurance securitization, establish 1 or  
6 more protected cells with the approval of the Commis-  
7 sioner.

8 (b) PROTECTED CELL ASSETS.—

9 (1) OWNERSHIP.—All amounts attributed to a  
10 protected cell established under this section, includ-  
11 ing assets transferred to a protected cell account,  
12 shall be owned by the national insurer.

13 (2) TRUSTEE.—The national insurer may not  
14 be, nor hold itself out to be, a trustee with respect  
15 to the protected cell assets of the protected cell ac-  
16 count described in paragraph (1).

17 (3) LIABILITIES.—The assets of a protected cell  
18 established under this section shall not be chargeable  
19 with liabilities arising out of any other business of  
20 the national insurer.

21 (c) SECURITY INTERESTS PERMITTED.—A national  
22 insurer may allow for a security interest to attach to pro-  
23 tected cell assets or a protected cell account if the security  
24 interest is in favor of a creditor of the protected cell and  
25 otherwise allowed under applicable law.

1 (d) REACH OF CREDITORS AND OTHER CLAIM-  
2 ANTS.—

3 (1) AVAILABILITY.—Protected cell assets shall  
4 only be available to the creditors of a national in-  
5 surer that are creditors in respect to that protected  
6 cell.

7 (2) RECOURSE.—Creditors with respect to a  
8 protected cell shall have no recourse against the pro-  
9 tected cell assets of other protected cells or the gen-  
10 eral account assets of the national insurer.

11 (3) FRAUD.—The establishment of a protected  
12 cell shall not, in and of itself, constitute a fraudulent  
13 conveyance, an intent by a national insurer to de-  
14 fraud creditors, or the carrying out of business by  
15 a national insurer for any other fraudulent purpose.

16 (e) RULEMAKING.—The Commissioner shall promul-  
17 gate regulations that establish standards for protected  
18 cells established by national insurers.

19 (f) EFFECT ON STATE LAW.—No State may, by stat-  
20 ute, regulation, order, interpretation, or otherwise, require  
21 licensing or otherwise regulate in any manner—

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

1           (2) an underwriter or selling agent (or its part-  
2           ners, directors, officers, members, managers, em-  
3           ployees, agents, representatives, or advisors) in an  
4           insurance securitization as an insurance or reinsur-  
5           ance agent, broker, producer, intermediary, advisor,  
6           consultant, or similar insurance professional by vir-  
7           tue of its activities in connection with the insurance  
8           securitization.

9 **SEC. 1211. CHARTERING AND LICENSING COMMENCEMENT**

10                           **DATE.**

11           (a) NATIONAL INSURER.—The Commissioner may  
12           not charter or license a national insurer until after the  
13           following regulations have been published in final form or  
14           interim final form:

15                   (1) The fee and assessment regulations required  
16           by section 1122.

17                   (2) The reporting regulations required by sec-  
18           tion 1124.

19                   (3) The organizational regulations required by  
20           section 1201.

21                   (4) The licensing regulations required by sec-  
22           tion 1203.

23                   (5) The participating policy procedures regula-  
24           tions required by section 1205.

1           (6) The charter conversion regulations required  
2 by section 1206.

3           (7) The transitional financial regulations re-  
4 quired by section 1212.

5           (8) The product regulations required by section  
6 1214.

7           (9) The market conduct regulations required by  
8 section 1216.

9           (10) The control regulations required by section  
10 1231.

11          (11) The merger, consolidation, and acquisition  
12 regulations required by section 1232.

13          (12) The bulk transfer regulations required by  
14 section 1233.

15          (13) The conversion regulations required by  
16 sections 1242 and 1243.

17          (14) The holding company regulations required  
18 by sections 1402 and 1403.

19          (15) The receivership regulations required by  
20 section 1504.

21          (16) The insolvency protection regulations re-  
22 quired by section 1609.

23          (b) NATIONAL AGENCIES.—The Commissioner may  
24 charter or license a national agency after the following

1 regulations have been published in final form, including  
2 interim final form:

3           (1) The fee and assessment regulations required  
4           by section 1122.

5           (2) The reporting regulations required by sec-  
6           tion 1124.

7           (3) The organizational regulations required by  
8           section 1201.

9           (4) The charter conversion regulations required  
10          by section 1206.

11          (5) The market conduct regulations required by  
12          section 1216.

13          (6) The merger, consolidation, and acquisition  
14          regulations required by section 1232.

15          (7) The producer licensing regulations required  
16          by section 1301.

17          (8) The holding company regulations required  
18          by sections 1402 and 1403.

19          (c) TIMING AND NOTICE.—

20           (1) TIMING.—The regulations described in sub-  
21           sections (a) and (b) shall be published in final form  
22           or interim final form, not later than 2 years after  
23           the date of the initial appointment and confirmation  
24           of the Commissioner.

1           (2) NOTICE.—At such time as the regulations  
2 described in subsections (a) or (b) have been issued  
3 in final form or interim final form, the Commis-  
4 sioner shall publish a notice in the Federal Register  
5 announcing that the Office is prepared to act on  
6 chartering and licensing applications.

7           (3) CONSIDERING AND ACTING UPON APPLICA-  
8 TIONS.—Notwithstanding any challenge to the regu-  
9 lations described in subsections (a) and (b), the  
10 Commissioner shall have the authority to consider,  
11 and act upon, chartering and licensing applications  
12 immediately upon publication of the notice described  
13 in paragraph (2).

## 14 **Subtitle B—Financial, Product, and** 15 **Market Regulations**

### 16 **SEC. 1212. TRANSITIONAL FINANCIAL REGULATIONS.**

17           (a) PROMULGATION OF FINANCIAL REGULATIONS  
18 THAT ARE CONSISTENT WITH NAIC STANDARDS AND  
19 MODELS.—The Commissioner shall establish, by regula-  
20 tion, the following:

21           (1) Accounting principles for a national insurer,  
22 which are consistent with the statutory accounting  
23 practices promulgated by the NAIC in its “Account-  
24 ing Practices and Procedures Manual”.

1           (2) Auditing standards for a national insurer,  
2           which are consistent with the guidance prescribed by  
3           the NAIC in its “Model Regulation Requiring An-  
4           nual Audited Financial Reports”.

5           (3) Investment standards for a national insurer,  
6           which are consistent with the “Investment of Insur-  
7           ers Model Act (Defined Standards Version)” of the  
8           NAIC, except that such investment standards shall  
9           not be bound by the provisions of the Model Act re-  
10          lated to authorized classes of investments, class or  
11          individual investment limitations, or prohibited in-  
12          vestments.

13          (4) Risk-based capital standards for a national  
14          insurer, which are consistent with the “Risk-Based  
15          Capital (RBC) for Insurers Model Act” and the re-  
16          lated “RBC Instructions” of the NAIC and non-  
17          disclosure rules and remedies for failing to meet  
18          such standards.

19          (5) Valuation standards for the obligations and  
20          liabilities of a national life insurer, which are con-  
21          sistent with the statutory valuation practices pro-  
22          mulgated by the NAIC in its “Accounting Practices  
23          and Procedures Manual”.

24          (6) Continuing and alternative (nonforfeiture)  
25          benefits standards applicable to national life insur-

1       ers, which are consistent with the “Standard Non-  
2       forfeiture Law for Life Insurance, Variable Life In-  
3       surance Model Regulation, Standard Nonforfeiture  
4       Law for Individual Deferred Annuities, Long-Term  
5       Care Insurance Model Act, and Long-Term Care In-  
6       surance Model Regulation” of the NAIC.

7               (7) Standards for the preparation and filing of  
8       an annual actuarial opinion on the adequacy of the  
9       assets of a national life insurer to meet its reason-  
10      ably expected obligations and liabilities, which are  
11      consistent with the “Actuarial Opinion and Memo-  
12      randum Regulation” of the NAIC.

13              (8) Standards for the preparation and filing of  
14      an annual actuarial opinion on the loss and loss ad-  
15      justment expense reserves of a national property/cas-  
16      ualty insurer, which are consistent with the NAIC’s  
17      “Property and Casualty Actuarial Opinion Model  
18      Law” and applicable “NAIC Property and Casualty  
19      Annual Statement Instructions”.

20              (b) NAIC STANDARDS, MODELS, PRACTICES, AND  
21      INSTRUCTIONS.—The NAIC standards, models, practices,  
22      and instructions referred to in subsection (a) shall be the  
23      standards, models, practices, and instructions adopted by  
24      the NAIC as of May 24, 2007.

1           (c) EFFECTIVE DATE AND FIVE-YEAR TRANSI-  
2 TIONAL PERIOD FOR INITIAL FINANCIAL REGULA-  
3 TIONS.—The financial regulations specified in subsection  
4 (a) shall be issued in final form no later than 2 years fol-  
5 lowing the initial appointment and confirmation of the  
6 Commissioner, and each regulation shall remain in effect  
7 for 5 years following the date upon which it becomes effec-  
8 tive.

9           (d) NAIC AMENDMENTS.—If, after May 24, 2007,  
10 the NAIC amends any standard, model, practice, or in-  
11 struction upon which the initial financial regulations are  
12 based, the Commissioner shall determine, by regulation,  
13 whether such amendment shall apply to a national insurer.  
14 If the Commissioner determines that an NAIC amendment  
15 to a standard, model, practice, or instruction should apply  
16 to a national insurer, the Commissioner may specify, by  
17 regulation, whether the amendment applies in whole or in  
18 part.

19           (e) REVISIONS OR MODIFICATIONS TO INITIAL FI-  
20 NANCIAL REGULATIONS BY COMMISSIONER.—

21           (1) IN GENERAL.—Subject to paragraph (2),  
22 after an initial financial regulation specified in sub-  
23 section (a) has been in effect for 5 years, the Com-  
24 missioner may, by regulation, revise or modify the  
25 regulation.



1 extent, or kind of coverage, or to charge a different rate  
2 for the same coverage is—

3 (1) based on sound actuarial principles; or

4 (2) related to actual or reasonably anticipated  
5 experience.

6 (c) LAW APPLICABLE TO INSURANCE POLICIES OR  
7 OTHER PRODUCTS OF NATIONAL INSURERS.—

8 (1) LAW SPECIFIED BY PARTIES.—Subject to  
9 any applicable Federal law, the provisions of any in-  
10 surance policy or other product of a national insurer  
11 shall be interpreted in accordance with the law of  
12 the jurisdiction specified by the parties to the insur-  
13 ance policy or other product if the parties have spec-  
14 ified the law of—

15 (A) the jurisdiction in which the main of-  
16 fice of the national insurer is located;

17 (B) the jurisdiction in which the principal  
18 place of business of the national insurer is lo-  
19 cated; or

20 (C) the jurisdiction in which the insurance  
21 policy or other product is delivered.

22 (2) DEFAULT LAW.—If the parties to an insur-  
23 ance policy or other product of a national insurer  
24 have not specified the jurisdiction whose law shall  
25 govern the provisions of the insurance policy or

1 other product, such provisions shall be interpreted in  
2 accordance with the law of the jurisdiction in which  
3 the insurance policy or other product is delivered.

4 (3) RULEMAKING.—The Commissioner shall es-  
5 tablish, by regulation, choice of law rules and stand-  
6 ards under this subsection.

7 (d) STANDARDS FOR POLICIES.—

8 (1) POLICY.—In this subsection, the term “pol-  
9 icy”—

10 (A) means a policy, contract, certificate, or  
11 other evidence of life insurance, disability in-  
12 come insurance, or long-term care insurance, or  
13 an annuity contract or a rider or endorsement  
14 thereto; and

15 (B) does not include—

16 (i) a funding agreement;

17 (ii) a reinsurance contract; or

18 (iii) an agreement, special rider, or  
19 endorsement relating only to the manner of  
20 distributing benefits or to the reservation  
21 of rights and benefits used at the request  
22 of the individual policyholder.

23 (2) RULEMAKING.—The Commissioner shall es-  
24 tablish, by regulation, standards for policies issued  
25 by a national insurer.

1           (3) TYPES OF POLICY REQUIREMENTS.—The  
2 standards established under paragraph (2) may in-  
3 clude general policy requirements and requirements  
4 regarding particular classes of policies.

5 (e) PRODUCT FILINGS.—

6           (1) FORM FILING.—A national insurer shall not  
7 issue a policy until the form of the policy has been  
8 received by the Commissioner.

9           (2) EXEMPTIONS.—The Commissioner may, by  
10 regulation, exempt particular categories of policies  
11 from the filing requirement.

12           (3) COMPLIANCE CERTIFICATE.—In accordance  
13 with regulations promulgated by the Commissioner,  
14 any filing of a policy form shall be accompanied by  
15 written certification by an officer of the national in-  
16 surer that the policy form complies with the stand-  
17 ards applicable to such form.

18 (f) INTERPRETIVE RULINGS.—

19           (1) PROCEDURES.—The Commissioner shall es-  
20 tablish procedures by which national insurers may  
21 obtain interpretive rulings from the Office regarding  
22 the interpretation and application of the standards  
23 established under this section.

24           (2) PUBLIC AVAILABILITY.—Except as provided  
25 under paragraph (3), requests by national insurers

1 for interpretive rulings from the Office and the com-  
2 plete text of such interpretive rulings shall not be  
3 made available to the public.

4 (3) PUBLICATION OF SUMMARIES.—Notwith-  
5 standing paragraph (2), the Commissioner shall pub-  
6 lish a summary of each interpretive opinion, exclud-  
7 ing the name of the national insurer and any other  
8 identifying information, either promptly after the  
9 issuance of such opinion or, upon the request of the  
10 national insurer, after such delay as the Commis-  
11 sioner determines appropriate.

12 (g) GROUP, BLANKET, AND FRANCHISE INSUR-  
13 ANCE.—

14 (1) AUTHORIZATION.—A national insurer  
15 may—

16 (A) sell, solicit, negotiate, and underwrite  
17 group, blanket, and franchise insurance policies;  
18 and

19 (B) extend group, blanket, or franchise in-  
20 surance policies to insure the dependents of em-  
21 ployees or members, or any class of employees  
22 or members.

23 (2) RULEMAKING.—The Commissioner shall, by  
24 regulation, establish standards for kinds and quali-

1       fications of permissible groups for group, blanket,  
2       and franchise insurance policies.

3       (h) INSURABLE INTEREST.—

4             (1) REGULATIONS REQUIRED.—The Commis-  
5       sioner shall, by regulation—

6                     (A) define the term “insurable interest”;

7                     (B) identify what persons have an insur-  
8       ance interest in the health and bodily safety of  
9       an individual;

10                    (C) establish circumstances under which  
11       an insurance policy issued with respect to an in-  
12       dividual, other than a group insurance policy,  
13       may be effectuated, including any insured con-  
14       sent requirements; and

15                    (D) establish rules for insurance policy  
16       transfers and assignments, which transactions  
17       shall be permitted for insurance policies written  
18       or sold in compliance with the regulations.

19             (2) LIMITATION ON APPLICABILITY.—The regu-  
20       lations required by paragraph (1) shall not apply to  
21       an annuity contract or a funding agreement.

22             (i) EFFECT OF STATE LAW.—No State may, by stat-  
23       ute, regulation, order, interpretation, or otherwise, impose  
24       any standard, relating to any matter addressed in this sec-

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

3 **SEC. 1215. PRODUCT REGULATION FOR NATIONAL PROP-**  
4 **ERTY/CASUALTY INSURERS.**

5 (a) APPLICATION.—This section shall apply to the  
6 business of national property/casualty insurers.

7 (b) MAINTENANCE OF COPIES OF POLICIES.—A na-  
8 tional insurer shall maintain for inspection a copy of every  
9 insurance policy form that it uses to insure risks.

10 (c) ANNUAL POLICY FORM LISTING.—A national in-  
11 surer shall annually provide the Commissioner with a list  
12 of all standard policy forms it uses to insure risks.

13 (d) RATES, RATING ELEMENTS, PRICE, AND  
14 FORMS.—The Act does not authorize the Commissioner  
15 to require a national insurer to use any particular rate,  
16 rating element, price, or form.

17 **SEC. 1216. REGULATION OF SALES AND MARKETING.**

18 (a) PURPOSE.—The purpose of this section is to en-  
19 sure appropriate Federal regulation of the sales and mar-  
20 keting practices of national insurers, national agencies,  
21 and federally licensed insurance producers to prevent un-  
22 fair methods of competition and unfair and deceptive acts  
23 and practices in the advertising, sale, issuance, distribu-  
24 tion, and administration of insurance policies and other

1 products of national insurers, and claims under insurance,  
2 policies and other products of national insurers.

3 (b) RULEMAKING.—The Commissioner shall promul-  
4 gate such regulations, applicable to national insurers, na-  
5 tional agencies, and federally licensed insurance pro-  
6 ducers, as the Commissioner determines to be necessary  
7 to carry out the purpose of this section, including rules  
8 governing the advertising, sale, issuance, distribution, and  
9 administration of insurance policies and other products of  
10 national insurers and claims under insurance policies and  
11 other products of national insurers.

12 **SEC. 1217. PROMPT CORRECTIVE ACTION.**

13 (a) RULEMAKING.—

14 (1) IN GENERAL.—Not later than the expira-  
15 tion of the 6-month period beginning upon the date  
16 of submission of the report under subsection (b)(3)  
17 to the Commissioner, the Commissioner shall pro-  
18 mulgate such regulations, applicable to national in-  
19 surers, as the Commissioner determines appropriate  
20 and consistent with the recommendation in that re-  
21 port to ensure that prompt corrective action is taken  
22 to resolve any hazardous financial condition of a na-  
23 tional insurer.

24 (2) AUTHORIZED CONTENT.—Rules required by  
25 this subsection may include such capital measures

1 and categories, capital standards, supervisory cri-  
2 teria, restrictions on permissible actions of such in-  
3 surers, requirements for such insurers, procedures,  
4 provisions regarding conservatorship and receiver-  
5 ship of such insurers, and other provisions as the  
6 Commissioner considers are appropriate and con-  
7 sistent with any recommendations in the report and  
8 the regulations issued pursuant to section  
9 1212(a)(4).

10 (b) GAO STUDY AND REPORT.—

11 (1) IN GENERAL.—The Comptroller General of  
12 the United States shall conduct a study to identify  
13 an appropriate structure of procedures and require-  
14 ments for taking prompt corrective actions with re-  
15 spect to national insurers, to ensure that any haz-  
16 ardous financial condition of such a national insurer  
17 is resolved effectively and efficiently, with the fewest  
18 possible losses.

19 (2) REQUIREMENTS.—In conducting the study  
20 required by this subsection, the Comptroller General  
21 shall analyze and evaluate various proposals, struc-  
22 tures, methods, and systems for taking prompt cor-  
23 rective actions with respect to various financial enti-  
24 ties and institutions, including—

1 (A) the prompt corrective action require-  
2 ments under section 38 of the Federal Deposit  
3 Insurance Act (12 U.S.C. 1831o) with respect  
4 to insured depository institutions; and

5 (B) the “Model Regulation to Define  
6 Standards and Commissioner’s Authority for  
7 Companies Deemed to be in Hazardous Finan-  
8 cial Condition” of the NAIC, as updated in  
9 2006.

10 (3) REPORT.—

11 (A) IN GENERAL.—Not later than the ex-  
12 piration of the 6-month period beginning on the  
13 date of enactment of this Act, the Comptroller  
14 General shall submit a report to the Committee  
15 on Banking, Housing, and Urban Affairs of the  
16 Senate, the Committee on Financial Services of  
17 the House of Representatives, and the Commis-  
18 sioner, regarding the study required under this  
19 subsection.

20 (B) CONTENTS.—The report required  
21 under this paragraph shall describe the study  
22 and the results of the evaluations conducted  
23 under the study, and shall include a specific  
24 recommendation to the Commissioner for estab-  
25 lishment of an appropriate structure of proce-

1           dures and requirements for taking prompt cor-  
 2           rective actions with respect to national insurers,  
 3           to ensure that any hazardous financial condi-  
 4           tion of a national insurer is resolved effectively  
 5           and efficiently with the fewest possible losses.

## 6           **Subtitle C—Reinsurance**

### 7   **SEC. 1221. FEDERAL LICENSING OF REINSURERS.**

8           (a) **AUTHORITY TO LICENSE.**—

9           (1) **IN GENERAL.**—The Commissioner may—

10           (A) license insurers that are not National  
 11           Insurers to provide reinsurance; and

12           (B) prescribe, by regulation, the standards  
 13           and procedures for granting such licenses.

14           (2) **CRITERIA.**—The standards prescribed under  
 15           paragraph (1)(B) shall give due consideration to—

16           (A) the public interest in providing secure  
 17           and sufficient reinsurance capacity in the  
 18           United States; and

19           (B) the need for promoting fair and effec-  
 20           tive competition.

21           (b) **DETERMINATION AND FINDING; ISSUANCE OF LI-**  
 22           **CENSE.**—

23           (1) **EXAMINATION AND INVESTIGATION.**—Upon  
 24           the receipt of an application for a license under this  
 25           section, the Commissioner shall examine the infor-

1       mation submitted by the applicant and may conduct  
2       further examinations and investigations, as nec-  
3       essary, to determine whether the applicant satisfies  
4       the standards for a license under this section.

5           (2) PUBLICATION OF FINDINGS.—The Commis-  
6       sioner shall publish the Commissioner’s findings and  
7       determination under paragraph (1).

8           (3) ISSUANCE OF FEDERAL LICENSE.—

9           (A) IN GENERAL.—Except as provided in  
10       subparagraph (B), if the Commissioner deter-  
11       mines that the applicant has satisfied the appli-  
12       cable requirements of this section, the Commis-  
13       sioner shall issue a Federal license to provide  
14       reinsurance.

15          (B) RESTRICTION.—The Commissioner  
16       shall not issue a Federal license for reinsurance  
17       until after the Commissioner is authorized to  
18       charter and license a National Insurer pursuant  
19       to section 1211.

20          (c) MINIMUM STANDARDS FOR LICENSING OF NON-  
21       UNITED STATES INSURERS.—The Commissioner shall not  
22       issue a license under this section to any insurer that is  
23       not a State insurer or a United States branch of a non-  
24       United States insurer unless the insurer agrees to—

1 (1) report its financial statements to the Com-  
 2 missioner on a basis that the Commissioner deter-  
 3 mines to be substantially similar to that required of  
 4 National Insurers under section 1124;

5 (2) submit to the jurisdiction of Federal, State,  
 6 and local courts in the United States; and

7 (3) demonstrate that all judgments of all  
 8 United States courts would be enforceable and col-  
 9 lectible by—

10 (A) being organized or incorporated in a  
 11 jurisdiction with which the United States has  
 12 entered into a treaty on the recognition and en-  
 13 forcement of judgments rendered by Federal,  
 14 State, and local courts in the United States; or

15 (B) agreeing to post prejudgment security  
 16 in the United States upon the commencement  
 17 of any litigation or arbitration in the United  
 18 States, subject to such regulations as the Com-  
 19 missioner may prescribe.

20 (d) REVOCATION OF LICENSE.—

21 (1) IN GENERAL.—The Commissioner may re-  
 22 voke, suspend, or restrict a Federal reinsurer's li-  
 23 cense in accordance with subtitle C of title I.

24 (2) STATUS OF FEDERALLY LICENSED REIN-  
 25 SURER.—For purposes of this subsection, a federally

1 licensed reinsurer shall be deemed to be a National  
2 Insurer under subtitle C of title I.

3 (e) ANNUAL REPORTS.—The Commissioner shall re-  
4 quire each reinsurer licensed under this section to submit  
5 an annual report of its financial condition and an annual  
6 report on the condition of any trust fund regulated under  
7 this subtitle in such form as may be prescribed by the  
8 Commissioner.

9 **SEC. 1222. CREDIT FOR INSURANCE CEDED BY A NATIONAL**  
10 **INSURER OR FEDERALLY LICENSED REIN-**  
11 **SURER.**

12 (a) CREDIT FOR INSURANCE CEDED TO A NATIONAL  
13 INSURER OR A FEDERALLY LICENSED REINSURER.—A  
14 national insurer may establish an asset or reduce its liabil-  
15 ities, to the extent of such liabilities, for insurance ceded  
16 to another national insurer or federally licensed reinsurer.

17 (b) OTHER ASSET OR REDUCTION FROM LIABILITY  
18 FOR INSURANCE CEDED.—A national insurer may estab-  
19 lish an asset or reduce its liabilities, to the extent of such  
20 liabilities, for insurance—

21 (1) that is ceded to—

22 (A) a State insurer;

23 (B) a United States branch entered  
24 through a State; or

25 (C) a non-United States insurer; and

1           (2) if such insurance is ceded consistent with  
2           the standards established by the Commissioner pur-  
3           suant to subsection (c).

4           (c) REGULATION.—The Commissioner shall establish,  
5           by regulation, standards governing insurance ceded by a  
6           national insurer, as the Commissioner may determine to  
7           be necessary to protect the policyholders of a national in-  
8           surer.

9           **SEC. 1223. RELATIONSHIP TO STATE LAW.**

10          (a) DOMICILIARY STATE DISCRIMINATION PROHIB-  
11          ITED.—Except as provided in section 1224(b), no State  
12          may, by statute, regulation, order, interpretation, or other-  
13          wise, prevent or interfere with a State insurer domiciled  
14          in such State or a United States branch entered through  
15          such State from establishing an asset or reducing its liabil-  
16          ity as a result of insurance ceded to a national insurer  
17          or a federally licensed reinsurer, to the same extent as the  
18          State would allow such insurer, if the insurance were  
19          ceded to another State insurer domiciled in such State.

20          (b) NON-DOMICILIARY ACTION PROHIBITED.—No  
21          State may, by statute, regulation, order, interpretation, or  
22          otherwise, prevent or interfere with a State insurer not  
23          domiciled in that State or a United States branch entered  
24          through another State from establishing an asset or reduc-  
25          ing its liability as a result of insurance ceded to a national

1 insurer or a federally licensed reinsurer, if the domicile  
2 of the ceding insurer allows such asset or reduction.

3 **SEC. 1224. FREEDOM OF COMMERCIAL CONTRACT.**

4 (a) PROHIBITION.—Except as provided in subsection  
5 (b), a State may not—

6 (1) deny a State insurer or a United States  
7 branch entered through a State all or part of any  
8 asset, or require any increase in liability for insur-  
9 ance ceded to any national insurer or federally li-  
10 censed reinsurer because its reinsurance contract  
11 contains, or does not contain, 1 or more specific con-  
12 tract terms; or

13 (2) otherwise require specific language or terms  
14 in any reinsurance contract.

15 (b) CONSTRUCTION.—Notwithstanding subsection  
16 (a), a State may require a State insurer domiciled in such  
17 State or a United States branch entered through that  
18 State to use contract terms that are substantially equiva-  
19 lent to those required under section 1222(c).

20 **SEC. 1225. REVIEW BY THE COMMISSIONER.**

21 (a) REVIEW.—The Commissioner shall review any  
22 State action taken pursuant to subsection (b) of section  
23 1224 to determine if the State action meets the standards  
24 set forth in that subsection.

1 (b) STANDARDS OF REVIEW.—Any State action  
2 taken pursuant to section 1224(b) shall meet the stand-  
3 ards of this section, if—

4 (1) it is closely based on standards established  
5 by the Commissioner pursuant to section 1222(c);

6 (2) it is made in consultation with the Commis-  
7 sioner;

8 (3) it serves a legitimate State interest; and

9 (4) it does not frustrate the subject reinsurance  
10 contract.

11 (c) NOTICE OF FAILURE; EFFECT OF FAILURE.—If  
12 the Commissioner finds that any State action taken pursu-  
13 ant to subsection (b) of section 1224 fails to meet any  
14 of the standards set forth in that subsection, the Commis-  
15 sioner shall provide the applicable State and State insurer  
16 with notice of, and reasons for, such failure, and such  
17 State action shall be deemed to be subject to section  
18 1224(a), notwithstanding the terms of section 1224(b).

19 (d) NO DELEGATION PERMITTED.—The Commis-  
20 sioner may not delegate to any insurance self-regulatory  
21 organization any authority conferred under this section  
22 with respect to review by the Commissioner of any State  
23 action taken pursuant to section 1224(b).

1 **Subtitle D—Acquisitions of Con-**  
2 **trol; Mergers; Bulk Transfers;**  
3 **Domestication**

4 **SEC. 1231. ACQUISITION OF CONTROL OF NATIONAL INSUR-**  
5 **ERS.**

6 (a) DEFINITIONS.—For purposes of this section—

7 (1) the term “national insurer” includes any  
8 person controlling a national insurer; and

9 (2) the term “person” does not include any se-  
10 curities broker holding, in the usual and customary  
11 functions of the broker, less than 20 percent of the  
12 voting securities of a national insurer or of any per-  
13 son who controls a national insurer.

14 (b) COMMISSIONER APPROVAL REQUIRED.—

15 (1) IN GENERAL.—No person, other than the  
16 issuer, shall make a tender offer for, make a request  
17 or invitation for tenders of, or enter into any agree-  
18 ment to exchange securities for, or acquire, in the  
19 open market or otherwise, any voting security of a  
20 national insurer if, after the consummation of such  
21 transaction, such person would, directly or indirectly  
22 (or by conversion or by exercise of any right to ac-  
23 quire) be in control of the national insurer. No per-  
24 son shall enter into an agreement to merge with or  
25 otherwise acquire control of a national insurer or

1 any person controlling a national insurer unless, at  
2 the time the offer, request, or invitation is made or  
3 the agreement is entered into, or before the acquisi-  
4 tion of the securities if no offer or agreement is in-  
5 volved—

6 (A) such person has filed with the Com-  
7 missioner and has sent to the national insurer,  
8 a statement that complies with the regulations  
9 prescribed under paragraph (3); and

10 (B) the offer, request, invitation, agree-  
11 ment, or acquisition has been approved by the  
12 Commissioner.

13 (2) SAVINGS PROVISION.—Nothing in this sub-  
14 section shall be construed to prohibit a person from  
15 making an offer, request, or invitation or entering  
16 into an agreement to acquire control of a national  
17 insurer, if such transaction is conditioned upon ob-  
18 taining the approval of the Commissioner in accord-  
19 ance with paragraph (1).

20 (3) FORM AND CONTENT OF STATEMENT.—The  
21 Commissioner shall, by regulation, prescribe the  
22 form and content of the statement to be filed under  
23 paragraph (1)(A).

24 (4) APPROVAL BY COMMISSIONER.—The Com-  
25 missioner shall approve any merger or other acquisi-

1       tion of control referred to in this subsection unless  
2       the Commissioner finds that—

3               (A) after the acquisition of control, the na-  
4               tional insurer would not be able to satisfy the  
5               requirements for the issuance of a Federal li-  
6               cense to write the line or lines of insurance for  
7               which the national insurer was previously li-  
8               censed;

9               (B) the financial condition of any acquir-  
10              ing person may jeopardize the financial stability  
11              of the national insurer or be hazardous to the  
12              policyholders of the national insurer;

13             (C) the plans or proposals of the acquiring  
14             person to liquidate the national insurer, sell its  
15             assets, consolidate or merge it with any person,  
16             or make any other material change in its busi-  
17             ness or corporate structure or management, are  
18             unfair and unreasonable to policyholders of the  
19             national insurer and not in the public interest;

20             (D) those persons who would control the  
21             operation of the national insurer lack the com-  
22             petence, experience, or integrity required to pro-  
23             tect the interests of policyholders of the na-  
24             tional insurer; or

1 (E) the acquisition is likely to be haz-  
2 arduous to the insurance-buying public.

3 (c) HEARING.—

4 (1) IN GENERAL.—The Commissioner may, in  
5 his sole discretion, hold a hearing on a merger or  
6 other acquisition of control that is subject to this  
7 section and for which a statement has been filed  
8 under subsection (b)(1)(A).

9 (2) PROCEDURES.—A hearing under this sub-  
10 section shall be subject to the procedures under sec-  
11 tion 1148, except that the Commissioner may deter-  
12 mine the location of such hearing.

13 (d) EXEMPTIONS.—The provisions of this section  
14 shall not apply to—

15 (1) any offer, request, invitation, agreement, or  
16 acquisition exempted by the Commissioner for not  
17 having been made or entered into for the purpose,  
18 and not having the effect, of changing or influencing  
19 the control of a national insurer, or as otherwise not  
20 comprehended within the purposes of this section; or

21 (2) a merger, consolidation, or acquisition sub-  
22 ject to section 1232.

23 (e) VOTING OF SECURITIES.—

24 (1) PROHIBITION.—No security which is the  
25 subject of any agreement or arrangement regarding

1 acquisition, or which is acquired or to be acquired,  
2 in contravention of the provisions of this section may  
3 be voted at any shareholder meeting, or may be  
4 counted for quorum purposes.

5 (2) EFFECT ON SHARES.—Any action of share-  
6 holders requiring the affirmative vote of a percent-  
7 age of shares may be taken as though the securities  
8 described under paragraph (1) were not issued and  
9 outstanding.

10 (3) INVALIDATION OF ACTION.—No action  
11 taken at any meeting described under paragraph (1)  
12 shall be invalidated by the voting of the securities,  
13 unless—

14 (A) the action would affect control of the  
15 national insurer; or

16 (B) such invalidation is ordered by a court.

17 (4) ACQUISITION IN CONTRAVENTION OF THIS  
18 ACT.—If a national insurer or the Commissioner has  
19 reason to believe that any security of the national in-  
20 surer has been or is about to be acquired in con-  
21 travention of the provisions of this section, the na-  
22 tional insurer or the Commissioner may apply to the  
23 United States district court for the judicial district  
24 in which the main office of the national insurer is

1 located or the United States District Court for the  
2 District of Columbia—

3 (A) to enjoin any offer, request, invitation,  
4 agreement, or acquisition made in contravention  
5 of this section;

6 (B) to enjoin the voting of any security so  
7 acquired;

8 (C) to void any vote of the security already  
9 cast at any meeting of shareholders; and

10 (D) for such other equitable relief as the  
11 nature of the case and the interest of the na-  
12 tional insurer's policyholders, the creditors and  
13 shareholders of the national insurer or the pub-  
14 lic may require.

15 (f) SEQUESTRATION OF VOTING SECURITIES.—

16 (1) IN GENERAL.—If a person has acquired or  
17 is proposing to acquire any voting securities in viola-  
18 tion of this section, the national insurer or the Com-  
19 missioner may request the United States district  
20 court for the judicial district in which the main of-  
21 fice of the national insurer is located or the United  
22 States District Court for the District of Columbia  
23 to—

1           (A) seize or sequester any voting securities  
2           of the national insurer owned directly or indi-  
3           rectly by the person; and

4           (B) issue such order as may be appropriate  
5           to carry out the provisions of this section.

6           (2) SITUS OF OWNERSHIP.—Notwithstanding  
7           any other provision of law, for the purposes of this  
8           section, the situs of ownership of the securities of a  
9           national insurer shall be deemed to be the State in  
10          which the main office of the national insurer is lo-  
11          cated.

12          (g) CONFLICT WITH OTHER FEDERAL LAWS.—This  
13          section shall be interpreted and applied so as not to con-  
14          flict with or supersede the provisions of any other Federal  
15          law or regulation governing the regulation of holding com-  
16          panies, including financial holding companies (as defined  
17          in section 2(p) of the Bank Holding Company Act of 1956  
18          (12 U.S.C. 1841(p))).

19          (h) NO DELEGATION PERMITTED.—The Commis-  
20          sioner may not delegate to any insurance self-regulatory  
21          organization any authority conferred under this section  
22          with respect to any merger or other acquisition of control  
23          of a national insurer.

1 **SEC. 1232. MERGERS, CONSOLIDATIONS, AND ACQUISITIONS OF NATIONAL INSURERS.**  
2

3 (a) NATIONAL INSURER AS RESULTING INSURER.—

4 (1) IN GENERAL.—Notwithstanding any other  
5 provision of law, except as provided under subsection  
6 (e), a national insurer may, with the approval of the  
7 Commissioner, merge, consolidate with, acquire all  
8 or substantially all the assets of, or assume all or  
9 substantially all the liabilities of, another national  
10 insurer or a State insurer in a transaction in which  
11 a national insurer is the resulting insurer, the ac-  
12 quiring insurer, or the assuming insurer, regardless  
13 of whether the insurers involved in the transaction  
14 are in stock form, mutual form, or fraternal form.

15 (2) MERGER, CONSOLIDATION, AND ACQUISITION PROCEDURES.—The Commissioner shall estab-  
16 lish, by regulation, procedures for—

17  
18 (A) the merger or consolidation of a na-  
19 tional insurer with another national insurer or  
20 a State insurer in a transaction in which a na-  
21 tional insurer is the resulting insurer; and

22 (B) the acquisition or assumption by a na-  
23 tional insurer of all or substantially all the as-  
24 sets or liabilities of another national insurer or  
25 a State insurer in a transaction in which the

1 national insurer is the acquiring insurer or as-  
2 suming insurer.

3 (3) EFFECT OF MERGER OR CONSOLIDATION.—

4 Upon the merger or consolidation of a national in-  
5 surer with another national insurer or a State in-  
6 surer under this section—

7 (A) the corporate existence of each of the  
8 merging or consolidating insurers shall be  
9 merged or consolidated into the resulting in-  
10 surer, and the resulting insurer shall be deemed  
11 to be the same corporation as each insurer par-  
12 ticipating in the merger or consolidation;

13 (B) except as provided under subpara-  
14 graph (D), the resulting insurer shall hold and  
15 be subject to all rights, privileges, liabilities,  
16 property interests, and other interests and obli-  
17 gations that each insurer participating in the  
18 merger or consolidation held or was subject to  
19 immediately prior to the merger or consolida-  
20 tion;

21 (C) the resulting insurer shall obtain, in  
22 accordance with section 1203, a Federal license  
23 for all lines of insurance that it sells, solicits,  
24 negotiates, or underwrites, except for those  
25 lines of insurance for which a national insurer

1 participating in the merger or consolidation  
2 held a Federal license immediately before the  
3 merger or consolidation; and

4 (D) the resulting insurer shall not hold any  
5 State license to sell, solicit, negotiate, or under-  
6 write insurance that was held by a State in-  
7 surer participating in the merger or consolida-  
8 tion.

9 (4) SPECIAL AUTHORITY.—The Commissioner  
10 may, subject to such conditions as the Commissioner  
11 shall prescribe, permit a national insurer resulting  
12 from a merger or consolidation under this section to  
13 retain, hold, or exercise such assets, liabilities, pow-  
14 ers, and authorities that do not conform to the legal  
15 requirements applicable to national insurers, as the  
16 Commissioner determines appropriate.

17 (b) STATE INSURER AS RESULTING INSURER.—

18 (1) IN GENERAL.—Subject to applicable State  
19 law and such notification procedures as the Commis-  
20 sioner shall prescribe by regulation, a State insurer  
21 may merge with, consolidate with, acquire assets of,  
22 or assume liabilities of, a national insurer in a trans-  
23 action in which a State insurer is the resulting in-  
24 surer.

1           (2) SAVINGS PROVISION.—Nothing in this sub-  
2           section or in a transaction under this subsection  
3           shall abrogate any rights, privileges, liabilities, prop-  
4           erty interests, or other interests or obligations that  
5           the national insurer held or was subject to imme-  
6           diately before the transaction.

7           (c) EFFECT OF ASSUMPTION OF LIABILITIES.—If the  
8           liabilities of a national insurer are assumed by another  
9           national insurer or a State insurer in accordance with this  
10          Act, the national insurer shall be released from all such  
11          liabilities upon their assumption by the other national in-  
12          surer or a State insurer.

13          (d) NO DELEGATION PERMITTED.—The Commis-  
14          sioner may not delegate to any insurance self-regulatory  
15          organization any authority conferred under this section  
16          with respect to any merger, consolidation, acquisition of  
17          assets, or assumption of liabilities involving a national in-  
18          surer.

19          (e) COORDINATION.—This section shall not apply to  
20          any bulk transfer (as defined in section 1233(a)(2)) that  
21          is subject to approval of the Commissioner in accordance  
22          with section 1233(b).

23          **SEC. 1233. BULK TRANSFERS.**

24          (a) DEFINITIONS.—In this section, the following defi-  
25          nitions shall apply:

1           (1) ASSUMING INSURER.—The term “assuming  
2 insurer” means the insurer that purchases or other-  
3 wise acquires existing insurance policies from an-  
4 other insurer by bulk transfer.

5           (2) BLOCK OF BUSINESS.—The term “block of  
6 business” means all those insurance policies of an  
7 insurer under a particular policy form.

8           (3) BULK TRANSFER.—The term “bulk trans-  
9 fer”—

10           (A) means the transfer by an insurer to  
11 another insurer of existing insurance policies  
12 constituting all or substantially all of 1 or more  
13 of its lines of business or blocks of business;  
14 and

15           (B) does not include—

16           (i) any sale in which the transferring  
17 insurer retains direct or indirect control of  
18 the assets supporting the transferred in-  
19 surance policies;

20           (ii) any transaction effected by an  
21 agreement under which the transferring in-  
22 surer continues to remain directly liable to  
23 the policyholders under the insurance poli-  
24 cies;

1 (iii) the substitution of 1 insurer for  
2 another upon the expiration of insurance  
3 coverage pursuant to statutory or contrac-  
4 tual requirements and the issuance of a  
5 new policy of insurance by that insurer;

6 (iv) the transfer of policies of insur-  
7 ance pursuant to merger or consolidation  
8 of 2 or more insurers to the extent that  
9 those transactions are regulated by statute;

10 (v) any transaction effected by an in-  
11 surer subject to a judicial order of receiver-  
12 ship, liquidation, or rehabilitation; or

13 (vi) any transfer of liabilities from 1  
14 insurer to another under a single group in-  
15 surance policy upon the request of the  
16 group policyholder.

17 (4) PERMITTED NATIONAL INSURER.—The  
18 term “permitted national insurer” means—

19 (A) a State insurer that is converting to a  
20 national insurer under section 1206; or

21 (B) a national insurer that is being newly  
22 chartered under section 1201 and licensed  
23 under section 1203.

1           (5) TRANSFERRED INSURANCE POLICIES.—The  
2 term “transferred insurance policies” means the in-  
3 surance policies that are subject to the bulk transfer.

4           (6) 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) COMMISSIONER APPROVAL.—

2 (1) IN GENERAL.—A national insurer shall not  
3 effect a bulk transfer as either the transferring in-  
4 surer or the assuming insurer as authorized under  
5 paragraph (1), (2), (3), or (5) of subsection (b)  
6 without the prior approval of the Commissioner, in  
7 accordance with such regulations as the Commis-  
8 sioner shall prescribe.

9 (2) STANDARD OF APPROVAL.—The Commis-  
10 sioner shall approve a bulk transfer under paragraph  
11 (1), after notice and a hearing, unless the Commis-  
12 sioner determines that the bulk transfer is likely to  
13 be hazardous to policyholders of transferred insur-  
14 ance policies, policyholders of the transferring in-  
15 surer, or policyholders of the assuming insurer.

16 (d) POLICYHOLDER CONSENT.—

17 (1) NO CONSENT REQUIRED.—Notwithstanding  
18 any other provision of law, a national insurer may,  
19 upon the approval of the Commissioner, effect a bulk  
20 transfer under paragraph (1) or (2) of subsection  
21 (b), as either the transferring insurer or the assum-  
22 ing insurer, without obtaining policyholder consent.

23 (2) BETWEEN NATIONAL INSURERS.—Notwith-  
24 standing any other provision of law, a national in-  
25 surer may, upon the approval of the Commissioner,

1 effect a bulk transfer under subsection (b)(3) as ei-  
2 ther the transferring insurer or the assuming in-  
3 surer, in accordance with the requirements pre-  
4 scribed by the Commissioner. Such requirements  
5 shall specify whether policyholder consent to such a  
6 bulk transfer is required and, if policyholder consent  
7 is required, the form in which such consent is re-  
8 quired to be given.

9 (3) ADDITIONAL PROVISIONS.—In addition to  
10 any policyholder consent required by any other appli-  
11 cable provision of law, the Commissioner may pre-  
12 scribe, by regulation, whether policyholder consent is  
13 required for a bulk transfer authorized under sub-  
14 section (b)(5) and, if policyholder consent is re-  
15 quired, the form in which such consent is required  
16 to be given.

17 (e) RELEASE FROM LIABILITY.—Upon the comple-  
18 tion of a bulk transfer under this section, the transferring  
19 insurer shall be released from its obligations under the  
20 transferred insurance policies.

21 (f) STATE LAW.—

22 (1) PROHIBITION.—Except as provided in para-  
23 graph (2), a State may not, by statute, regulation,  
24 order, interpretation, or otherwise—

1 (A) require a national insurer, a permitted  
2 national insurer, or a State insurer to—

3 (i) obtain policyholder consent to a  
4 bulk transfer; or

5 (ii) submit the bulk transfer to State  
6 review or action (including approval and  
7 nondisapproval); or

8 (B) prevent or significantly interfere with  
9 a bulk transfer effected pursuant to this sec-  
10 tion.

11 (2) CONSTRUCTION.—Paragraph (1) shall not  
12 be construed to prohibit any State from—

13 (A) collecting, reviewing, and taking action  
14 (including approval or disapproval) on applica-  
15 tions and other documents or reports con-  
16 cerning a proposed bulk transfer permitted  
17 under—

18 (i) paragraph (2), (4), or (5) of sub-  
19 section (b) to which a State insurer (other  
20 than a permitted national insurer) domi-  
21 ciled in that State is a party; or

22 (ii) paragraph (4) or (5) of subsection  
23 (b) to which a State insurer (other than a  
24 permitted national insurer), other than a  
25 State insurer domiciled in that State, is a

1 party, if the review or action meets the  
2 standards set forth in paragraph (3); or

3 (B) requiring policyholder consent of a  
4 proposed bulk transfer permitted under para-  
5 graph (4) or (5) of subsection (b).

6 (3) STANDARDS.—A review or action meets the  
7 standards under this paragraph, if it—

8 (A) is based on standards that are not  
9 more onerous than those imposed by the Com-  
10 missioner;

11 (B) occurs within a reasonable time frame  
12 that advances the purposes of this section;

13 (C) is made in close consultation and co-  
14 operation with the Commissioner;

15 (D) is without bias or discrimination to-  
16 ward either the transferring insurer or the as-  
17 suming insurer;

18 (E) serves a legitimate State interest; and

19 (F) does not frustrate the proposed bulk  
20 transfer.

21 (4) NOTICE OF FAILURE.—If the Commissioner  
22 finds that any State review or action under para-  
23 graph (2)(A) fails to meet any of the standards set  
24 forth in paragraph (3), the Commissioner may pro-

1       vide the applicable State with notice of such failure  
2       and the reasons for such failure.

3       (g) DIFFERENTIAL TREATMENT PROHIBITED.—A  
4 State may not, by statute, regulation, order, interpreta-  
5 tion, or otherwise, treat a national insurer, a permitted  
6 national insurer, or a State insurer entering into a bulk  
7 transfer agreement with a national insurer, a permitted  
8 national insurer, a State insurer, or any affiliate or sub-  
9 sidiary of such insurer, differently than any other insurer  
10 operating in that State.

11       (h) NO DELEGATION PERMITTED.—The Commis-  
12 sioner may not delegate to any insurance self-regulatory  
13 organization any authority conferred under this section  
14 with respect to any bulk transfer involving a national in-  
15 surer.

16 **SEC. 1234. DOMESTICATION OF UNITED STATES BRANCH**  
17 **OF A NON-UNITED STATES INSURER.**

18       (a) DOMESTICATION PERMITTED.—Notwithstanding  
19 any other provision of law, any non-United States insurer  
20 having its United States branch entered through a State  
21 or established pursuant to section 1202, and owning bene-  
22 ficially, directly or indirectly, all outstanding shares of a  
23 national insurer may, upon the written approval by the  
24 Commissioner, domesticate its United States branch by  
25 agreeing in writing with such national insurer to the ac-

1 quision of the business and assets, and the assumption  
2 of all liabilities, of the United States branch, by the na-  
3 tional insurer for no consideration except such assump-  
4 tion.

5 (b) APPROVAL BY COMMISSIONER.—If the Commis-  
6 sioner determines that the domestication of a United  
7 States branch of a non-United States insurer complies  
8 with the provisions of this section and that the interests  
9 of policyholders and creditors of the United States branch  
10 are not materially affected in an adverse manner by such  
11 domestication, the Commissioner may approve the domes-  
12 tication in accordance with this section.

13 (c) EFFECTIVE DATE OF DOMESTICATION.—

14 (1) IN GENERAL.—The domestication of the  
15 United States branch shall be effective on the date  
16 on which a certified copy of the instrument of trans-  
17 fer and assumption is filed with the Commissioner.

18 (2) EFFECT OF DOMESTICATION.—On the date  
19 described in paragraph (1)—

20 (A) all rights, franchises, and interests of  
21 such United States branch in and to every spe-  
22 cies of property, real, personal, and mixed, and  
23 things in action belonging to such branch, shall  
24 be deemed transferred to and vested in the ac-  
25 quiring national insurer;

1 (B) the acquiring national insurer shall be  
2 deemed to have assumed all liabilities of the  
3 United States branch;

4 (C) all deposits of the United States  
5 branch held by State officers or other State  
6 regulatory agencies under State law shall be re-  
7 leased; and

8 (D) the non-United States insurer and the  
9 United States branch shall be released from all  
10 liabilities so assumed.

11 (d) RELEASE OF DEPOSITS.—At the time of the do-  
12 mestication of a United States branch under this section,  
13 the Commissioner shall—

14 (1) transfer to the account of the acquiring na-  
15 tional insurer the securities deposited by such  
16 United States branch in compliance with the provi-  
17 sions of this Act; and

18 (2) consent that the trustee of the trustee as-  
19 sets deposited by such United States branch in com-  
20 pliance with the provisions of this Act shall with-  
21 draw from the trust and transfer and deliver to the  
22 acquiring national insurer all assets held by such  
23 trustee.

24 (e) WITHDRAWAL AND TRANSFER OF TRUSTEED AS-  
25 SETS.—

1           (1) IN GENERAL.—At the time of the domes-  
2           tication of a United States branch established under  
3           State law, the trustee of any trustee assets depos-  
4           ited by such United States branch in compliance  
5           with applicable State law shall, with the consent of  
6           the Commissioner—

7                   (A) withdraw the trustee assets from the  
8                   trust; and

9                   (B) transfer and deliver to the acquiring  
10                  national insurer all assets held by such trustee.

11           (2) LIMITATION.—No State may, by statute,  
12           regulation, order, interpretation, or otherwise, pre-  
13           vent, significantly interfere with, review, approve, or  
14           disapprove the withdrawal of trustee assets or other  
15           deposits of a United States branch established under  
16           State law that is domesticated pursuant to this sec-  
17           tion, if such withdrawal is made contemporaneously  
18           with or subsequent to the consummation of a domes-  
19           tication of the United States branch under this sec-  
20           tion.

21           (f) NO DELEGATION PERMITTED.—The Commis-  
22           sioner may not delegate to any insurance self-regulatory  
23           organization any authority under this section with respect  
24           to the domestication of a United States branch of a non-  
25           United States insurer.

1 **SEC. 1235. MERGERS, CONSOLIDATIONS, AND ACQUISITIONS OF NATIONAL AGENCIES.**  
2

3 (a) NATIONAL AGENCY RESULTING.—

4 (1) IN GENERAL.—Notwithstanding any other  
5 provision of law, a national agency may, with the ap-  
6 proval of the Commissioner, merge, consolidate with,  
7 acquire all or substantially all the assets of, or as-  
8 sume all or substantially all the liabilities of, another  
9 national agency or a State insurance agency in a  
10 transaction in which a national agency is the result-  
11 ing agency, the acquiring agency, or the assuming  
12 agency.

13 (2) MERGER, CONSOLIDATION, AND ACQUISITION PROCEDURES.—The Commissioner is author-  
14 ized, under such regulations as the Commissioner  
15 may prescribe, to provide for—

17 (A) the merger or consolidation of a na-  
18 tional agency with another national agency or a  
19 State insurance agency in a transaction in  
20 which a national agency is the resulting agency;  
21 and

22 (B) the acquisition or assumption by a na-  
23 tional agency of all or substantially all the as-  
24 sets or all or substantially all the liabilities of  
25 another national agency or a State insurance

1           agency in a transaction in which the national  
2           agency is the acquiring or assuming agency.

3           (3) EFFECT OF MERGER OR CONSOLIDATION.—

4           Upon the merger or consolidation of a national  
5           agency with another national agency or a State in-  
6           surance agency under this section—

7                   (A) the corporate existence of each of the  
8                   merging or consolidating agencies shall be  
9                   merged or consolidated into the resulting agen-  
10                  cy, and the resulting agency shall be deemed to  
11                  be the same corporation as each agency partici-  
12                  pating in the merger or consolidation; and

13                   (B) except as provided under paragraph  
14                   (4), the resulting agency shall have all the  
15                   rights, privileges, liabilities, property interests,  
16                   and other interests and obligations that each  
17                   agency participating in the merger or consolida-  
18                   tion had immediately before the merger or con-  
19                   solidation.

20           (4) LIMITATION.—Upon a merger or consolida-  
21           tion under this subsection, the resulting agency—

22                   (A) shall not hold any State license to sell,  
23                   solicit, or negotiate insurance that was held by  
24                   a State agency participating in the merger or  
25                   consolidation; and

1 (B) shall obtain, in accordance with section  
2 1301, appropriate licenses for all lines of insur-  
3 ance that it sells, solicits, or negotiates except  
4 for those lines of insurance for which a national  
5 agency participating in the merger or consolida-  
6 tion held a Federal producer's license imme-  
7 diately before the merger or consolidation.

8 (5) SPECIAL AUTHORITY.—The Commissioner  
9 may, subject to such regulations as the Commis-  
10 sioner may prescribe, permit a national agency re-  
11 sulting from a merger or consolidation under this  
12 subsection to retain, hold, or exercise such assets, li-  
13 abilities, powers, and authorities that do not con-  
14 form to the legal requirements applicable to national  
15 agencies as the Commissioner determines to be ap-  
16 propriate.

17 (b) STATE INSURANCE AGENCY RESULTING.—

18 (1) IN GENERAL.—Subject to such notification  
19 procedures as the Commissioner may prescribe by  
20 regulation, a State insurance agency may merge,  
21 consolidate with, acquire assets of, or assume liabil-  
22 ities of, a national agency in a transaction in which  
23 a State insurance agency is the resulting agency, in  
24 accordance with applicable State law.

1           (2) SAVINGS PROVISION.—Nothing in this sub-  
 2           section or in a transaction pursuant to this sub-  
 3           section shall abrogate any rights, privileges, liabil-  
 4           ities, property interests, other interests, or obliga-  
 5           tions that the national agency had immediately be-  
 6           fore the transaction.

7           (c) EFFECT OF ASSUMPTION OF LIABILITIES.—If the  
 8           liabilities of a national agency are assumed by another na-  
 9           tional agency or a State insurance agency in accordance  
 10          with the provisions of this Act, such national agency from  
 11          whom the liabilities are assumed shall be released from  
 12          all liabilities so assumed upon their assumption by the  
 13          other national agency or a State insurance agency.

14          (d) NO DELEGATION PERMITTED.—The Commis-  
 15          sioner may not delegate to any insurance self-regulatory  
 16          organization any authority conferred under this section  
 17          with respect to any merger, consolidation, or acquisition  
 18          of assets or assumption of liabilities involving a national  
 19          agency.

## 20                           **Subtitle E—Conversions**

### 21   **SEC. 1241. DEFINITIONS.**

22           In this subtitle, the following definitions shall apply:

23           (1) ADOPTION DATE.—The term “adoption  
 24           date” means the date on which the board of direc-

1       tors of the converting mutual insurer or converting  
2       stock insurer adopts the plan of conversion.

3           (2) CONVERTED MUTUAL INSURER.—The term  
4       “converted mutual insurer” means the national life  
5       insurer in mutual form into which a stock life in-  
6       surer has been converted in accordance with the pro-  
7       visions of section 1242.

8           (3) CONVERTED STOCK INSURER.—The term  
9       “converted stock insurer” means the national in-  
10      surer in stock form into which a mutual insurer has  
11      been converted in accordance with the provisions of  
12      section 1243.

13          (4) CONVERTING MUTUAL INSURER.—The term  
14      “converting mutual insurer” means the mutual in-  
15      surer that is converting under a plan of conversion  
16      under section 1243.

17          (5) CONVERTING STOCK INSURER.—The term  
18      “converting stock insurer” means the stock life in-  
19      surer that is converting under a plan of conversion  
20      under section 1242.

21          (6) MEMBERSHIP INTERESTS.—The term  
22      “membership interests”—

23            (A) means the interests of members and  
24            policyholders of the mutual insurer arising

1 under the charter and bylaws of the mutual in-  
2 surer or otherwise by applicable law;

3 (B) includes the right to vote for directors  
4 of the mutual insurer and the right to vote on  
5 any plan of merger or consolidation of the mu-  
6 tual insurer; and

7 (C) does not include rights in surplus, if  
8 any.

9 (7) MUTUAL INSURER.—The term “mutual in-  
10 surer” means the State insurer in mutual form or  
11 national insurer in mutual form that is converting to  
12 a national insurer in stock form pursuant to a plan  
13 of conversion adopted in accordance with section  
14 1243.

15 (8) PLAN OF CONVERSION OR PLAN.—The  
16 terms “plan of conversion” and “plan” mean a plan  
17 of conversion adopted by a stock life insurer or a  
18 mutual insurer in accordance with this subtitle.

19 (9) RIGHTS IN SURPLUS.—The term “rights in  
20 surplus”—

21 (A) means rights, if any, of members or  
22 policyholders of the mutual insurer to a return  
23 of that portion of the surplus that has not been  
24 apportioned or declared by the board of direc-  
25 tors for policyholder dividends;

1 (B) includes rights of members or policy-  
2 holders of the mutual insurer to a distribution  
3 of surplus in liquidation or conservation of the  
4 insurer under applicable law, or in a dissolution  
5 or winding up; and

6 (C) does not include any right expressly  
7 conferred solely by the terms of an insurance  
8 policy.

9 (10) STOCK LIFE INSURER.—The term “stock  
10 life insurer” means the State life insurer in stock  
11 form or national life insurer in stock form that is  
12 converting to a national life insurer in mutual form  
13 pursuant to a plan of conversion adopted in accord-  
14 ance with section 1242.

15 **SEC. 1242. CONVERSION OF STOCK LIFE INSURER TO NA-**  
16 **TIONAL LIFE INSURER IN MUTUAL FORM.**

17 (a) AUTHORITY TO CONVERT.—Notwithstanding any  
18 other provision of law, a stock life insurer may convert  
19 to a national insurer in mutual form in accordance with  
20 a plan of conversion approved by the Commissioner under  
21 this section that meets the requirements of this section,  
22 and by complying with the requirements of this section  
23 and rules issued by the Commissioner under this Act.

24 (b) PLAN OF CONVERSION.—

1           (1) IN GENERAL.—The plan of conversion re-  
2           quired by this section—

3                   (A) shall be adopted by the board of direc-  
4                   tors of the converting stock insurer; and

5                   (B) shall provide for the conversion of the  
6                   converting stock insurer into a national life in-  
7                   surer in mutual form.

8           (2) ISSUANCE OF STOCK AFTER ADOPTION  
9           DATE.—No additional shares of capital stock shall  
10           be issued after the adoption date, except that—

11                   (A) stock options to purchase capital stock  
12                   may continue to be issued under existing con-  
13                   tracts; and

14                   (B) outstanding options may continue to  
15                   be exercised until the effective date of the plan  
16                   of conversion.

17           (3) CONTENTS.—The plan of conversion shall  
18           provide for—

19                   (A) the purchase by the converting stock  
20                   insurer of all of its outstanding capital stock, at  
21                   a price either specified in the plan or to be de-  
22                   termined under a formula specified in the plan,  
23                   for cash or other consideration as set forth in  
24                   the plan; and

1 (B) the termination, upon terms specified  
2 in the plan, of any contractual obligation incon-  
3 sistent with the nature of a mutual insurer, in-  
4 cluding any obligation to issue stock options or  
5 issue capital stock upon exercise of options.

6 (c) APPROVAL OF PLAN BY COMMISSIONER.—The  
7 Commissioner shall approve the plan of conversion re-  
8 quired by this section, if the Commissioner finds, after a  
9 hearing, that—

10 (1) the plan is fair and equitable to the policy-  
11 holders, shareholders, and holders of options to ac-  
12 quire capital stock of the converting stock insurer;

13 (2) the plan does not violate the law; and

14 (3) the converted mutual insurer will, after the  
15 conversion, satisfy the requirements for the issuance  
16 of a license to write the lines of insurance for which  
17 it is licensed.

18 (d) VOTE ON APPROVAL OF PLAN.—

19 (1) STOCKHOLDERS.—The plan of conversion  
20 shall be submitted to the holders of record on the  
21 adoption date of the converting stock insurer's  
22 shares entitled to vote thereon and shall be subject  
23 to approval of the holders of a majority of such  
24 shares.

25 (2) POLICYHOLDERS.—

1 (A) SUBMISSION.—The plan of conversion  
2 shall be submitted to policyholders of the con-  
3 verting stock insurer—

4 (i) who are insured for at least  
5 \$1,000; and

6 (ii) whose policy of insurance is in  
7 force—

8 (I) for a period of at least 1 year  
9 before the adoption date;

10 (II) on the adoption date; and

11 (III) on the date of the meeting  
12 of policyholders called for the purpose  
13 of approving the plan of conversion.

14 (B) APPROVAL.—The plan of conversion  
15 shall be subject to the approval of a majority of  
16 the votes cast by the policyholders described in  
17 subparagraph (A).

18 (e) EFFECT OF CONVERSION ON CONVERTED MU-  
19 TUAL INSURERS.—

20 (1) IN GENERAL.—On the effective date of the  
21 plan of conversion, the stock insurer shall become a  
22 national life insurer in mutual form and share-  
23 holders eligible to receive consideration under the  
24 plan of conversion are entitled to receive the consid-  
25 eration specified in the plan in exchange for their

1 shares of capital stock of the converting stock in-  
2 surer.

3 (2) NO EFFECT ON EXISTING RIGHTS AND LI-  
4 ABILITIES.—The converted mutual insurer is a con-  
5 tinuation of the original stock life insurer, and the  
6 conversion shall not annul, modify, or change any of  
7 the original stock life insurer’s existing suits, rights,  
8 contracts, or liabilities, except as provided in the  
9 plan of conversion.

10 (3) RIGHTS AFTER CONVERSION.—After con-  
11 version, the converted mutual insurer shall—

12 (A) exercise all the rights and powers and  
13 perform all the duties conferred or imposed by  
14 law upon insurers writing the classes of insur-  
15 ance written by the converted mutual insurer;  
16 and

17 (B) retain the rights and contracts existing  
18 prior to conversion, subject to the effect of the  
19 plan.

20 (f) TIME LIMITS FOR PLAN ACTIONS.—

21 (1) IN GENERAL.—Notwithstanding any other  
22 provision of law, actions concerning any plan of con-  
23 version or proposed plan of conversion under this  
24 section or any acts taken or proposed to be taken  
25 under this section shall be commenced not later than

1 30 days after the date on which the plan of conver-  
2 sion is approved by the Commissioner under sub-  
3 section (c).

4 (2) PLAN WITHDRAWN.—If the plan of conver-  
5 sion is withdrawn, the actions described in para-  
6 graph (1) shall be commenced not later than 30  
7 days after the date on which the board of directors  
8 approves a resolution to withdraw the plan.

9 (g) EFFECT ON STATE LAW.—No State may, by stat-  
10 ute, regulation, order, interpretation, or otherwise, prevent  
11 or interfere with a conversion under this section or impede  
12 the activities of, take any action against, or apply any pro-  
13 vision of law or regulation to, any such stock life insurer  
14 because the stock life insurer plans to convert, or has con-  
15 verted, to a national life insurer in mutual form under this  
16 section.

17 (h) NO DELEGATION PERMITTED.—The Commis-  
18 sioner may not delegate to any insurance self-regulatory  
19 organization any authority under this section with respect  
20 to the conversion of a stock life insurer.

21 **SEC. 1243. CONVERSION OF MUTUAL INSURER TO NA-**  
22 **TIONAL INSURER IN STOCK FORM.**

23 (a) AUTHORITY TO CONVERT.—Notwithstanding any  
24 other provision of law, a mutual insurer may convert to  
25 a national insurer in stock form in accordance with a plan

1 of conversion approved by the Commissioner under this  
2 section that meets the requirements of this section, and  
3 by complying with the requirements of this section and  
4 the rules issued by the Commissioner under this Act.

5 (b) PLAN OF CONVERSION.—

6 (1) IN GENERAL.—The plan of conversion—

7 (A) shall be adopted by the board of direc-  
8 tors of the converting mutual insurer;

9 (B) shall provide for the conversion of the  
10 converting mutual insurer into a national in-  
11 surer in stock form; and

12 (C) may provide for effecting the conver-  
13 sion by merger of the mutual insurer with an-  
14 other company.

15 (2) CONTENTS.—The plan of conversion shall  
16 provide that—

17 (A) all membership interests and rights in  
18 surplus are extinguished;

19 (B) each eligible person will receive, with-  
20 out payment by the person, consideration that  
21 is allocated among the eligible persons using a  
22 fair and equitable formula; and

23 (C) eligible persons may receive 1 or more  
24 kinds of consideration, including—

25 (i) cash;

1 (ii) shares of capital stock of the con-  
2 verting mutual insurer;

3 (iii) shares of capital stock (or inter-  
4 ests in shares of capital stock) of a cor-  
5 poration that, after the conversion, directly  
6 or indirectly, controls the converted stock  
7 insurer;

8 (iv) premium credits;

9 (v) enhanced insurance benefits; or

10 (vi) in the case of a converting mutual  
11 insurer that is a life insurer, credits to in-  
12 surance policy account values, as set forth  
13 in the plan.

14 (c) APPROVAL OF PLAN BY COMMISSIONER.—The  
15 Commissioner shall approve the plan of conversion re-  
16 quired by this section, if the Commissioner finds, after a  
17 hearing, that—

18 (1) the plan is fair and equitable to the insurer  
19 and its policyholders;

20 (2) the plan does not violate the law; and

21 (3) the converted stock insurer will, after the  
22 conversion, satisfy the requirements for the issuance  
23 of a license to write the line or lines of insurance for  
24 which it is licensed.

1 (d) VOTE ON APPROVAL OF PLAN.—The plan of con-  
2 version shall be submitted to those persons who are eligible  
3 to vote on the plan and shall be subject to approval of  
4 a majority of the votes cast by such persons.

5 (e) EMPLOYEE STOCK PURCHASES; STOCK OP-  
6 TIONS.—Subject to regulations prescribed by the Commis-  
7 sioner, the converted insurer or a corporation that, after  
8 the conversion, directly or indirectly, controls the con-  
9 verted insurer, may establish stock option, incentive, and  
10 share ownership plans customary for publicly traded com-  
11 panies in the same and similar industries.

12 (f) EFFECT OF CONVERSION ON CONVERTED STOCK  
13 INSURERS.—

14 (1) IN GENERAL.—On the effective date of the  
15 plan of conversion—

16 (A) the mutual insurer shall become a na-  
17 tional insurer in stock form;

18 (B) all membership interests and rights in  
19 surplus shall be extinguished; and

20 (C) persons eligible to receive consideration  
21 under the plan of conversion shall be entitled to  
22 receive the consideration specified in the plan in  
23 exchange for membership interests and liquida-  
24 tion of rights in surplus.

1           (2) NO EFFECT ON EXISTING RIGHTS AND LI-  
2 ABILITIES.—The converted stock insurer is a con-  
3 tinuation of the original mutual insurer, and the  
4 conversion shall not annul, modify, or change any of  
5 the original mutual insurer’s existing suits, rights,  
6 contracts, or liabilities, except as provided in the  
7 plan of conversion.

8           (3) RIGHTS AFTER CONVERSION.—After con-  
9 version, the converted stock insurer shall—

10                   (A) exercise all the rights and powers and  
11                   perform all the duties conferred or imposed by  
12                   law upon insurers writing the classes of insur-  
13                   ance written by the converted stock insurer;  
14                   and

15                   (B) retain the rights and contracts existing  
16                   prior to conversion, subject to the effect of the  
17                   plan.

18           (g) LIMITATIONS ON ACQUIRING CONVERTED STOCK  
19 INSURER.—

20                   (1) IN GENERAL.—During the 5-year period be-  
21                   ginning on the effective date of the plan of conver-  
22                   sion, no person or group of persons acting in concert  
23                   shall directly or indirectly offer to acquire, or ac-  
24                   quire in any manner, the beneficial ownership of 5  
25                   percent or more of any class of voting securities of

1 a converted insurer or of a person that controls the  
2 converted insurer, without the prior consent of the  
3 Commissioner.

4 (2) EFFECT OF VIOLATION.—Upon the viola-  
5 tion of paragraph (1), or any action that, if con-  
6 summated, would constitute such a violation, all vot-  
7 ing securities of the converted insurer or of the per-  
8 son acquired by any person in excess of the max-  
9 imum amount permitted to be acquired by the per-  
10 son under paragraph (1) shall be deemed to be non-  
11 voting securities of the converted stock insurer or of  
12 that person.

13 (3) ENFORCEMENT.—

14 (A) COMMENCEMENT.—A violation or ac-  
15 tion described in paragraph (1) may be en-  
16 forced or enjoined by appropriate proceeding  
17 commenced by the converted stock insurer or  
18 the Commissioner in—

19 (i) the United States district court for  
20 the judicial district in which the main of-  
21 fice of the converted stock insurer is lo-  
22 cated;

23 (ii) the United States District Court  
24 for the District of Columbia; or

1 (iii) any other court having jurisdic-  
2 tion.

3 (B) ORDER.—The court may issue any  
4 order it finds necessary to cure the violation or  
5 to prevent the proposed action.

6 (h) TIME LIMITS FOR PLAN ACTIONS.—

7 (1) IN GENERAL.—Notwithstanding any other  
8 provision of law, actions concerning any plan of con-  
9 version or proposed plan of conversion under this  
10 section or any acts taken or proposed to be taken  
11 under this section shall be commenced not later than  
12 30 days after the date on which the plan of conver-  
13 sion is approved by the Commissioner under sub-  
14 section (c).

15 (2) PLAN WITHDRAWN.—If the plan of conver-  
16 sion is withdrawn, the actions shall be commenced  
17 not later than 30 days after the date on which the  
18 board of directors approves a resolution to withdraw  
19 the plan.

20 (i) EFFECT ON STATE LAW.—No State may, by stat-  
21 ute, regulation, order, interpretation, or otherwise, prevent  
22 or interfere with a conversion under this section or impede  
23 the activities of, take any action against, or apply any pro-  
24 vision of law or regulation to, any such mutual insurer  
25 because that mutual insurer plans to convert, or has con-

1 verted, to a national insurer in stock form under this sec-  
 2 tion.

3 (j) NO DELEGATION PERMITTED.—The Commis-  
 4 sioner may not delegate to any insurance self-regulatory  
 5 organization any authority under this section with respect  
 6 to the conversion of a mutual insurer.

## 7 **Subtitle F—State Taxation**

### 8 **SEC. 1251. STATE TAXATION OF NATIONAL INSURERS.**

9 (a) STATE TAXATION RULE.—Except as provided in  
 10 subsection (b) and section 1610, a national insurer doing  
 11 business in any State shall be subject to all applicable  
 12 State and local taxes, assessments, and charges including  
 13 insurance retaliatory taxes or other similar taxes, and  
 14 shall be entitled to all applicable tax credits, deductions,  
 15 and offsets provided under State law, as well as all policy-  
 16 holder surcharge provisions under State law, to the same  
 17 extent and in the same manner as an insurer licensed to  
 18 do business in such State and chartered in the State where  
 19 the national insurer is considered domiciled under sub-  
 20 section (c) or (d), except that, such national insurer shall  
 21 not be subject to—

22 (1) any additional taxes, assessments, and  
 23 charges imposed by such State (or local government)  
 24 by reason of the failure of the national insurer to be

1 licensed or otherwise authorized to conduct business  
2 or write or sell insurance policies, by such State; or

3 (2) special assessments and charges that fund  
4 services that the State does not provide with respect  
5 to the national insurer.

6 (b) EXCEPTION.—No State shall have power to im-  
7 pose an insurance retaliatory tax on any national insurer,  
8 unless—

9 (1) for any tax purpose for which State of  
10 domicile is relevant, every national insurer is treated  
11 by such State as domiciled in the State designated  
12 by each national insurer under subsection (c); and

13 (2) the insurance retaliatory tax is imposed by  
14 such State on every national insurer to the same ex-  
15 tent and in the same manner as it is imposed on  
16 every insurer chartered in the State where the na-  
17 tional insurer is considered domiciled under sub-  
18 section (c).

19 (c) DESIGNATION OF DOMICILE.—

20 (1) IN GENERAL.—A national insurer may des-  
21 ignate, as its State of domicile, by filing such des-  
22 ignation in writing with the Commissioner—

23 (A) the State in which the national insur-  
24 er's principal place of business in the United  
25 States is located; or

1           (B) in the case of an insurer that has con-  
2           verted from a State insurer to a national in-  
3           surer under this Act, the State in which such  
4           insurer was domiciled immediately before such  
5           conversion.

6           (2) NO DESIGNATION BY NATIONAL INSURER.—  
7           If a national insurer does not make a designation of  
8           a State of domicile under this subsection, the na-  
9           tional insurer shall be deemed to have designated as  
10          its State of domicile the State in which its principal  
11          place of business in the United States is located.

12          (d) CHANGE IN DOMICILE.—A national insurer may  
13          change its State of domicile, with the approval of the Com-  
14          missioner, to any other State meeting the requirements  
15          under subsection (c).

16          (e) STATUS OF NATIONAL INSURER.—For purposes  
17          of State taxation, a national insurer—

18               (1) shall not be considered a department, agen-  
19               cy, or instrumentality of the Federal Government;  
20               and

21               (2) except as provided in this section, a national  
22               insurer shall not be exempt from any State tax or  
23               subject to a lesser burden of any State tax, solely by  
24               reason of its status as a national insurer under this  
25               Act.

1 **SEC. 1252. STATE TAXATION OF NATIONAL AGENCIES.**

2 (a) STATE TAXATION RULE.—A national agency  
3 shall be subject to all taxes imposed under any applicable  
4 provision of State law, to the same extent and in the same  
5 manner as an agency chartered in the State in which the  
6 national agency is considered domiciled pursuant to sub-  
7 section (b).

8 (b) STATE OF DOMICILE.—For purposes of this sec-  
9 tion, the State of domicile of a national agency shall be  
10 deemed to be the State in which the principal place of  
11 business of the national agency in the United States is  
12 located.

13 (c) STATUS OF NATIONAL AGENCY.—For purposes  
14 of State taxation, a national agency shall not—

15 (1) be considered to be a department, agency,  
16 or instrumentality of the Federal Government; and

17 (2) except as provided in this section, be ex-  
18 empt from any State tax or subject to a lesser bur-  
19 den of any State tax, solely by reason of its status  
20 as a national agency under this Act.

21 **SEC. 1253. STATE TAXATION OF NON-ADMITTED AND SUR-**  
22 **PLUS LINES INSURANCE.**

23 (a) IN GENERAL.—No State, other than the State in  
24 which an insured maintains its principal place of business  
25 or, in the case of an individual, maintains a principal resi-

1 dence, may require any Premium Tax for Non-Admitted  
2 Insurance or Surplus Lines Insurance.

3 (b) DEFINITION.—For purposes of this section, the  
4 term “Premium Tax for Non-Admitted or Surplus Lines  
5 Insurance” means any tax, fee, assessment, or other  
6 charge imposed by a State on an insured, either directly  
7 or through a producer that is based upon any payment  
8 made as consideration for Non-Admitted Insurance or  
9 Surplus Lines Insurance, and any other compensation  
10 given in consideration for a contract of insurance.

11 **TITLE III—INSURANCE PRODUCERS AND OTHER INSURANCE**  
12 **SERVICING PERSONS**

14 **SEC. 1301. FEDERAL LICENSING OF INSURANCE PRODUCERS.**  
15

16 (a) COMMISSION AUTHORITY.—The Commissioner—

17 (1) shall have authority to issue Federal pro-  
18 ducer licenses; and

19 (2) shall, by regulation—

20 (A) define the line or lines of insurance for  
21 which a person may obtain a Federal producer  
22 license, which shall include surplus lines of in-  
23 surance or non-admitted insurance; and

24 (B) specify educational and examination  
25 requirements for persons seeking a Federal pro-

1           ducer license, other than national agencies that  
2           are subject to chartering criteria under section  
3           1201.

4           (b) NATIONAL AGENCIES.—The Commissioner shall  
5           issue a Federal producer license to a national agency upon  
6           the issuance of a charter certificate to such Agency pursu-  
7           ant to section 1201.

8           (c) AUTHORITY OF PERSON HOLDING A FEDERAL  
9           PRODUCER LICENSE.—A Federal producer license issued  
10          under this section authorizes the person to sell, solicit, or  
11          negotiate insurance in any State for any line or lines of  
12          insurance specified in such license, and exercise all such  
13          incidental powers, as shall be necessary to carry out such  
14          activities, including claims adjustments and settlement,  
15          risk management, employee benefits advice, retirement  
16          planning, and any other insurance-related consulting ac-  
17          tivities.

18          (d) EXAMINATIONS AND REPORTS.—In addition to  
19          the examination and reporting requirements applicable to  
20          national agencies pursuant to sections 1124 and 1125, the  
21          Commissioner may—

22                 (1) provide for the examination of federally li-  
23                 censed insurance producers that are not national  
24                 agencies only in response to a complaint or any evi-

1        dence that the federally licensed insurance producer  
2        has violated or is about to violate—

3                    (A) a law, rule, or regulation;

4                    (B) any condition imposed in writing by  
5        the Commissioner in connection with issuing a  
6        Federal producer license; or

7                    (C) any written agreement entered into  
8        with the Commissioner; and

9            (2) require federally licensed insurance pro-  
10        ducers that are not national agencies to make such  
11        reports, containing such information and in such  
12        form, as the Commissioner may prescribe by regula-  
13        tion, to the extent necessary to require compliance  
14        with this Act.

15        (e) INFORMATION PRACTICES.—The Commissioner  
16        may, by regulation, provide that there shall be no civil li-  
17        ability imposed on and no cause of action shall arise from  
18        a national insurer or national agency, an insurer-affiliated  
19        party, or a federally licensed insurance producer submit-  
20        ting any statement or information required under this Act  
21        or any regulation thereunder or requested in writing by  
22        the Commissioner relating to the conduct of a federally  
23        licensed insurance producer, provided that—

24                    (1) this protection may not apply to false state-  
25        ments made with actual malice; and

1           (2) such regulation shall not abrogate or modify  
2           any existing common law or statutory privileges or  
3           immunities.

4           (f) **AUTHORITY OF STATE LICENSED INSURANCE**  
5 **PRODUCER.**—An insurance producer licensed by a State  
6 may sell, solicit, or negotiate insurance in such State on  
7 behalf of a national insurer without a Federal producer  
8 license.

9 **SEC. 1302. PRODUCER DATABASE.**

10          (a) **IN GENERAL.**—The Commissioner shall adopt  
11 regulations for the development of an electronic database  
12 consisting of information relating to federally licensed in-  
13 surance producers and an electronic communication net-  
14 work that links the Commissioner with State insurance  
15 regulators and insurers for an electronic exchange of such  
16 information.

17          (b) **MAINTENANCE.**—The Commissioner, by rule or  
18 order, may delegate authority over the maintenance of  
19 each database described in subsection (a) to an insurance  
20 self-regulatory organization. In making any such rule or  
21 entering any such order, the Commissioner shall take into  
22 consideration the regulatory capabilities and procedures of  
23 the insurance self-regulatory organization, availability of  
24 staff, convenience of location, avoidance of unnecessary  
25 regulatory duplication, and any other factors the Commis-

1 sioner may consider appropriate to the protection of pol-  
 2 icyholders, the efficiency of the producer licensing system,  
 3 and the cooperation and coordination among regulatory  
 4 organizations.

5 **SEC. 1303. SUPERVISION AND OVERSIGHT OF FEDERALLY**  
 6 **LICENSED INSURANCE PRODUCERS.**

7 (a) PURPOSE.—The purpose of this section is to es-  
 8 tablish when a national insurer, national agency, or other  
 9 federally licensed insurance producer has a duty to super-  
 10 vise a federally licensed insurance producer who is an indi-  
 11 vidual. The duty to supervise as required in this section  
 12 shall be in addition to the authority of the Commissioner  
 13 to exercise its powers under section 1102(b).

14 (b) DUTY TO SUPERVISE.—

15 (1) NATIONAL INSURERS.—A national insurer  
 16 shall have a duty to supervise the sales and mar-  
 17 keting practices of a federally licensed insurance  
 18 producer who is an individual with respect to the  
 19 sale, solicitation, or negotiation of insurance policies  
 20 of such national insurer, if—

21 (A) such producer is an—

22 (i) employee of the national insurer;

23 or

24 (ii) agent of the national insurer; and

1           (B) the entire or principal business activity  
2           of such producer is devoted to the sale, sollicita-  
3           tion, or negotiation of insurance policies for  
4           such insurer, the supervision of the agents for  
5           such insurer, or both.

6           (2) NATIONAL AGENCIES AND OTHER FEDER-  
7           ALLY LICENSED PRODUCERS.—A national agency or  
8           other federally licensed insurance producer has a  
9           duty to supervise the sales and marketing practices  
10          of a federally licensed insurance producer who is an  
11          individual with respect to the sale, solicitation, or  
12          negotiation of insurance policies, if such producer—

13                 (A) is an employee of such agency or other  
14                 producer, and the sale, solicitation, and negotia-  
15                 tion of insurance is within the scope of employ-  
16                 ment of the producer; or

17                 (B) is an agent of such agency or other  
18                 producer, and the sale, solicitation, and negotia-  
19                 tion of insurance is pursuant to the terms of an  
20                 agreement between the agent and such national  
21                 agency or other producer.

22          (3) STANDARDS FOR SUPERVISION.—The Com-  
23          missioner shall, by regulation, establish standards  
24          for the duties established in paragraphs (1) and (2).  
25          Such standards shall not conflict with the rules

1 adopted by any self-regulatory organization approved  
2 by the Securities and Exchange Commission pursu-  
3 ant to its authority under section 19(b)(1) of the Se-  
4 curities Exchange Act of 1934 (15 U.S.C. 78s(b)(1))  
5 for broker-dealer supervision of registered represent-  
6 atives.

7 (4) EXEMPTION.—The Commissioner may, by  
8 regulation, exempt any class of persons from the du-  
9 ties established under paragraphs (1) and (2), if the  
10 Commissioner determines that, given the nature of  
11 the business relationship with the federally licensed  
12 insurance producer who is an individual, it would be  
13 unreasonable or inappropriate to require the class  
14 member to supervise such producer.

15 (5) NO DUTY.—A national insurer, national  
16 agency, or other federally licensed insurance pro-  
17 ducer shall not have a duty to supervise the sales  
18 and marketing practices of persons not described in  
19 paragraph (1) or (2).

20 (6) OVERSIGHT OF INDIVIDUAL INDEPENDENT  
21 FEDERALLY LICENSED INSURANCE PRODUCERS.—

22 (A) IN GENERAL.—The sales and mar-  
23 keting practices of a federally licensed insur-  
24 ance producer who is an individual with respect  
25 to the sale, solicitation, or negotiation of insur-

1           ance policies shall be subject to the direct over-  
2           sight of the Commissioner, if such producer is  
3           not a person subject to supervision under the  
4           terms of paragraph (1) or (2).

5                   (B) STANDARDS AND PROCEDURES.—The  
6           Commissioner shall, by regulation, establish  
7           standards and procedures for the direct over-  
8           sight of the sales and marketing practices of  
9           federally licensed insurance producers described  
10          in subparagraph (A).

11          (c) WHOLESALE LIFE INSURANCE BROKERAGE  
12   AGENCIES.—This section shall not apply to any wholesale  
13   life insurance brokerage agency, as that term is defined  
14   by the Commissioner.

15   **SEC. 1304. RELATIONSHIP TO STATE LAW.**

16          (a) NO STATE RESTRICTIONS.—No State may, by  
17   statute, regulation, order, interpretation, or otherwise,  
18   prevent or restrict a national insurer from engaging in the  
19   acts described in subsection (b) for any person, or from  
20   engaging the services of a person who engages in such acts  
21   for the national insurer, nor shall any State require that  
22   a person be licensed by reason of engaging in such acts  
23   for a national insurer.

1 (b) ACTS PROTECTED FROM STATE RESTRIC-  
2 TIONS.—The acts referred to in subsection (a) are the fol-  
3 lowing:

4 (1) Investigating, evaluating, ascertaining, or  
5 determining the amount of or negotiating, settling,  
6 or adjusting or otherwise participating in the dis-  
7 posal of claims, losses, or damages arising under in-  
8 surance policies written by a national insurer,  
9 whether the person performing the act is called an  
10 adjuster, independent adjuster, or another name.

11 (2) Soliciting, negotiating, or placing reinsur-  
12 ance cessions or retrocessions on behalf of a ceding  
13 national insurer without the authority or power to  
14 bind reinsurance on behalf of such national insurer,  
15 whether the person performing the act is called a re-  
16 insurance intermediary or another name.

17 (3) Having authority to bind or manage all or  
18 part of the assumed reinsurance business of a na-  
19 tional insurer that is a reinsurer (including the man-  
20 agement of a separate division, department, or un-  
21 derwriting office) and acting as an agent for such  
22 reinsurer, whether the person performing the act is  
23 called a reinsurance intermediary-manager, man-  
24 ager, or another name.

1           (4) Directly or indirectly underwriting, col-  
 2           lecting charges or premiums, or adjusting or settling  
 3           claims, in connection with policies of insurance writ-  
 4           ten by a national insurer.

5           (c) ACTIVITIES OF FEDERALLY LICENSED INSUR-  
 6 ANCE PRODUCERS.—No State may—

7           (1) by statute, regulation, order, interpretation,  
 8           or otherwise, prevent or restrict a federally licensed  
 9           insurance producer from engaging in any activity  
 10          within the scope of authority granted under section  
 11          1301(c); or

12          (2) require such producer to be licensed by rea-  
 13          son of engaging in such acts on behalf of a national  
 14          insurer, State insurer, or a United States branch of  
 15          a non-United States insurer.

16          (d) ACTIVITIES OF STATE PRODUCERS.—No State  
 17          may, by statute, regulation, order, interpretation, or other-  
 18          wise, prevent or restrict an insurance producer licensed  
 19          by such State from selling, soliciting, or negotiating insur-  
 20          ance in such State on behalf of a national insurer.

21 **SEC. 1305. LICENSING COMMENCEMENT DATE.**

22          (a) FEDERALLY LICENSED INSURANCE PRO-  
 23          DUCERS.—The Commissioner shall not license a Federal  
 24          insurance producer until after the following regulations  
 25          have been published in final form or interim final form:

1           (1) The fee and assessment regulations required  
2           by section 1122.

3           (2) The reporting regulations required by sec-  
4           tion 1124.

5           (3) The market conduct regulations required by  
6           section 1216.

7           (4) The producer licensing regulations required  
8           by section 1301.

9           (5) Such other regulations that the Commis-  
10          sioner determines, at the discretion of the Commis-  
11          sioner, to be necessary prior to the initial licensing  
12          of Federal insurance producers.

13          (b) TIMING AND NOTICE.—

14           (1) TIMING.—The regulations described in sub-  
15          section (a) shall be published in final form, not later  
16          than 2 years after the initial appointment and con-  
17          firmation of the Commissioner.

18           (2) NOTICE.—At such time as the regulations  
19          described in subsection (a) have been issued in final  
20          form, the Commissioner shall publish a notice in the  
21          Federal Register announcing that the Office is pre-  
22          pared to act on licensing applications under this  
23          title.

# 1 **TITLE IV—HOLDING COMPANIES**

## 2 **SEC. 1401. DEFINITIONS.**

3 In this title, the following definitions shall apply:

4 (1) EXTRAORDINARY DIVIDEND OR DISTRIBUTION.—Except as may otherwise be specified by the  
5 Commissioner by regulation, the term “extraor-  
6 dinary dividend or distribution” means a dividend or  
7 distribution of cash or other property on its out-  
8 standing shares (excluding pro rata distributions of  
9 any class of the national insurer’s own shares),  
10 whose fair market value, together with that of other  
11 dividends or distributions made within the prior 12  
12 months, exceeds the greater of—

14 (A) 10 percent of the policyholder surplus  
15 of the national insurer, as of the prior Decem-  
16 ber 31; or

17 (B) the net income of the national insurer  
18 for the 12-month period ending on the prior  
19 December 31.

20 (2) INSURANCE HOLDING COMPANY SYSTEM.—  
21 The term “insurance holding company system”  
22 means 2 or more affiliated persons, 1 or more of  
23 which is a national insurer.

1 **SEC. 1402. REGISTRATION.**

2 (a) REGISTRATION.—Each national insurer that is a  
3 member of an insurance holding company system shall  
4 register with the Commissioner.

5 (b) REGISTRATION STATEMENT.—The Commissioner  
6 shall, by regulation, prescribe—

7 (1) the form and content of the registration  
8 statement to be filed pursuant to subsection (a); and

9 (2) the time and place where the registration  
10 statement is required to be filed with the Commis-  
11 sioner.

12 (c) TERMINATION OF REGISTRATION.—The Commis-  
13 sioner shall terminate the registration of any national in-  
14 surer which demonstrates that it no longer is a member  
15 of an insurance holding company system.

16 (d) CONSOLIDATED REGISTRATION STATEMENT.—  
17 The Commissioner may require or allow 2 or more affili-  
18 ated national insurers to file a consolidated registration  
19 statement.

20 (e) EXEMPTIONS.—The provisions of this section  
21 shall not apply to any national insurer, information, or  
22 transaction if, and to the extent that, the Commissioner  
23 by regulation or order, exempts such insurer, information,  
24 or transaction from the provisions of this section.

25 (f) DISCLAIMER.—Any person may file with the Com-  
26 missioner a disclaimer of affiliation with any national in-

1 surer or a disclaimer may be filed by the national insurer  
 2 or any member of an insurance holding company system.  
 3 The disclaimer shall fully disclose all material relation-  
 4 ships and bases for affiliation between the person and the  
 5 national insurer as well as the basis for disclaiming the  
 6 affiliation. After a disclaimer has been filed, the national  
 7 insurer shall be relieved of any duty to register or report  
 8 under this section which may arise out of the national in-  
 9 surer's relationship with the person unless and until the  
 10 Commissioner disallows the disclaimer. The Commissioner  
 11 shall disallow a disclaimer only after furnishing all parties  
 12 in interest with notice and opportunity to be heard and  
 13 after making specific findings of fact to support the dis-  
 14 allowance.

15 **SEC. 1403. STANDARDS AND MANAGEMENT OF A NATIONAL**  
 16 **INSURER WITHIN AN INSURANCE HOLDING**  
 17 **COMPANY SYSTEM.**

18 (a) TRANSACTIONS WITHIN AN INSURANCE HOLDING  
 19 COMPANY SYSTEM.—

20 (1) STANDARDS.—Transactions within an in-  
 21 surance holding company system to which a national  
 22 insurer subject to registration under section 1402 is  
 23 a party shall be subject to the following standards:

24 (A) The terms shall be fair, reasonable,  
 25 and at least as favorable to the national insurer

1 as those that would be offered to, or would  
2 apply to, a nonaffiliate.

3 (B) Charges or fees for services performed  
4 shall be reasonable and at least as favorable to  
5 the national insurer as those that would be of-  
6 fered to, or would apply to, a nonaffiliate.

7 (C) Expenses incurred and payment re-  
8 ceived shall be allocated to the national insurer  
9 in conformity with customary insurance ac-  
10 counting practices consistently applied.

11 (D) The books, accounts, and records of  
12 each party to all such transactions shall be so  
13 maintained as to clearly and accurately disclose  
14 the nature and details of the transactions in-  
15 cluding such accounting information as is nec-  
16 essary to support the reasonableness of the  
17 charges or fees to the respective parties.

18 (E) The national insurer's surplus fol-  
19 lowing any dividends or distributions to share-  
20 holders shall be reasonable in relation to the  
21 outstanding liabilities of the national insurer  
22 and adequate to meet its financial needs.

23 (2) APPROVAL OF CERTAIN TRANSACTIONS.—

24 The Commissioner shall, by regulation, specify cer-  
25 tain transactions involving a national insurer and

1 any person in its insurance holding company system  
2 that are not permissible for a national insurer unless  
3 the national insurer has notified the Commissioner  
4 in writing of its intention to enter into the trans-  
5 action and the Commissioner either has approved or  
6 not disapproved the transaction within a specified  
7 time period.

8 (3) COMPLIANCE WITH STANDARDS.—The  
9 Commissioner, in reviewing any transaction for  
10 which notice is required pursuant to paragraph (2),  
11 shall consider whether the transaction complies with  
12 the standards set forth in paragraph (1) and wheth-  
13 er the transaction may adversely affect the interests  
14 of policyholders.

15 (b) EXTRAORDINARY DIVIDENDS.—

16 (1) IN GENERAL.—No national insurer that is  
17 a member of an insurance holding company system  
18 shall pay any extraordinary dividend or distribution  
19 to its shareholders until 30 days after the Commis-  
20 sioner has received notice of the declaration in a  
21 form prescribed by the Commissioner.

22 (2) CONDITIONAL DIVIDEND OR DISTRIBU-  
23 TION.—A national insurer that is a member of an  
24 insurance holding company system may declare an  
25 extraordinary dividend or distribution which is con-

1       ditional upon the Commissioner's approval, and the  
2       declaration shall confer no rights upon shareholders  
3       unless—

4               (A) the Commissioner has approved the  
5       payment of the dividend or distribution; or

6               (B) the Commissioner has not disapproved  
7       payment within the 30-day period referred to in  
8       paragraph (1).

9       **SEC. 1404. RELATIONSHIP TO STATE LAW.**

10       (a) **PERMITTED AFFILIATION.**—A national insurer  
11       that is part of an insurance holding company system may  
12       be affiliated with an insurer or agency that is not char-  
13       tered or licensed under this Act.

14       (b) **REINSURANCE POOLING AGREEMENTS.**—The  
15       Commissioner shall have exclusive jurisdiction over rein-  
16       surance pooling agreements to which 1 or more national  
17       property/casualty insurers and affiliated State property/  
18       casualty insurers, or agency are parties under which poli-  
19       cies of insurance sold, solicited, negotiated, and under-  
20       written by and reinsurance assumed by affiliated national  
21       property/casualty insurers and State property/casualty in-  
22       surers are pooled.

23       **SEC. 1405. CONFLICT WITH OTHER FEDERAL LAWS.**

24       This title shall be interpreted and applied so as not  
25       to conflict with or supersede the provisions of any other

1 Federal law or regulation governing the regulation of hold-  
 2 ing companies, including financial holding companies, as  
 3 defined in section 2 of the Bank Holding Company Act  
 4 of 1956 (12 U.S.C. 1841), and saving and loan holding  
 5 companies, as defined in section 10 of the Homeowners'  
 6 Loan Act (12 U.S.C. 1467a).

7 **SEC. 1406. NO DELEGATION PERMITTED.**

8 The Commissioner may not delegate to any insurance  
 9 self-regulatory organization any authority conferred under  
 10 this title with respect to regulation of a national insurer  
 11 that is a member of an insurance holding company system.

12 **TITLE V—RECEIVERSHIP**

13 **SEC. 1501. APPOINTMENT OF OFFICE AS RECEIVER.**

14 (a) IN GENERAL.—Notwithstanding any other provi-  
 15 sion of Federal or State law, if any of the grounds under  
 16 subsection (c) exist, at the discretion of the Commissioner,  
 17 the Commissioner may establish a receivership for a na-  
 18 tional insurer for the purpose of rehabilitation or liquida-  
 19 tion, as appropriate.

20 (b) APPOINTMENT.—In any receivership established  
 21 under this title, the Commissioner shall appoint the Office  
 22 as receiver.

23 (c) GROUNDS FOR APPOINTMENT.—The grounds for  
 24 establishing a receivership for the purpose of rehabili-  
 25 tating or liquidating a national insurer are as follows:

1           (1) INSOLVENCY.—The national insurer is in-  
2 solvent.

3           (2) SUBSTANTIAL DISSIPATION.—The national  
4 insurer has substantial dissipation of assets or earn-  
5 ings due to—

6                   (A) any violation of any provision of Fed-  
7 eral or State law; or

8                   (B) any hazardous practice.

9           (3) HAZARDOUS CONDITION.—The national in-  
10 surer is in such condition that the further trans-  
11 action of business would be hazardous, financially or  
12 otherwise, to policyholders, creditors, or the public.

13           (4) CEASE-AND-DESIST ORDERS.—The national  
14 insurer has willfully violated a cease-and-desist order  
15 that has become final.

16           (5) CONCEALMENT.—The national insurer has  
17 concealed the books, papers, records, or assets of the  
18 national insurer, or has refused to submit the books,  
19 papers, records, or affairs of the national insurer,  
20 for inspection to any examiner or to any lawful  
21 agent of the Commissioner.

22           (6) INABILITY TO MEET OBLIGATIONS.—The  
23 national insurer is likely to be unable to pay its obli-  
24 gations or meet the demands of its creditors in the  
25 normal course of business.

1           (7) VIOLATIONS OF LAW.—The national insurer  
2           has willfully and continuously violated any law or  
3           regulation, or committed any hazardous practice or  
4           condition, that is likely to—

5                   (A) cause insolvency or substantial dissipa-  
6                   tion of assets or earnings; or

7                   (B) weaken the condition of the national  
8                   insurer.

9           (8) CONSENT.—The national insurer, by resolu-  
10           tion of its board of directors or its shareholders or  
11           members, consents to the appointment.

12           (9) MONEY LAUNDERING.—The Attorney Gen-  
13           eral notifies the Commissioner in writing that the  
14           national insurer has been found guilty of a criminal  
15           offense under section 1956 or 1957 of title 18,  
16           United States Code, or section 5322 or 5324 of title  
17           31, United States Code.

18           (d) DIRECTORS NOT LIABLE.—The members of the  
19           board of directors of a national insurer shall not be liable  
20           to the shareholders, members, policyholders, or creditors  
21           of the insurer for acquiescing in, or consenting in good  
22           faith to, the appointment of the Office as a receiver.

23           (e) OFFICE NOT SUBJECT TO ANY OTHER FEDERAL  
24           AGENCY.—When acting as receiver, the Office shall not  
25           be subject to the direction or supervision of any other

1 agency of the United States or any State in the exercise  
2 of the rights, powers, and privileges of the Office.

3 **SEC. 1502. EFFECT OF RECEIVERSHIP PROCEEDING.**

4 Any order issued placing a national insurer into a re-  
5 ceivership under this title for purposes of liquidation shall  
6 be deemed to be and have the effect of an order of liquida-  
7 tion by a court of competent jurisdiction with a finding  
8 of insolvency against the insurer for purposes of any provi-  
9 sion of State law relating to guaranty associations.

10 **SEC. 1503. POWERS AND DUTIES.**

11 (a) IN GENERAL.—The Office, as receiver, shall have  
12 all of the powers of the directors, officers, and managers  
13 of the national insurer, whose authority shall be sus-  
14 pended, except as they are redelegated by the receiver.

15 (b) SPECIFIC POWERS.—In addition to those powers  
16 otherwise provided by this title, the Office, as receiver,  
17 shall have the power to—

18 (1) use, sell, or lease property of the insurer;

19 (2) after notice and a hearing, borrow money  
20 on the security of the national insurer's assets, bor-  
21 row money without security, and execute and deliver  
22 all documents necessary to such transaction for the  
23 purpose of facilitating the receiver;

24 (3) collect all debts and monies due and claims  
25 belonging to the national insurer, wherever located;

1           (4) institute and pursue legal actions and to  
2 continue any pending action, in any jurisdiction;

3           (5) suspend, limit, or permit insurance policy  
4 withdrawals in connection with insurance policies;

5           (6) do other acts as are necessary or expedient  
6 to collect, marshal, or protect the assets or property,  
7 including the power to sell, compound, compromise,  
8 or assign debts for purposes of collection upon such  
9 terms and conditions as the receiver considers best  
10 and that are consistent with this title;

11           (7) enter into contracts necessary to carry out  
12 the order of rehabilitation or liquidation;

13           (8) hold hearings, subpoena witnesses to compel  
14 their attendance, administer oaths, examine a person  
15 under oath, and compel a person to subscribe to the  
16 person's testimony after it has been correctly re-  
17 duced to writing and, in connection with these pow-  
18 ers, require the production of books, papers, records,  
19 or other documents that the receiver considers rel-  
20 evant to the inquiry; and

21           (9) exercise all powers held or conferred upon  
22 receivers by the laws of the United States that are  
23 not inconsistent with the provisions of this title.

1 **SEC. 1504. RULEMAKING.**

2 (a) IN GENERAL.—The Commissioner shall establish,  
3 by regulation, standards and procedures for receivership  
4 proceedings commenced under this title, including provi-  
5 sions regarding automatic stays and other stays of pro-  
6 ceedings, procedures, and priorities for the allowance or  
7 disallowance of claims, standards for the treatment of re-  
8 insurance, and such other matters as the Commissioner  
9 determines appropriate.

10 (b) MODEL.—Except as otherwise provided in this  
11 title, the regulations issued by the Commissioner under  
12 subsection (a) shall be substantially similar to the cor-  
13 responding provisions of the Uniform Receivership Law  
14 adopted by the Interstate Insurance Receivership Compact  
15 Commission in September 1998.

16 (c) RULES REGARDING COORDINATION WITH STATE  
17 GUARANTY ASSOCIATIONS.—In order to facilitate insol-  
18 vency protection of consumers pursuant to title VI, the  
19 regulations issued by the Commissioner under subsection  
20 (a) shall contain provisions that are substantially similar  
21 to sections 8I, 8J, 8K, and 14C of the Life and Health  
22 Insurance Guaranty Association Model Act, as promul-  
23 gated by the NAIC, and in effect on May 24, 2007, and  
24 provisions substantially similar to sections 405 and 612  
25 of the Insurer Receivership Model Act, promulgated by the  
26 NAIC in December 2005.

1 **SEC. 1505. JUDICIAL REVIEW.**

2 (a) NATIONAL INSURERS.—

3 (1) IN GENERAL.—Whenever the Office is ap-  
4 pointed as a receiver for a national insurer, the na-  
5 tional insurer may, within 30 days of such appoint-  
6 ment, bring an action in the United States District  
7 Court for the judicial district in which the principal  
8 place of business of such insurer is located, or in the  
9 United States District Court for the District of Co-  
10 lumbia, for an order requiring the Office to remove  
11 itself as receiver.

12 (2) REVIEW.—Upon the filing of an action  
13 under paragraph (1), the court shall, upon the mer-  
14 its dismiss such action or direct the Office to remove  
15 itself as such receiver.

16 (b) CLAIMANTS.—If the Office, acting as a receiver,  
17 disallows a claim against the receivership, a claimant may,  
18 within 60 days of the notice of disallowance, bring an ac-  
19 tion in the United States District Court for the judicial  
20 district in which the principal place of business of the na-  
21 tional insurer is located, or in the United States District  
22 Court for the District of Columbia, to challenge the dis-  
23 allowance.

1                   **TITLE VI—INSOLVENCY**  
2                   **PROTECTION**

3 **SEC. 1601. PARTICIPATION IN GUARANTY ASSOCIATIONS.**

4           (a) PARTICIPATION IN STATE GUARANTY ASSOCIA-  
5 TIONS.—

6                   (1) NATIONAL INSURERS.—A national insurer  
7 shall become and continue as a member of a quali-  
8 fied association, as provided in section 1602, for  
9 each line of insurance covered in each State in which  
10 the national insurer is doing business.

11                   (2) ASSESSMENTS.—Qualified associations shall  
12 be authorized to levy assessments on national insur-  
13 ers. National insurers shall be obligated to pay such  
14 assessments, to the extent that they are levied on  
15 the same terms that State insurers are obligated to  
16 pay assessments to the association or fund under ap-  
17 plicable State law.

18           (b) PARTICIPATION IN NATIONAL INSURANCE GUAR-  
19 ANTY CORPORATION.—A national insurer or a State in-  
20 surer that offers a line of insurance in a State that does  
21 not have a qualified association for such line of insurance  
22 shall become and continue to be a member of the Corpora-  
23 tion, if such line of insurance is the subject of coverage  
24 by the Corporation.

1 **SEC. 1602. QUALIFIED AND NONQUALIFIED ASSOCIATIONS.**

2 (a) **QUALIFIED ASSOCIATION.**—In this title, the term  
3 “qualified association” means a State insurance guaranty  
4 association or State insurance guaranty fund that—

5 (1) admits as members both State and national  
6 insurers;

7 (2) in the event that a member is placed into  
8 receivership, provides benefits or coverage to the pol-  
9 icyholders of such member that are not less than the  
10 benefits or coverage described in section 1604 (for  
11 life and health insurance guaranty associations or  
12 funds) or section 1605 (for property and casualty  
13 guaranty funds); and

14 (3) has a board of directors that is—

15 (A) representative of insurers on a basis  
16 that does not unfairly discriminate against na-  
17 tional insurers; and

18 (B) fairly representative of insurers of dif-  
19 ferent sizes and lines of insurance written.

20 (b) **DETERMINATION, ELECTION, AND RECERTIFI-**  
21 **CATION.**—

22 (1) **DETERMINATION.**—Before the third anni-  
23 versary of the date of enactment of this Act (re-  
24 ferred to in this section as the “pre-publication pe-  
25 riod”), the Commissioner shall—

1 (A) review all existing State insurance  
2 guaranty associations and State insurance  
3 guaranty funds;

4 (B) publish a list of those associations and  
5 funds that the Commissioner has determined to  
6 be qualified associations in accordance with the  
7 requirements of subsection (a); and

8 (C) give the reasons why any State insur-  
9 ance association or State insurance guaranty  
10 fund is not determined to be a qualified associa-  
11 tion, in accordance with the requirements of  
12 subsection (a).

13 (2) PETITION AND ELECTION.—After the pre-  
14 publication period, any association or fund—

15 (A) that is not identified on the list pub-  
16 lished pursuant to paragraph (1) may petition  
17 the Commissioner for a determination that the  
18 association or fund is a qualified association,  
19 and the Commissioner shall make such a deter-  
20 mination if the association or fund establishes  
21 to the satisfaction of the Commissioner that the  
22 requirements of subsection (a) have been met;  
23 and

24 (B) that is named on the list published  
25 pursuant to paragraph (1) shall have an addi-

1           tional 1-year period of time following the pre-  
2           publication period (referred to in this section as  
3           the “post-publication period”) in which to no-  
4           tify the Commissioner of the decision of the as-  
5           sociation or fund to be a nonqualified associa-  
6           tion, as defined in subsection (d).

7           (3) PREEMPTION.—Any association or fund  
8           that elects to be a nonqualified association shall be  
9           subject to Federal preemption according to sub-  
10          sections (e) and (f).

11          (4) RECONSIDERATION.—

12           (A) LETTER TO COMMISSIONER.—A State  
13           insurance guaranty association or State insur-  
14           ance guaranty fund may seek qualification as a  
15           qualified association by letter to the Commis-  
16           sioner, if the Commissioner—

17           (i) determines that a State insurance  
18           guaranty association or State insurance  
19           guaranty fund does not meet the require-  
20           ments of subsection (a), after the reasons  
21           for such denial have been addressed; or

22           (ii) revokes the status of a State in-  
23           surance guaranty association or State in-  
24           surance guaranty fund as a qualified asso-  
25           ciation pursuant to subsection (c), after

1           the reasons for such revocation have been  
2           addressed.

3           (B) OTHER ELECTIONS.—An association  
4           or fund may seek qualification as a qualified as-  
5           sociation by letter to the Commissioner after it  
6           meets the terms of the definition of a qualified  
7           association, as set forth in subsection (a), in  
8           any case in which a State insurance guaranty  
9           association or State insurance guaranty fund—

10                   (i) elects to be a nonqualified associa-  
11                   tion pursuant to paragraph (2)(B); or

12                   (ii) refuses to assume responsibilities  
13                   of a qualified association pursuant to sub-  
14                   section (f).

15           (c) REVOCATION.—The Commissioner shall revoke a  
16           determination that an association or fund is a qualified  
17           association, if, at any time, the Commissioner determines  
18           that the association or fund fails to satisfy the terms of  
19           the definition of a qualified association, as set forth in  
20           subsection (a). In such event, the Commissioner shall pro-  
21           vide a written notice of the revocation to the affected asso-  
22           ciation or fund, and the relevant State insurance regu-  
23           lator, and the association or fund or the State insurance  
24           regulator may seek a review of the revocation under the  
25           terms of section 1706.

1 (d) NONQUALIFIED ASSOCIATION.—For purposes of  
2 this title, any State insurance guaranty association or  
3 State insurance guaranty fund that is not a qualified asso-  
4 ciation shall be a “nonqualified association”.

5 (e) PREEMPTION.—

6 (1) CONSERVATION, REHABILITATION, OR LIQ-  
7 UIDATION.—Except as provided in paragraph (2)  
8 and in subsection (f), a nonqualified association may  
9 not levy an assessment upon a national insurer or  
10 State insurer to pay claims for a member insurer  
11 that is subject to an order of conservation, rehabili-  
12 tation, or liquidation.

13 (2) EXCEPTION.—In the event that a conserva-  
14 tion, rehabilitation, or liquidation of a national in-  
15 surer or State insurer referred to in paragraph (1)  
16 commences at a time when a State insurance guar-  
17 anty association or State insurance guaranty fund is  
18 a qualified association, but such association or fund  
19 subsequently becomes a nonqualified association,  
20 such association or fund shall be entitled to levy as-  
21 sessments in respect of such pending conservation,  
22 rehabilitation, or liquidation on all companies doing  
23 business in the State where the association or fund  
24 resides as if the association or fund remained a  
25 qualified association, unless the Commissioner finds

1 that such association or fund has failed to provide  
2 protection to consumers in accordance with State  
3 law or is unfairly discriminating in coverage or as-  
4 sements between national insurers and State in-  
5 surers (in which case the Commissioner may, by  
6 order, transfer all coverage responsibilities and as-  
7 sement powers of the association or fund to the  
8 Corporation).

9 (3) CORPORATION AUTHORITY.—The Corpora-  
10 tion may contract with a nonqualified association de-  
11 scribed in paragraph (2) for the purpose of assum-  
12 ing the responsibilities of such nonqualified associa-  
13 tion. The Corporation also may contract with a  
14 State insurance guaranty association or State insur-  
15 ance guaranty fund that has been determined to be  
16 a qualified association pursuant to subsection (b)(4)  
17 for the purpose of permitting such association or  
18 fund to assume the responsibilities of the Corpora-  
19 tion in a State where the association or fund resides  
20 in respect to a conservation, rehabilitation, or liq-  
21 uidation that commenced at a time when such asso-  
22 ciation or fund was a nonqualified association.

23 (f) TEMPORARY PERIOD.—

24 (1) IN GENERAL.—Except as provided in para-  
25 graph (2), in the event of a conservation, rehabilita-

1 tion, or liquidation of a State insurer or national in-  
2 surer during the temporary period, a State insur-  
3 ance guaranty association or State insurance guar-  
4 anty fund, in addition to its existing powers under  
5 State law, may—

6 (A) assess national insurers in an insol-  
7 vency of a State insurer; and

8 (B) assess State insurers and national in-  
9 surers in an insolvency of a national insurer.

10 (2) EXCEPTION.—Assessments may not be  
11 made under paragraph (1) if, not later than 6  
12 months after the date of enactment of this Act or  
13 on the date of levying any such assessment, which-  
14 ever occurs first, the State association or fund pro-  
15 vides notice to the Commissioner that it does not in-  
16 tend to levy such assessments or provide coverage or  
17 benefits to persons holding insurance policies issued  
18 by national insurers. If a State association or fund  
19 provides such notice and does not withdraw the no-  
20 tice during the temporary period, the Corporation  
21 shall provide coverage or benefits in respect to any  
22 conservation, rehabilitation, or liquidation that  
23 would have otherwise been the responsibility of the  
24 State association or fund during the temporary pe-  
25 riod.

1           (3) DEFINITION.—In this subsection, the term  
2           “temporary period” means the 4-year period begin-  
3           ning on the date of enactment of this Act.

4 **SEC. 1603. ESTABLISHMENT OF THE NATIONAL INSURANCE**  
5 **GUARANTY CORPORATION.**

6           (a) ESTABLISHMENT OF THE CORPORATION.—

7           (1) IN GENERAL.—In the event that the list  
8           published under section 1602(b)(1) indicates that in  
9           any State, the principal life and health or property  
10          and casualty guaranty association or fund (or both)  
11          in such State has not been determined to be a quali-  
12          fied association, and if the Commissioner has not  
13          granted any petition to reconsider any such deter-  
14          mination before the end of the 4-year period begin-  
15          ning on the date of enactment of this Act, the Com-  
16          missioner shall establish the National Insurance  
17          Guaranty Corporation (in this section referred to as  
18          the “Corporation”), in accordance with this section.

19          (2) NONPROFIT AND SUCCESSION.—The Cor-  
20          poration shall be a nonprofit corporation and shall  
21          have succession until dissolved by an Act of Con-  
22          gress.

23          (3) APPLICATION OF DISTRICT OF COLUMBIA  
24          NONPROFIT CORPORATION ACT.—The Corporation  
25          shall, except as otherwise provided in this title, be

1 subject to, and have all the powers conferred upon  
2 a nonprofit corporation by the District of Columbia  
3 Nonprofit Corporation Act (D.C. Code, 29–301.01  
4 et seq., or any successor thereto).

5 (b) MEMBERSHIP OF THE CORPORATION.—

6 (1) IN GENERAL.—The membership of the Cor-  
7 poration shall consist of member insurers.

8 (2) DEFINITION.—In this title, the term “mem-  
9 ber insurer”—

10 (A) means any national insurer or a State  
11 insurer that operates in a State that does not  
12 have a qualified association for the line of in-  
13 surance offered by such national insurer or  
14 State insurer in such State, if such line of in-  
15 surance is the subject of coverage by the Cor-  
16 poration; and

17 (B) does not include—

18 (i) a hospital or medical service orga-  
19 nization, whether for profit or not-for-prof-  
20 it;

21 (ii) a health maintenance organiza-  
22 tion;

23 (iii) a fraternal benefit society;

24 (iv) a mandatory or voluntary State  
25 pooling plan;

1 (v) a mutual assessment company or  
2 other person that operates on an assess-  
3 ment basis;

4 (vi) a surplus lines carrier, a risk re-  
5 tention group, or a State insurer writing  
6 business on a non-admitted or unlicensed  
7 basis;

8 (vii) an organization whose lines of  
9 business include only charitable gift annu-  
10 ities; or

11 (viii) an entity similar to any entity  
12 described in any of clauses (i) through  
13 (vii).

14 (c) CORPORATE GOVERNANCE.—

15 (1) GOVERNING BODY.—The board of directors  
16 of the Corporation shall be the governing body of the  
17 Corporation and shall be vested with all powers nec-  
18 essary for the management and administration of  
19 the affairs of the Corporation and the promotion of  
20 the purposes of the Corporation, as authorized by  
21 this Act. The authority of the board of directors  
22 shall be specified in the bylaws of the Corporation.

23 (2) ELECTION OR APPOINTMENT.—The initial  
24 board of directors of the Corporation shall be elected  
25 by the membership of the Corporation, provided that

1 if the membership fails to elect the initial board of  
2 the Corporation on or before the end of the 4-year  
3 period specified in section 1602(f), then the initial  
4 board shall be appointed from among the member-  
5 ship by the Commissioner. Membership on the board  
6 of directors shall be fairly representative of members  
7 of differing size and lines of business written.

8 (3) INITIAL BYLAWS AND RULES.—The Com-  
9 missioner shall prescribe the initial bylaws and rules  
10 governing the Corporation, which shall set forth the  
11 composition of the board of directors, the term of  
12 board members, filling of board vacancies, board  
13 compensation, election of officers and procedures to  
14 call board meetings, and all matters necessary for  
15 the governance of the Corporation not addressed by  
16 the District of Columbia Nonprofit Corporation Act  
17 (D.C. Code, 29–301.01 et seq.).

18 (4) AMENDMENTS TO BYLAWS AND RULES.—  
19 An amendment to the bylaws and rules of the Cor-  
20 poration following the establishment of the initial by-  
21 laws and rules as provided in paragraph (3) shall be  
22 adopted by the board of directors of the Corporation  
23 following the approval of the amendment by the  
24 Commissioner.

1 (d) RELATIONSHIP OF CORPORATION TO THE FED-  
2 ERAL GOVERNMENT.—

3 (1) SUPERVISION AND OVERSIGHT.—The Cor-  
4 poration shall be subject to supervision and over-  
5 sight by the Commissioner.

6 (2) NOT AN AGENCY OR INSTRUMENTALITY OF  
7 THE FEDERAL GOVERNMENT.—The Corporation  
8 shall not be an agency or instrumentality of the  
9 United States Government.

10 (3) FULL FAITH AND CREDIT.—The obligations  
11 of the Corporation shall not be backed, directly or  
12 indirectly, by the full faith and credit of the United  
13 States. The Corporation shall receive no financial as-  
14 sistance from or have any authority to borrow from  
15 the United States.

16 (4) FUNDS NOT INCLUDED IN THE FEDERAL  
17 BUDGET.—Funds held by or due to the Corporation  
18 shall not be included in the budget of the United  
19 States, nor may the United States borrow or pledge  
20 such funds.

21 (e) CONTRACTING WITH PERSON TO ADMINISTER  
22 BENEFITS.—The Corporation may contract, with the ap-  
23 proval of the Commissioner, with another person to ad-  
24 minister the benefits to be provided by the Corporation,

1 or otherwise as necessary to fulfill the responsibilities of  
2 the Corporation under this title.

3 (f) ACCOUNTS FOR ADMINISTRATION AND ASSESS-  
4 MENTS.—For purposes of administration and assess-  
5 ments, the Corporation shall establish and separately  
6 maintain 6 accounts as follows:

7 (1) A life insurance account.

8 (2) An annuity account.

9 (3) A health account.

10 (4) A workers' compensation account.

11 (5) An automobile insurance account.

12 (6) An account for all other lines of property/  
13 casualty insurance to which this title applies.

14 **SEC. 1604. BENEFITS FOR POLICYHOLDERS OF NATIONAL**  
15 **LIFE INSURERS.**

16 (a) IN GENERAL.—If a national life insurer or State  
17 life insurer is doing business in a State that does not have  
18 a qualified association, as defined in section 1602, for the  
19 line of insurance offered by such national life insurer or  
20 State life insurer in such State (and if such line of insur-  
21 ance is covered by the Corporation), and such national life  
22 insurer or State life insurer is placed into receivership for  
23 purposes of liquidation, the Corporation shall provide ben-  
24 efits as specified in subsections (b) and (c).

1 (b) COVERED PERSONS.—Benefits shall be made  
2 available as follows:

3 (1) To persons who, regardless of where the  
4 persons reside, are the beneficiaries, assignees, or  
5 payees of the persons covered under paragraph (2).

6 (2) To persons who are owners of or certificate  
7 holders under the insurance policies, and in each  
8 case who are residents of the State in which the  
9 nonqualified association is located.

10 (3) This title shall not provide coverage to a  
11 person who is a payee (or beneficiary) of a policy  
12 owner, if the payee (or beneficiary) is afforded any  
13 coverage by a qualified association.

14 (4) This title is intended to provide coverage to  
15 persons who are residents of States in which non-  
16 qualified associations are located and, in special cir-  
17 cumstances, to persons who are not residents of such  
18 States. In order to avoid duplicate coverage, if a per-  
19 son who would otherwise receive coverage under this  
20 title is provided coverage under the laws of any  
21 State other than the State in which the nonqualified  
22 association is located, the person shall not be pro-  
23 vided coverage under this title. In determining the  
24 application of the provisions of this paragraph in sit-  
25 uations where a person could be covered by the asso-

1 ciation of more than 1 State, whether as a policy  
 2 owner, payee, beneficiary, or assignee, this title shall  
 3 be construed in conjunction with the laws of such  
 4 States to result in coverage by only 1 association or  
 5 by the Corporation.

6 (c) INSURANCE POLICIES COVERED AND COVERAGE  
 7 LIMITS.—

8 (1) REGULATION.—The Commissioner shall es-  
 9 tablish, by regulation, the lines of insurance covered,  
 10 the scope of coverage, defenses, exclusions, and the  
 11 coverage limits on benefits for policyholders.

12 (2) NAIC MODEL.—The regulations described  
 13 in paragraph (1) shall be substantially similar to the  
 14 “Life and Health Insurance Guaranty Association  
 15 Model Act” of the NAIC in effect on May 24, 2007,  
 16 subject to the exclusions and benefits described in  
 17 paragraphs (3) and (4), respectively.

18 (3) EXCLUSIONS FROM COVERAGE.—There  
 19 shall be excluded from coverage under this title—

20 (A) any portion of a policy or contract not  
 21 guaranteed by the insurer, or under which the  
 22 risk is borne by the policy or contract owner;

23 (B) any policy or contract of reinsurance,  
 24 unless assumption certificates have been issued  
 25 pursuant to the reinsurance policy or contract;

1 (C) any portion of a policy or contract, to  
2 the extent that the rate of interest on which it  
3 is based—

4 (i) averaged over the period of 4 years  
5 prior to the date on which the Corporation  
6 becomes obligated with respect to the pol-  
7 icy or contract, exceeds a rate of interest  
8 determined by subtracting 2 percentage  
9 points from the average corporate bond  
10 yield, as determined by the Commissioner,  
11 averaged for that same 4-year period or for  
12 such lesser period, if the policy or contract  
13 was issued less than 4 years before the  
14 Corporation became so obligated; and

15 (ii) on and after the date on which the  
16 Corporation becomes obligated with respect  
17 to the policy or contract, exceeds the rate  
18 of interest determined by subtracting 3  
19 percentage points from the average cor-  
20 porate bond yield, as most recently avail-  
21 able, as determined by the Commissioner;

22 (D) any portion of a policy or contract  
23 issued to a plan or program of an employer, as-  
24 sociation, or other person to provide life, health,  
25 or annuity benefits to its employees, members,

1 or others, to the extent that the plan or pro-  
2 gram is self-funded or uninsured, including ben-  
3 efits payable by an employer, association, or  
4 other person under—

5 (i) a multiple employer welfare ar-  
6 rangement, as defined in section 514 of the  
7 Employee Retirement Income Security Act  
8 of 1974;

9 (ii) a minimum premium group insur-  
10 ance plan;

11 (iii) a stop-loss group insurance plan;

12 or

13 (iv) an administrative services only  
14 contract;

15 (E) any portion of a policy or contract, to  
16 the extent that it provides for—

17 (i) dividends or experience rating  
18 credits;

19 (ii) voting rights; or

20 (iii) payment of any fees or allowances  
21 to any person, including the policy or con-  
22 tract owner, in connection with the service  
23 to or administration of the policy or con-  
24 tract;

1 (F) any portion of a policy or contract, to  
2 the extent that the assessments required by sec-  
3 tion 1608 with respect to the policy or contract  
4 are preempted by Federal or State law;

5 (G) any obligation that does not arise  
6 under the express written terms of the policy or  
7 contract issued by the insurer to the contract  
8 owner or policy owner, including—

9 (i) claims based on marketing mate-  
10 rials;

11 (ii) claims based on side letters, rid-  
12 ers, or other documents that were issued  
13 by the insurer without meeting applicable  
14 policy form filing or approval require-  
15 ments;

16 (iii) misrepresentations of or regard-  
17 ing policy benefits;

18 (iv) extra-contractual claims; or

19 (v) a claim for penalties or consequen-  
20 tial or incidental damages;

21 (H) any contractual agreement that estab-  
22 lishes the obligations of the member insurer to  
23 provide a book value accounting guaranty for  
24 defined contribution benefit plan participants  
25 by reference to a portfolio of assets that is

1 owned by the benefit plan or its trustee, which  
2 in each case is not an affiliate of the member  
3 insurer;

4 (I) any unallocated annuity contract; and

5 (J) any funding agreement.

6 (4) COVERAGE BENEFITS.—The benefits pro-  
7 vided under this title shall in no event exceed the  
8 lesser of—

9 (A) the contractual obligations for which  
10 the insurer is liable, or would have been liable  
11 if it were not an impaired or insolvent insurer;  
12 or

13 (B) with respect to—

14 (i) 1 life, regardless of the number of  
15 insurance policies—

16 (I) \$300,000 in life insurance  
17 death benefits, but not more than  
18 \$100,000 in net cash surrender and  
19 net cash withdrawal values for life in-  
20 surance;

21 (II) in health insurance bene-  
22 fits—

23 (aa) \$100,000 for long-term  
24 care; or

1 (bb) \$300,000 for disability  
2 insurance; or

3 (III) \$100,000 in the present  
4 value of annuity benefits, including  
5 net cash surrender and net cash with-  
6 drawal values; and

7 (ii) each payee of a structured settle-  
8 ment annuity (or beneficiary or bene-  
9 ficiaries of the payee if deceased),  
10 \$100,000 in present value annuity bene-  
11 fits, in the aggregate, including net cash  
12 surrender and net cash withdrawal values,  
13 if any, except that, in no event shall bene-  
14 fits exceed—

15 (I) an aggregate of \$300,000 in  
16 benefits with respect to any 1 life  
17 under clause (i) and this clause; or

18 (II) with respect to 1 policy  
19 owner of multiple nongroup insurance  
20 policies of life insurance, or 1 policy  
21 owner of 1 or more group insurance  
22 policies of life insurance insuring the  
23 lives of multiple insureds, where the  
24 policy owner (or any benefit plan,  
25 trust, or other entity sponsored or

1 controlled by the policy owner) is also  
2 the beneficiary, whether the policy  
3 owner is an individual, firm, corpora-  
4 tion, or other person, and whether the  
5 individuals insured are officers, man-  
6 agers, employees, or other individuals,  
7 more than \$5,000,000 in benefits, re-  
8 gardless of the number of such poli-  
9 cies held by the policy owner.

10 (5) RULE OF CONSTRUCTION.—The limitations  
11 set forth in this subsection are limitations on bene-  
12 fits under this title before taking into account either  
13 the subrogation and assignment rights or the extent  
14 to which those benefits could be provided out of the  
15 assets of the impaired or insolvent insurer attrib-  
16 utable to covered policies.

17 (6) USE OF ASSETS.—The obligations for bene-  
18 fits under this title may be met by the use of assets  
19 attributable to covered policies or reimbursed to the  
20 Corporation pursuant to the subrogation and assign-  
21 ment rights in section 1607.

22 (d) OTHER EXCLUSIONS.—The Corporation shall not  
23 be required to guarantee, assume, reinsure, or perform or  
24 cause to be guaranteed, assumed, reinsured, or performed,  
25 the contractual obligations of the insolvent or impaired in-

1 surer under a covered policy that do not materially affect  
 2 the economic values or economic benefits of the covered  
 3 policy.

4 **SEC. 1605. CLAIMS COVERED FOR POLICYHOLDERS OF NA-**  
 5 **TIONAL PROPERTY/CASUALTY INSURERS.**

6 (a) DEFINITIONS.—For purposes of this section, the  
 7 following definitions shall apply:

8 (1) ASSOCIATION.—The term “Association”  
 9 means any property/casualty insurance guaranty as-  
 10 sociation created under the laws of the relevant  
 11 State, no matter how denominated, which performs  
 12 the role of an association or fund paying certain  
 13 property/casualty claims made under policies of an  
 14 insolvent insurer to or on behalf of policyholders re-  
 15 siding in the State.

16 (2) CLAIMANT.—The term “claimant” means  
 17 any insured making a first party claim or any per-  
 18 son instituting a liability claim, except that no per-  
 19 son who is an affiliate of the insolvent insurer may  
 20 be a claimant.

21 (3) COVERED CLAIM.—The term “covered  
 22 claim”—

23 (A) means an unpaid claim, including one  
 24 for unearned premiums, submitted by a claim-  
 25 ant, which arises out of and is within the cov-

1 erage and is subject to the applicable limits of  
2 an insurance policy to which this title applies  
3 issued by a member insurer, if—

4 (i) such member insurer becomes an  
5 insolvent insurer after the effective date of  
6 this title; and

7 (ii) either—

8 (I) the claimant or insured is a  
9 resident of a State that does not have  
10 a qualified association covering the  
11 type of risk insured at the time of the  
12 insured event (for which purpose, in  
13 the case of an entity other than an in-  
14 dividual, the residence of a claimant,  
15 insured, or policyholder is the State in  
16 which its principal place of business is  
17 located at the time of the insured  
18 event); or

19 (II) the claim is a first party  
20 claim for damage to property with a  
21 permanent location in the State; and

22 (B) does not include—

23 (i) any amount awarded as punitive or  
24 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, underwriting asso-  
6 ciation, health maintenance organization,  
7 hospital plan corporation, professional  
8 health service corporation, or self-insurer  
9 as subrogation recoveries, reinsurance re-  
10 coveries, contribution, indemnification, or  
11 otherwise, and no such claim for any  
12 amount due any reinsurer, insurer, insur-  
13 ance pool, underwriting association, health  
14 maintenance organization, hospital plan  
15 corporation, or self-insurer may be as-  
16 serted against a person insured under a  
17 policy issued by an insolvent insurer, other  
18 than to the extent that such claim exceeds  
19 the obligation limitations of the Corpora-  
20 tion set forth in this Act;

21           (iv) any first party claim by an in-  
22 sured whose net worth exceeds  
23 \$25,000,000 on December 31 of the year  
24 prior to the year in which the member in-  
25 surer becomes an insolvent insurer (for

1           which purpose, the net worth of the in-  
2           sured on that date shall be deemed to in-  
3           clude the aggregate net worth of the in-  
4           sured and all of its affiliates and subsidi-  
5           aries, as calculated on a consolidated  
6           basis); or

7                       (v) any first party claim by an insured  
8           which is an affiliate of the insolvent in-  
9           surer.

10           (4) INSOLVENT INSURER.—The term “insolvent  
11           insurer” means an insurer with a line of business  
12           covered by the Corporation and doing business in a  
13           State without a qualified association, covering the  
14           type of risk insured, and against whom a final order  
15           of liquidation with a finding of insolvency has been  
16           issued pursuant to title V and the regulations pro-  
17           mulgated thereunder.

18           (b) IN GENERAL.—If a national property and cas-  
19           ualty insurer or a State property and casualty insurer is  
20           doing business in a State that does not have a qualified  
21           association for the line of insurance offered by such in-  
22           surer in such State (and if such line of insurance is cov-  
23           ered by the Corporation), and such insurer is placed into  
24           receivership for purposes of liquidation, the Corporation  
25           shall provide benefits as specified in this section.

1 (c) INSURANCE LINES INCLUDED.—This title shall  
2 provide coverage for covered claims on all lines of direct  
3 insurance (other than those specified in subsection (d))—

4 (1) existing prior to the order of liquidation;

5 (2) arising not later than 30 days after the  
6 order of liquidation;

7 (3) arising before the insurance policy expira-  
8 tion date, if earlier than 30 days after the order or  
9 liquidation; or

10 (4) arising before the insured replaces the in-  
11 surance policy or causes its cancellation, if the in-  
12 sured does so not later than 30 days after the order  
13 of liquidation.

14 (d) INSURANCE LINES EXCLUDED.—This title shall  
15 not provide coverage on claims for—

16 (1) life, annuity, health, or disability insurance  
17 (except as provided in section 1604);

18 (2) mortgage guaranty, financial guaranty, or  
19 other forms of insurance offering protection against  
20 investment risks;

21 (3) fidelity or surety bonds, or any other bond-  
22 ing obligations;

23 (4) credit insurance, vendors single interest in-  
24 surance, or collateral protection insurance or any

1 similar insurance protecting the interests of the  
2 creditor arising out of a creditor-debtor transaction;

3 (5) insurance of warranties or service contracts  
4 including insurance that provides for the repair, re-  
5 placement, or service of goods or property, indem-  
6 nification for repair, replacement, or service for the  
7 operational or structural failure of the goods or  
8 property due to a defect in materials, workmanship,  
9 or normal wear and tear, or provides reimbursement  
10 for the liability incurred by the issuer of agreements  
11 or service contracts that provide such benefits;

12 (6) title insurance;

13 (7) ocean marine insurance;

14 (8) any transaction or combination of trans-  
15 actions between a person (including affiliates of such  
16 person) and an insurer (including affiliates of such  
17 insurer) which involves the transfer of investment or  
18 credit risk unaccompanied by transfer of insurance  
19 risk; or

20 (9) any insurance provided by or guaranteed by  
21 any State or the Federal Government.

22 (e) COVERAGE LIMITATIONS.—

23 (1) IN GENERAL.—The obligation to a claimant  
24 under this section shall be satisfied by paying to the  
25 claimant—

1 (A) the full amount of a covered claim for  
2 the benefits under a workers' compensation in-  
3 surance coverage;

4 (B) an amount not exceeding \$10,000 per  
5 policy for a covered claim for return of un-  
6 earned premiums, less a deductible of \$100;  
7 and

8 (C) an amount not exceeding \$300,000 per  
9 claim for all other covered claims, except that  
10 for purposes of such limitation, all claims of  
11 any kind whatsoever arising out of, or related  
12 to, bodily injury or death to any 1 person shall  
13 constitute a single claim, regardless of the num-  
14 ber of insurance policies issued by the insolvent  
15 insurer, the number of claims made, or the  
16 number of claimants.

17 (2) LIMITATION.—In no event shall a claimant  
18 be entitled to an amount in excess of the obligation  
19 of the insolvent insurer under the policy or coverage  
20 from which the claim arises.

21 (3) EXCLUSIONS.—Notwithstanding any other  
22 provisions of this title, for purposes of this sub-  
23 section, a covered claim shall not include—

24 (A) a claim filed more than 18 months  
25 after the entry of the order of liquidation or the

1 final date set for the filing of claims against the  
2 liquidator or receiver of the insolvent insurer  
3 pursuant to title V and the regulations promul-  
4 gated thereunder, whichever date occurs first;  
5 or

6 (B) any claim filed with the Corporation or  
7 the receiver for losses incurred but not reported  
8 under the policy of the insured.

9 (f) EXHAUSTION OF OTHER COVERAGE.—

10 (1) IN GENERAL.—Any person having a claim  
11 under an insurance policy, whether or not it is a pol-  
12 icy issued by a member insurer, and the claim under  
13 such other policy arises from the same facts, injury,  
14 or loss that gave rise to a covered claim against the  
15 Corporation, shall be required first to exhaust all  
16 coverage provided by any such policy.

17 (2) REDUCTIONS.—Any amount payable on a  
18 covered claim under this title shall be reduced by the  
19 full applicable limits stated in such other insurance  
20 policy, and the Corporation shall receive a full credit  
21 for such stated limits, or, where there are no appli-  
22 cable stated limits, the claim shall be reduced by the  
23 total recovery.

24 (3) LIMITATION.—Notwithstanding paragraphs  
25 (1) and (2)—

1 (A) no person shall be required to exhaust  
2 any right under the policy of an insolvent in-  
3 surer;

4 (B) a claim under a policy providing liabil-  
5 ity coverage to a person who may be jointly and  
6 severally liable with or a joint tortfeasor with  
7 the person covered under the policy of the insol-  
8 vent insurer that gives rise to the covered claim  
9 shall be considered to be a claim arising from  
10 the same facts, injury, or loss that gave rise to  
11 the covered claim against the Corporation;

12 (C) a claim under an insurance policy shall  
13 also include, for purposes of this section—

14 (i) a claim against a health mainte-  
15 nance organization, a hospital plan cor-  
16 poration, or a professional health service  
17 corporation; and

18 (ii) any amount payable by or on be-  
19 half of a self-insurer; and

20 (D) to the extent that the obligation of the  
21 Corporation is reduced by the application of  
22 this section, the liability of the person insured  
23 by the policy of the insolvent insurer for the  
24 claim shall be reduced in the same amount.

1           (4) ORDER OF RECOVERY.—Any person having  
2           a claim which may be recovered under more than 1  
3           qualified association shall seek recovery first, from  
4           the qualified association of the place of residence of  
5           the insured (or the Corporation, if the place of resi-  
6           dence is a State that does not have a qualified asso-  
7           ciation), except that if it is a first party claim for  
8           damage to property with a permanent location, the  
9           person shall seek recovery first from the qualified  
10          association (or the Corporation, if applicable) of the  
11          location of the property, and if it is a workers' com-  
12          pensation claim, the person shall seek recovery first  
13          from the qualified association (or the Corporation, if  
14          applicable) of the residence of the claimant. Any re-  
15          covery under this Act shall be reduced by the  
16          amount of recovery from any other insurance guar-  
17          anty association or its equivalent.

18          (g) RIGHT TO RECOVER.—The Corporation shall  
19          have the right to recover all amounts paid the Corporation  
20          on behalf of a person, whether for indemnity, defense, or  
21          otherwise, in the case of—

22                 (1) any insured whose net worth on December  
23                 31 of the year immediately preceding the date on  
24                 which the insurer becomes an insolvent insurer ex-  
25                 ceeds \$25,000,000 (and for such purpose, the net

1 worth of an insured on such date shall be deemed  
2 to include the aggregate net worth of the insured  
3 and all of its subsidiaries and affiliates, as calculated  
4 on a consolidated basis); and

5 (2) any person who is an affiliate of the insol-  
6 vent insurer.

7 (h) PAYMENT OF CLAIMS.—Payment of claims under  
8 this title by the Corporation shall be made from the appro-  
9 priate property and casualty account established pursuant  
10 to section 1603.

11 **SEC. 1606. POWERS AND DUTIES OF THE CORPORATION.**

12 (a) POWERS AND DUTIES RELATED TO CERTAIN NA-  
13 TIONAL LIFE INSURERS AND STATE LIFE INSURERS.—

14 (1) NATIONAL LIFE INSURERS AND STATE LIFE  
15 INSURERS WHO ARE MEMBER INSURERS SUBJECT TO  
16 REHABILITATION.—Subject to the provisions of this  
17 title, if a national life insurer or a State life insurer  
18 is a member insurer placed into receivership for pur-  
19 poses of rehabilitation, the Corporation may, in its  
20 discretion, and subject to any conditions imposed by  
21 the Corporation that do not impair the contractual  
22 obligations of the national life insurer or State life  
23 insurer, and that are approved by the Commis-  
24 sioner—

1           (A) guarantee, assume, or reinsure, or  
 2           cause to be guaranteed, assumed, or reinsured,  
 3           any or all of the insurance policies of the na-  
 4           tional life insurer or State life insurer; or

5           (B) provide such monies, pledges, loans,  
 6           notes, guarantees, or other means as are proper  
 7           to effectuate subparagraph (A) and assure pay-  
 8           ment of the contractual obligations of the na-  
 9           tional life insurer or State life insurer, pending  
 10          action under subparagraph (A).

11          (2) NATIONAL LIFE INSURERS AND STATE LIFE  
 12          INSURERS WHO ARE MEMBER INSURERS SUBJECT TO  
 13          LIQUIDATION.—

14           (A) IN GENERAL.—Subject to the provi-  
 15           sions of this title, if a national life insurer or  
 16           a State life insurer is a member insurer placed  
 17           into receivership for purposes of liquidation, the  
 18           Corporation shall, in its discretion, take either  
 19           the actions specified in subparagraph (B) or the  
 20           actions specified in subparagraph (C).

21           (B) ASSUMPTION OF OBLIGATIONS OF NA-  
 22           TIONAL LIFE INSURER OR STATE LIFE INSURER  
 23           WHO IS A MEMBER INSURER.—The Corpora-  
 24           tion—

25                   (i) shall—

1 (I) guarantee, assume, or rein-  
2 sure, or cause to be guaranteed, as-  
3 sumed, or reinsured, the insurance  
4 policies of the national life insurer or  
5 State life insurer; or

6 (II) assure payment of the con-  
7 tractual obligations of the national life  
8 insurer or State life insurer; and

9 (ii) shall provide monies, pledges,  
10 loans, notes, guarantees, or other means  
11 reasonably necessary to discharge the du-  
12 ties imposed by this section.

13 (C) PROVISION OF BENEFITS TO POLICY-  
14 HOLDERS.—The Corporation—

15 (i) with respect to life insurance poli-  
16 cies and annuities, shall assure payment of  
17 benefits for premiums identical to the pre-  
18 miums and benefits (except for terms of  
19 conversion and renewability) that would  
20 have been payable under the insurance  
21 policies of the national life insurer or State  
22 life insurer who is a member insurer, for  
23 claims incurred—

24 (I) with respect to group insur-  
25 ance policies, not later than the ear-

1           lier of the next renewal date under  
2           those insurance policies or 45 days,  
3           but not less than 30 days, after the  
4           date on which the Corporation be-  
5           comes obligated under this section  
6           with respect to such policies; and

7           (II) with respect to nongroup in-  
8           surance policies, not later than the  
9           earlier of the next renewal date (if  
10          any) under the insurance policies or 1  
11          year, but not less than 30 days, from  
12          the date on which the Corporation be-  
13          comes obligated under this section  
14          with respect to such policies;

15          (ii) shall make diligent efforts to pro-  
16          vide all known insureds or annuitants (for  
17          nongroup insurance policies), or group pol-  
18          icyholders with respect to group insurance  
19          policies, 30 days advance notice of the ter-  
20          mination (pursuant to clause (i)) of the  
21          benefits provided;

22          (iii) with respect to nongroup insur-  
23          ance policies covered by this title, shall  
24          make available to each known insured or  
25          annuitant and to each individual formerly

1 insured or formerly an annuitant under a  
2 group policy who is not eligible for replace-  
3 ment group coverage, substitute coverage  
4 on an individual basis in accordance with  
5 the provisions of clause (iv), if the insured  
6 or annuitants had a right under law or the  
7 terminated policy or annuity to convert  
8 coverage to individual coverage or to con-  
9 tinue an individual policy or annuity in  
10 force until a specified age or for a specified  
11 time, during which the national life insurer  
12 or State life insurer had no right unilater-  
13 ally to make changes in any provision of  
14 the policy or had a right only to make  
15 changes in premium by class;

16 (iv) in providing the substitute cov-  
17 erage required under clause (iii), may offer  
18 either to reissue the terminated coverage  
19 or to issue an alternative policy, which al-  
20 ternative or reissued insurance policies—

21 (I) shall be offered without re-  
22 quiring evidence of insurability;

23 (II) may not provide for any  
24 waiting period or exclusion that would

1 not have applied under the terminated  
2 policy; and

3 (III) may be reinsured by the  
4 Corporation; and

5 (v) shall obtain the approval of the  
6 Commissioner of all alternative policies  
7 adopted or issued by the Corporation  
8 under this paragraph.

9 (D) TERMINATION OF BENEFITS.—Bene-  
10 fits under this title with respect to coverage  
11 under any policy of an insolvent national life in-  
12 surer or under any reissued or alternative policy  
13 shall cease on the date on which the coverage  
14 or policy is replaced by another similar policy  
15 by the policyholder, the insured, or the Cor-  
16 poration.

17 (3) TREATMENT OF PREMIUMS.—

18 (A) NONPAYMENT OF PREMIUMS.—The  
19 nonpayment of premiums within 31 days after  
20 the date required under the terms of any guar-  
21 anteed, assumed, alternative, or reissued policy  
22 or substitute coverage provided pursuant to  
23 paragraphs (1) or (2) shall terminate benefits  
24 under this title with respect to the policy, ex-  
25 cept with respect to any claims incurred or any

1 net cash surrender value that may be due in ac-  
2 cordance with the provisions of this title.

3 (B) PREMIUMS DUE AFTER LIQUIDATION  
4 INITIATED.—Premiums due for coverage under  
5 covered policies after the Commissioner has ini-  
6 tiated the liquidation of a national life insurer  
7 or a State life insurer who is a member insurer  
8 shall belong to and be payable at the direction  
9 of the Corporation, and the Corporation shall  
10 be liable for unearned premiums due to the pol-  
11 icyholders under the covered policies.

12 (4) PERMANENT AND TEMPORARY LIENS.—In  
13 carrying out the duties under paragraph (2), the  
14 Corporation may, subject to the approval of the  
15 Commissioner—

16 (A) impose permanent policy liens in con-  
17 nection with a guarantee, assumption, or rein-  
18 surance contract, if the Corporation finds that  
19 the amounts which can be assessed under this  
20 title are less than the amounts needed to assure  
21 full and prompt performance of the protections  
22 provided under this title, or that the economic  
23 or financial conditions as they affect the insur-  
24 ance industry are sufficiently adverse to render

1 the imposition of such permanent policy liens to  
2 be in the public interest; or

3 (B) impose temporary moratoriums or  
4 liens on payments of cash values and policy  
5 loans, or any other right to withdraw funds on  
6 payments of cash values and policy loans, or  
7 any other right to withdraw funds held in con-  
8 junction with insurance policies, in addition to  
9 any contractual provisions for deferral of cash  
10 or policy loan value.

11 (5) INDEXED INSURANCE POLICIES.—

12 (A) IN GENERAL.—In carrying out its du-  
13 ties in connection with paragraphs (1) or (2),  
14 the Corporation may, subject to the approval of  
15 the Commissioner, issue substitute coverage for  
16 an insurance policy that provides an interest  
17 rate, crediting rate, or similar factor deter-  
18 mined by use of an index or other external ref-  
19 erence stated in the insurance policy employed  
20 in calculating returns or changes in value by  
21 issuing an alternative insurance policy in ac-  
22 cordance with subparagraph (B).

23 (B) APPLICABILITY.—Subparagraph (A)  
24 shall apply in any case in which—

1 (i) in lieu of the index or other exter-  
2 nal reference provided for in the original  
3 insurance policy, the alternative insurance  
4 policy provides for—

5 (I) a fixed interest rate;

6 (II) payment of dividends with  
7 minimum guarantees; or

8 (III) a different method for cal-  
9 culating interest or changes in value;

10 (ii) there is no requirement for evi-  
11 dence of insurability, waiting period, or  
12 other exclusion that would not have applied  
13 under the replaced insurance policy; and

14 (iii) the alternative insurance policy is  
15 substantially similar to the replaced insur-  
16 ance policy in all other material terms.

17 (b) POWERS AND DUTIES RELATED TO NATIONAL  
18 PROPERTY/CASUALTY INSURERS AND STATE PROPERTY/  
19 CASUALTY INSURERS WHO ARE MEMBER INSURERS  
20 WITH RESPECT TO COVERED CLAIMS.—

21 (1) IN GENERAL.—Subject to the terms of this  
22 title, when a national property/casualty insurer or a  
23 State property/casualty insurer is a member insurer  
24 placed into receivership for purposes of liquidation,

1 the Corporation shall exercise the powers and duties  
2 specified in this subsection.

3 (2) ASSUMPTION OF OBLIGATIONS.—The Cor-  
4 poration shall be deemed the insurer to the extent  
5 of its obligation on covered claims and to that ex-  
6 tent, shall have all rights, duties, and obligations of  
7 the insolvent national property/casualty insurer or  
8 State property/casualty insurer, as if such insurer  
9 had not become insolvent, including the right to pur-  
10 sue and retain salvage and subrogation recoverable  
11 on covered claims obligations to the extent paid by  
12 the Corporation.

13 (3) INVESTIGATION AND PAYMENT OF  
14 CLAIMS.—The Corporation shall investigate claims  
15 brought against the Corporation and adjust, com-  
16 promise, settle, and pay covered claims, to the extent  
17 of the obligations of the Corporation. The Corpora-  
18 tion shall pay claims in any order that it determines  
19 reasonable, including the payment of claims as they  
20 are received from the claimants or in groups or cat-  
21 egories of claims. The Corporation may review set-  
22 tlements, releases, and adjustments to which the in-  
23 solvent national property/casualty insurer or State  
24 property/casualty insurer or its insured were parties  
25 to determine the extent to which the settlements, re-

1 leases, and judgments may be properly contested.  
2 The Corporation shall have the right to appoint or  
3 substitute and to direct legal counsel retained under  
4 liability insurance policies for the defense of covered  
5 claims.

6 (c) OTHER CORPORATION POWERS.—In addition to  
7 the rights and powers provided elsewhere in this title, the  
8 Corporation may—

9 (1) enter into such contracts as are necessary  
10 or proper to carry out the provisions and purposes  
11 of this title;

12 (2) sue or be sued, including taking any legal  
13 actions necessary or proper to recover any unpaid  
14 assessments under section 1608 and to settle claims  
15 or potential claims against the Corporation;

16 (3) borrow money to effect the purposes of this  
17 title (and any notes or other evidence of indebted-  
18 ness of the Corporation not in default shall be legal  
19 investments for national insurers and may be carried  
20 as assets);

21 (4) employ or retain such persons as are nec-  
22 essary or appropriate to handle the financial trans-  
23 actions of the Corporation and to perform such  
24 other functions as become necessary or proper under  
25 this title;

1           (5) take such legal action as may be necessary  
2           or appropriate to avoid or recover payment of im-  
3           proper claims;

4           (6) exercise, for the purposes of this title and  
5           to the extent approved by the Commissioner, the  
6           powers of a national insurer, except that the Cor-  
7           poration may not issue insurance policies or annuity  
8           contracts other than those issued to provide the pro-  
9           tections under this title;

10          (7) request information from a person seeking  
11          protection under this title in order to aid the Cor-  
12          poration in determining its obligations under this  
13          title with respect to the person, which person shall  
14          promptly comply with the request; and

15          (8) take other necessary or appropriate action  
16          to discharge the duties and obligations of the Cor-  
17          poration under this title or to exercise the powers of  
18          the Corporation under this title.

19 **SEC. 1607. SUBROGATION.**

20          (a) IN GENERAL.—Persons receiving benefits or pay-  
21          ments for claims under this title shall be deemed to have  
22          assigned their rights under, and any causes of action  
23          against any person for losses arising under, resulting  
24          from, or otherwise relating to, their covered policies to the  
25          Corporation, and the Corporation shall have a claim by

1 way of subrogation to the rights of such persons against  
2 the assets of the insolvent insurer, to the extent of the  
3 benefits received or claims paid because of this title. The  
4 Corporation shall also have the right to require an assign-  
5 ment to the Corporation of such rights and cause of action  
6 by any payee, policyowner, beneficiary, insured, or annu-  
7 itant as a condition precedent to the receipt of any right  
8 or benefits conferred by this title upon the person.

9 (b) COMMON LAW RIGHTS.—In addition to sub-  
10 section (a), the Corporation shall have all common law  
11 rights of subrogation and any other equitable or legal rem-  
12 edy that would have been available to the national insurer  
13 or policyowner, beneficiary, or payee of an insurance policy  
14 with respect to the policy.

15 (c) PRIORITY.—The priority of the subrogation rights  
16 of the Corporation against the assets of a national insurer  
17 shall be governed by the regulations issued by the Com-  
18 missioner pursuant to section 1504.

19 (d) RESULT IF FOUND INVALID OR INEFFECTIVE.—  
20 If any other provision of this section is held to be invalid  
21 or ineffective with respect to any person or claim for any  
22 reason, the amount payable under this title with respect  
23 to the related benefits or payments under this title shall  
24 be reduced by the amount realized by any other person  
25 with respect to the person or claim that is attributable

1 to the insurance policies (or portion of the insurance poli-  
2 cies) covered by this title.

3 (e) PAYMENT OF PORTION.—If benefits or payments  
4 have been provided under this title with respect to a cov-  
5 ered obligation and a person recovers amounts as to which  
6 the Corporation has rights, as described in this section,  
7 the person shall pay to the Corporation the portion of the  
8 recovery attributable to the insurance policies (or portion  
9 of the insurance policies) covered by this title.

10 **SEC. 1608. ASSESSMENTS.**

11 (a) ASSESSMENTS BY CORPORATION AUTHORIZED.—  
12 For the purpose of providing the funds necessary to pro-  
13 vide the benefits or payments under this title, the Corpora-  
14 tion shall be authorized to assess member insurers sepa-  
15 rately for each account, at such time and for such amounts  
16 as the board of directors of the Corporation finds nec-  
17 essary, in accordance with this section.

18 (b) CLASSES OF ASSESSMENTS.—

19 (1) IN GENERAL.—The Corporation shall im-  
20 pose 3 classes of assessments in accordance with  
21 paragraphs (2) through (4).

22 (2) GENERAL ADMINISTRATIVE ASSESS-  
23 MENTS.—

24 (A) IN GENERAL.—Each member insurer  
25 shall be assessed an amount necessary to cover

1 the general administrative and legal costs of the  
2 Corporation, other than the costs specified in  
3 paragraphs (3) and (4).

4 (B) AMOUNT.—In setting the amount of  
5 the assessment under subparagraph (A), the  
6 Corporation shall divide such administrative  
7 and legal expenses equally among all member  
8 insurers.

9 (C) DEPOSIT.—The amount collected pur-  
10 suant to this paragraph shall be deposited, in  
11 equal amounts, in the accounts established pur-  
12 suant to section 1603(f).

13 (3) PROPERTY/CASUALTY ASSESSMENTS.—

14 (A) IN GENERAL.—The Corporation  
15 shall—

16 (i) allocate claims paid and expenses  
17 incurred among the workers' compensation  
18 account, the automobile insurance account,  
19 or the other property/casualty account; and

20 (ii) assess member insurers doing  
21 business in States without qualified asso-  
22 ciations covering the types of risks insured  
23 that are licensed to sell property/casualty  
24 insurance separately for each account de-  
25 scribed in clause (i) the amounts necessary

1           to pay the obligations of the Corporation  
2           under section 1605 and the expenses of  
3           handling such claims.

4           (B) AMOUNT.—The assessment established  
5           under subparagraph (A)(ii) shall equal an  
6           amount that bears the same ratio to the total  
7           amount of claims and expenses allocated to an  
8           account pursuant to subparagraph (A)(i) as the  
9           premiums received by such member insurer in  
10          States without qualified associations on the  
11          kind of insurance in the account during the cal-  
12          endar year preceding the assessment bears to  
13          the premiums received by all assessed member  
14          insurers in States without qualified associations  
15          on the kind of insurance in the account during  
16          the year preceding the assessment.

17          (C) DEPOSIT.—The assessments received  
18          pursuant to this paragraph shall be deposited in  
19          the workers' compensation account, the auto-  
20          mobile insurance account, or the other property/  
21          casualty account, as appropriate.

22          (4) LIFE AND ANNUITY ASSESSMENTS.—

23                 (A) IN GENERAL.—The Corporation  
24                 shall—

1 (i) allocate benefits paid and expenses  
2 incurred among the life insurance account,  
3 the annuity account, and the health ac-  
4 count; and

5 (ii) assess member insurers doing  
6 business in States without qualified asso-  
7 ciations that are licensed to sell life insur-  
8 ance separately for each account described  
9 in clause (i) the amounts necessary to pay  
10 the obligations of the Corporation under  
11 section 1604 and the expenses of providing  
12 such benefits.

13 (B) AMOUNT.—The assessment established  
14 under subparagraph (A)(ii) shall equal an  
15 amount that bears the same ratio to the total  
16 of benefits and expenses allocated to an account  
17 pursuant to subparagraph (A)(i) as the pre-  
18 miums received by such member insurer in  
19 States without qualified associations on the  
20 kind of insurance in the account during the cal-  
21 endar year preceding the assessment bears to  
22 the premiums received by all assessed member  
23 insurers in States without qualified associations  
24 on the kind of insurance in the account during  
25 the year preceding the assessment.

1 (C) DEPOSIT.—The assessments received  
2 pursuant to this paragraph shall be deposited in  
3 the life insurance account, the annuity account,  
4 or the health account, as appropriate.

5 (c) NOTICE AND IMPOSITION OF ASSESSMENTS.—

6 (1) WRITTEN NOTICE REQUIRED.—The Cor-  
7 poration shall provide each member insurer a writ-  
8 ten notice of an assessment, and assessments shall  
9 be payable not earlier than 30 days after the date  
10 of receipt of such notice.

11 (2) LATE PAYMENT.—Member insurers that fail  
12 to pay an assessment when due shall be subject to  
13 an interest charge on the assessment, as set by the  
14 Corporation.

15 (3) ASSESSMENTS NOT IMPOSED UNTIL NEED-  
16 ED.—The Corporation shall not impose an assess-  
17 ment described in paragraph (3) or (4) of subsection  
18 (b) until such funds are needed.

19 (4) MAXIMUM ASSESSMENT.—

20 (A) IN GENERAL.—The Corporation may  
21 not assess a member insurer doing business in  
22 States without qualified associations in any  
23 year on any account in an amount greater than  
24 2 percent of the net direct written premiums of  
25 the insurer for the calendar year preceding the

1 assessment on the kind of insurance in the ac-  
2 count.

3 (B) INSUFFICIENT AMOUNT IN LIFE IN-  
4 SURANCE ACCOUNT, ANNUITY ACCOUNT, OR  
5 HEALTH ACCOUNT.—

6 (i) INSUFFICIENT AMOUNT IN LIFE  
7 INSURANCE ACCOUNT.—If the maximum  
8 assessment in any year does not provide an  
9 amount sufficient to make all necessary  
10 payments from the life insurance account,  
11 the Corporation may assess the annuity ac-  
12 count, the health account, or both, for the  
13 necessary additional amount, except that  
14 in each subsequent year, for so long as  
15 necessary, the Corporation shall assess up  
16 to the maximum on the life insurance ac-  
17 count, in order to—

18 (I) make all necessary payments  
19 from the life insurance account; and

20 (II) reimburse the annuity ac-  
21 count or the health account, or both,  
22 for the amounts assessed on behalf of  
23 the life insurance account.

24 (ii) INSUFFICIENT AMOUNT IN ANNU-  
25 ITY ACCOUNT.—If the maximum assess-

1           ment in any year does not provide an  
2           amount sufficient to make all necessary  
3           payments from the annuity account, the  
4           Corporation may assess the life insurance  
5           account, the health account, or both, for  
6           the necessary additional amount, except  
7           that, in each subsequent year, for so long  
8           as necessary, the Corporation shall assess  
9           up to the maximum on the annuity ac-  
10          count, in order to—

11                   (I) make all necessary payments  
12                   from the annuity account; and

13                   (II) reimburse the life insurance  
14                   account, the health account, or both,  
15                   for the amounts assessed on behalf of  
16                   the annuity account.

17           (iii)   INSUFFICIENT   AMOUNT   IN  
18           HEALTH ACCOUNT.—If the maximum as-  
19           sessment in any year does not provide an  
20           amount sufficient to make all necessary  
21           payments from the health account, the  
22           Corporation may assess the life insurance  
23           account, the annuity account, or both, for  
24           the necessary additional amount, except  
25           that, in each subsequent year, for so long

1 as necessary, the Corporation shall assess  
 2 up to the maximum on the health account,  
 3 in order to—

4 (I) make all necessary payments  
 5 from the health account; and

6 (II) reimburse the life insurance  
 7 account, the annuity account, or both,  
 8 for the amounts assessed on behalf of  
 9 the health account.

10 (C) INSUFFICIENT AMOUNT IN WORKERS'  
 11 COMPENSATION ACCOUNT, AUTOMOBILE INSUR-  
 12 ANCE ACCOUNT, OR OTHER PROPERTY/CAS-  
 13 UALTY INSURANCE ACCOUNT.—

14 (i) INSUFFICIENT AMOUNT IN WORK-  
 15 ERS' COMPENSATION ACCOUNT.—If the  
 16 maximum assessment in any year does not  
 17 provide an amount sufficient to make all  
 18 necessary payments from the workers'  
 19 compensation account, the Corporation  
 20 may assess the automobile insurance ac-  
 21 count, other property/casualty insurance  
 22 account, or both, for the necessary addi-  
 23 tional amount, except that, in each subse-  
 24 quent year, for as long as necessary, the  
 25 Corporation shall assess up to the max-

1           imum on the workers compensation ac-  
2           count, in order to—

3                   (I) make all necessary payments  
4                   from the workers' compensation ac-  
5                   count; and

6                   (II) reimburse the automobile in-  
7                   surance account, the other property/  
8                   casualty insurance account, or both,  
9                   for the amounts assessed on behalf of  
10                  the workers' compensation account.

11               (ii) INSUFFICIENT AMOUNT IN AUTO-  
12               MOBILE INSURANCE ACCOUNT.—If the  
13               maximum assessment in any year does not  
14               provide an amount sufficient to make all  
15               necessary payments from the automobile  
16               insurance account, the Corporation may  
17               assess the workers' compensation account,  
18               the other property/casualty insurance ac-  
19               count, or both, for the necessary additional  
20               amount, except that, in each subsequent  
21               year, for so long as necessary, the Cor-  
22               poration shall assess up to the maximum  
23               on the automobile insurance account, in  
24               order to—

1 (I) make all necessary payments  
2 from the automobile insurance ac-  
3 count; and

4 (II) reimburse the workers' com-  
5 pensation account, the other property/  
6 casualty insurance account, or both,  
7 for the amounts assessed on behalf of  
8 the automobile insurance account.

9 (iii) INSUFFICIENT AMOUNT IN OTHER  
10 PROPERTY/CASUALTY INSURANCE AC-  
11 COUNT.—If the maximum assessment in  
12 any year does not provide an amount suffi-  
13 cient to make all necessary payments from  
14 the other property/casualty insurance ac-  
15 count, the Corporation may assess the  
16 workers' compensation account, the auto-  
17 mobile insurance account, or both, for the  
18 necessary additional amount, except that,  
19 in each subsequent year for so long as nec-  
20 essary, the Corporation shall assess up to  
21 the maximum on the other property/cas-  
22 ualty insurance account, in order to—

23 (I) make all necessary payments  
24 from the other property/casualty in-  
25 surance account; and

1 (II) reimburse the automobile in-  
2 surance account, the workers' com-  
3 pensation account, or both, for the  
4 amounts assessed on behalf of the  
5 other property casualty insurance ac-  
6 count.

7 (d) ABATED OR DEFERRED ASSESSMENTS.—

8 (1) AUTHORITY OF CORPORATION.—The board  
9 of directors of the Corporation may abate or defer,  
10 in whole or in part, an assessment imposed on a  
11 member insurer under this title if, in the opinion of  
12 the board, payment of the assessment would endan-  
13 ger the ability of the member insurer to fulfill its  
14 contractual obligations.

15 (2) SHARED BURDEN.—In the event an assess-  
16 ment against a member insurer is abated or de-  
17 ferred, in whole or in part, the amount by which the  
18 assessment is abated or deferred may be assessed  
19 against the other member insurers doing business in  
20 States without qualified associations, in a manner  
21 consistent with the basis for assessments set forth in  
22 this section. Once the conditions that caused action  
23 under this subsection have been removed or rectified,  
24 the member insurer shall pay all assessments that

1        were deferred pursuant to a repayment plan ap-  
2        proved by the board of directors of the Corporation.

3        (e) REFUNDS.—The board of directors of the Cor-  
4        poration may, by an equitable method, as established by  
5        its operating rules, refund to member insurers, in propor-  
6        tion to the contribution of each insurer to that account,  
7        the amount by which the assets of the account exceed the  
8        amount that the board finds is necessary to carry out dur-  
9        ing the coming year the obligations of this title with re-  
10       regard to that account, including assets accruing from as-  
11       signment, subrogation, net realized gains, and income  
12       from investments. A reasonable amount may be retained  
13       in any account to provide funds for the continuing ex-  
14       penses of the Corporation, and for future claims.

15       (f) ASSESSMENT PROTESTS.—

16            (1) IN GENERAL.—A member insurer that wish-  
17        es to protest all or part of an assessment under this  
18        title shall pay when due the full amount of the as-  
19        sessment, as set forth in the notice provided by the  
20        Corporation. The payment shall be available to meet  
21        obligations under this title during the pendency of  
22        the protest or any subsequent appeal. Payment shall  
23        be accompanied by a statement in writing that the  
24        payment is made under protest and setting forth a  
25        brief statement of the grounds for the protest.

1           (2) NOTIFICATION OF DETERMINATION.—Not  
2 later than 60 days after the date of payment of an  
3 assessment under protest by a member insurer, the  
4 Corporation shall notify the member insurer in writ-  
5 ing of the determination of the Corporation with re-  
6 spect to the protest, unless the Corporation notifies  
7 the insurer that additional time is required to re-  
8 solve the issues raised by the protest.

9           (3) FINAL DECISION.—Not later than 30 days  
10 after a final decision has been made, the Corpora-  
11 tion shall notify the protesting member insurer in  
12 writing of the final decision. Not later than 60 days  
13 after the date of receipt of notice of the final deci-  
14 sion, the protesting member insurer may appeal that  
15 final action to the Commissioner.

16           (4) REFERRAL.—In the alternative to rendering  
17 a final decision with respect to a protest based on  
18 a question regarding the assessment base, the Cor-  
19 poration may refer protests to the Commissioner for  
20 a final decision, with or without a recommendation  
21 from the Corporation.

22           (5) PROTEST OR APPEAL UPHELD.—If the pro-  
23 test or appeal on the assessment is upheld, the  
24 amount paid in error or excess shall be returned to  
25 the member insurer. Interest on a refund due a pro-

1 testing member insurer shall be paid at the rate ac-  
2 tually earned by the Corporation.

3 (g) TRANSITIONAL RESPONSIBILITIES.—In the event  
4 that the conservation, rehabilitation, or liquidation of a  
5 national insurer or State insurer commences at a time  
6 when a State insurance guaranty association or State in-  
7 surance guaranty fund is a nonqualified association, but  
8 such association or fund subsequently becomes a qualified  
9 association, the Corporation shall continue to be respon-  
10 sible for such conservation, rehabilitation, or liquidation,  
11 unless and until the Corporation shall contract with such  
12 association or fund pursuant to section 1602(e)(3). The  
13 Corporation shall continue to be entitled to levy assess-  
14 ments in respect of such pending conservation, rehabilita-  
15 tion, or liquidation on all companies doing business in the  
16 State where the association or fund resides, as if the asso-  
17 ciation or fund remained a nonqualified association.

18 (h) INFORMATION REQUESTS.—The Corporation  
19 may request information of member insurers doing busi-  
20 ness in States without qualified associations in order to  
21 aid in carrying out its duties under this section, and such  
22 member insurers shall promptly comply with such a re-  
23 quest.

1 **SEC. 1609. REGULATIONS.**

2 In addition to the duties and powers enumerated else-  
3 where in this title, the Commissioner shall issue such regu-  
4 lations as the Commissioner determines necessary to fa-  
5 cilitate the operations of the Corporation and implement  
6 the terms of this title.

7 **SEC. 1610. STATE TAXATION.**

8 No State shall have the power to impose its premium  
9 tax, franchise tax, income tax, retaliatory tax, or other pri-  
10 mary tax applicable to insurance companies, on any na-  
11 tional insurer, unless such State allows the national in-  
12 surer to recoup Corporation assessments allocable to such  
13 State—

14 (1) in the same manner and to the same extent  
15 that a State insurer is allowed to recoup State insur-  
16 ance guaranty association or State insurance guar-  
17 anty fund assessments in such State; or

18 (2) through the rates or a policyholder sur-  
19 charge, at the election of the national insurer, in any  
20 State that allows State insurers to recoup State in-  
21 surance guaranty association or State insurance  
22 guaranty fund assessments only through the rates.

23 **SEC. 1611. EXAMINATION OF THE CORPORATION; ANNUAL**  
24 **REPORT.**

25 The Corporation shall be subject to examination and  
26 regulation by the Commissioner. The Corporation shall

1 submit to the Commissioner, and each State insurance  
2 commissioner in any State without a qualified association,  
3 a financial report in a form approved by the Commissioner  
4 and a report of the activities of the Corporation during  
5 the preceding fiscal year, as the activities relate to its du-  
6 ties and functions carried out under this title.

7 **SEC. 1612. IMMUNITY.**

8       There shall be no liability on the part of, and no  
9 cause of action of any nature shall arise against, any of  
10 the following persons for any action or omission by them  
11 in the performance of their powers and duties under the  
12 State insurance guaranty association or fund or provisions  
13 of State insurance guaranty association or fund law or  
14 under this title:

15           (1) A member insurer and its directors, officers,  
16       employees, and agents.

17           (2) Any State insurance guaranty association or  
18       State insurance guaranty fund and its respective di-  
19       rectors, officers, employees, or agents.

20           (3) The Corporation and its directors, officers,  
21       employees, and agents.

22           (4) The Commissioner and the representatives  
23       thereof.

24           (5) Any State insurance commissioner and rep-  
25       resentatives thereof.

1 **TITLE** **VII—CONFORMING**  
2 **AMENDMENTS AND MIS-**  
3 **CELLANEOUS PROVISIONS**

4 **SEC. 1701. NONDISCRIMINATION.**

5 No State may, by statute, regulation, order, interpre-  
6 tation, or otherwise, discriminate, in any manner,  
7 against—

8 (1) any State insurer because such insurer or  
9 any affiliate has applied to become, or has declared  
10 its intention to become, a national insurer chartered  
11 under this Act;

12 (2) any State-licensed insurance producer be-  
13 cause such insurance producer or an affiliate has ap-  
14 plied to become, or has declared its intention to be-  
15 come, a national agency chartered under this Act or  
16 a federally licensed insurance producer licensed  
17 under this Act;

18 (3) any affiliate of a national insurer, national  
19 agency, or a federally licensed insurance producer  
20 because the affiliate is so affiliated;

21 (4) any policyholder, insured, claimant, State-li-  
22 censed insurance producer, or any person engaged in  
23 the acts described in section 1304(b) because of any  
24 dealing with a national insurer, national agency, a  
25 federally licensed insurance producer, or an affiliate

1 of a national insurer, national agency, or a federally  
2 licensed insurance producer; or

3 (5) any State-licensed insurance producer (in-  
4 cluding with respect to such producer's sales, solici-  
5 tation, or negotiation of any insurance policy written  
6 or sold by a State insurer) because it sells, solicits,  
7 or negotiates an insurance policy written or sold by  
8 a national insurer.

9 **SEC. 1702. APPLICATION OF THE FEDERAL ANTITRUST**  
10 **LAWS TO NATIONAL INSURERS, NATIONAL**  
11 **AGENCIES, AND FEDERALLY LICENSED IN-**  
12 **SURANCE PRODUCERS.**

13 (a) APPLICATION.—Except as provided in subsection  
14 (b), the Sherman Act (15 U.S.C. 1 et seq.), the Clayton  
15 Act (15 U.S.C. 12 et seq.), the Federal Trade Commission  
16 Act (15 U.S.C. 41 et seq.), and the Act of June 19, 1936  
17 (49 Stat. 1526) (commonly known as the Robinson-Pat-  
18 man Antidiscrimination Act), shall be applicable to na-  
19 tional insurers, national agencies, and federally licensed  
20 insurance producers to the same extent as other busi-  
21 nesses are subject to such laws, except as follows:

22 (1) Such laws shall not apply to the develop-  
23 ment, dissemination, or use of standard insurance  
24 policy forms (including standard endorsements,  
25 addendums, and policy language), or to activities in-

1       cidental thereto, by national insurers, national agen-  
2       cies, and federally licensed insurance producers.

3               (2) Section 3 of the Act of March 9, 1945 (59  
4       Stat. 33; 15 U.S.C. 1013), shall apply to national  
5       insurers, national agencies, and federally licensed in-  
6       surance producers to the extent that such insurers  
7       and producers are subject to State law.

8       (b) EXCEPTION.—Section 5 of the Federal Trade  
9       Commission Act (15 U.S.C. 45) shall not apply to national  
10      insurers, national agencies, and federally licensed insur-  
11      ance producers.

12   **SEC. 1703. APPLICATION OF STATE LAW AND REGULATION**  
13                   **TO NATIONAL INSURERS, NATIONAL AGEN-**  
14                   **CIES, AND FEDERALLY LICENSED INSURANCE**  
15                   **PRODUCERS.**

16      Except to the extent expressly provided in this Act,  
17      national insurers, national agencies, and federally licensed  
18      insurance producers shall not be subject under State law  
19      to any form of licensing, examination, reporting, regula-  
20      tion, or other supervision relating to the sale, solicitation,  
21      or negotiation of insurance, to the underwriting of insur-  
22      ance, or to any other insurance operations.

23   **SEC. 1704. FEDERAL COURT JURISDICTION.**

24      Chapter 85 of part IV of title 28, United States Code,  
25      is amended by adding at the end the following:

1 **“§ 1370. National insurer as party**

2 “The district courts shall have original jurisdiction  
3 of any civil action—

4 “(1) commenced by the United States, or by di-  
5 rection of any officers thereof, against any national  
6 insurer, national agency, or any federally licensed in-  
7 surance producer;

8 “(2) to enjoin the Commissioner of National In-  
9 surance in the Commissioner’s capacity as head of  
10 the Office of National Insurance or as the receiver  
11 of a national insurer.”.

12 **SEC. 1705. FEDERAL COURT VENUE.**

13 Chapter 87 of part IV of title 28, United States Code,  
14 is amended by adding at the end the following:

15 **“SEC. 1414. NATIONAL INSURER OR NATIONAL AGENCY AC-  
16 TION AGAINST COMMISSIONER OF NATIONAL  
17 INSURANCE.**

18 “Any civil action by a national insurer or a national  
19 agency to enjoin the Commissioner of National Insurance,  
20 under the provisions of any Act of Congress relating to  
21 such insurers or agencies, may be prosecuted in the judi-  
22 cial district where such insurer or agency is located.”.

23 **SEC. 1706. JUDICIAL REVIEW.**

24 Except as otherwise expressly provided in this Act,  
25 any party aggrieved by an order of the Commissioner  
26 under this Act may obtain a review of such order in the

1 United States Court of Appeals within any circuit wherein  
2 such party has its main office, or in the Court of Appeals  
3 for the District of Columbia, by filing in the court, within  
4 30 days after the entry of the Commissioner's order, a  
5 petition praying that the order of the Commissioner be  
6 set aside, modified, or terminated. A copy of such petition  
7 shall be forthwith transmitted to the Commissioner by the  
8 clerk of the court, and thereupon the Commissioner shall  
9 file in the court the record made before the Commissioner,  
10 as provided in section 2112 of title 28, United States  
11 Code. Upon the filing of such petition, the court shall have  
12 jurisdiction to affirm, set aside, modify, or terminate the  
13 order of the Commissioner and to require the Commis-  
14 sioner to take such action with regard to the matter under  
15 review as the court determines proper. Review of an order  
16 under this section shall be had as provided in chapter 7  
17 of part I of title 5, United States Code. The judgment  
18 and decree of the court shall be final, except that the same  
19 shall be subject to review by the Supreme Court upon cer-  
20 tiorari, as provided in section 1254 of title 28, United  
21 States Code.

22 **SEC. 1707. AMENDMENT TO THE FREEDOM OF INFORMA-**  
23 **TION ACT.**

24 Section 552(b)(8) of title 5, United States Code, is  
25 amended by inserting "(including national insurers, na-

1 tional agencies, and federally licensed insurance pro-  
 2 ducers)” after “financial institutions”.

3 **SEC. 1708. AMENDMENTS TO THE FEDERAL SECURITIES**

4 **LAWS.**

5 (a) SECURITIES ACT OF 1933.—The Securities Act  
 6 of 1933 (15 U.S.C. 77a et seq.) is amended—

7 (1) in section 2(a)(13), by inserting “the Com-  
 8 missioner of National Insurance or” after “subject  
 9 to supervision by”;

10 (2) in section 2(a)(14), by inserting “the  
 11 United States or” after “the laws of”;

12 (3) in section 3(a)(8), by inserting “the Com-  
 13 missioner of National Insurance or” after “subject  
 14 to the supervision of”;

15 (4) in section 4(5)(A)(ii), by inserting “the  
 16 Commissioner of National Insurance or” after “sub-  
 17 ject to the supervision of”.

18 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-  
 19 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)  
 20 is amended—

21 (1) in section 10A(i)(1)(A) (15 U.S.C. 78j-  
 22 l(i)(1)(A)), by inserting “or Federal” after “pur-  
 23 poses of State”;

24 (2) in section 15(b)(4)(H) (15 U.S.C.  
 25 78o(b)(4)(H))—

1 (A) by striking “or the National” and in-  
2 serting “the National”; and

3 (B) by inserting, “or the Commissioner of  
4 National Insurance” after “Union Administra-  
5 tion”.

6 (3) in section 17(i)(3)(C)(iii), by inserting “or  
7 by the Commissioner of National Insurance” after  
8 “appropriate State insurance regulator”; and

9 (4) in section 17(i)(4)—

10 (A) in subparagraph (A), by striking  
11 “and” after the semicolon;

12 (B) in subparagraph (B), by striking the  
13 period at the end and inserting “; and”; and

14 (C) by adding at the end the following:

15 “(D) the Commissioner of National Insur-  
16 ance with regard to all interpretations of, and  
17 the enforcement of, the National Insurance Act  
18 of 2007 relating to the activities, conduct, and  
19 operations of national insurers, national agen-  
20 cies, and federally licensed insurance pro-  
21 ducers.”.

22 (c) AMENDMENTS TO INVESTMENT COMPANY ACT OF  
23 1940.—The Investment Company Act of 1940 (15 U.S.C.  
24 80a–1 et seq.) is amended—

1           (1) in section 2(a)(17), by inserting “the Com-  
2           missioner of National Insurance or” after “subject  
3           to supervision by”;

4           (2) in section 2(a)(37), by inserting “the  
5           United States or” after “the laws of”;

6           (3) in section 12(g)—

7                 (A) by inserting “the Commissioner of Na-  
8                 tional Insurance or” after “affect or derogate  
9                 from the powers of”; and

10                (B) by inserting “Federal or” after “affect  
11                the right under”;

12           (4) in section 26(f)(2)(B)(ii), by inserting “or,  
13           in the case of a national insurer chartered under the  
14           National Insurance Act of 2007, files with the Com-  
15           missioner of National Insurance,” after “files with  
16           the insurance regulatory authority of the State  
17           which is the domiciliary State of the insurance com-  
18           pany,”; and

19           (5) in section 26(f)(2)(B)(iii), by inserting “or,  
20           in the case of a national insurer chartered under the  
21           National Insurance Act of 2007, the Commissioner  
22           of National Insurance” after “insurance authority of  
23           such State”.

1 (d) INVESTMENT ADVISERS ACT OF 1940.—Section  
2 203(e)(9) of the Investment Advisers Act of 1940 (15  
3 U.S.C. 80b-3(e)(9)) is amended—

4 (1) by striking “or the National” and inserting  
5 “the National”; and

6 (2) by inserting “, or the Commissioner of Na-  
7 tional Insurance” after “Union Administration”.

8 **SEC. 1709. AMENDMENTS TO THE EMPLOYEE RETIREMENT**  
9 **INCOME SECURITY ACT OF 1974.**

10 The Employee Retirement Income Security Act of  
11 1974 (29 U.S.C. 1001 et seq.) is amended—

12 (1) in section 401(b)(2)(A), by inserting “or li-  
13 censed as a national insurer” after “qualified to do  
14 business in a State”; and

15 (2) in section 733(b)(2), by inserting “or which  
16 is licensed as a national insurer and which is subject  
17 to the authority of the Commissioner of National In-  
18 surance” after “(within the meaning of section  
19 514(b)(2))”.

20 **SEC. 1710. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**  
21 **ACT.**

22 (a) INTERAGENCY CONSULTATION.—

23 (1) AMENDMENTS.—Section 307 of the  
24 Gramm-Leach-Bliley Act (15 U.S.C. 6716) is  
25 amended by adding at the end the following:

1       “(g) OFFICE OF NATIONAL INSURANCE.—In this sec-  
2 tion, the terms ‘State insurance regulator’, ‘State insur-  
3 ance regulators’, and ‘insurance regulator of any State’  
4 shall include the Office of National Insurance.”.

5           (2) NO WAIVER.—The provision of information  
6 or material by the Office of National Insurance to  
7 a Federal banking agency (as defined in section 3 of  
8 the Federal Deposit Insurance Act (12 U.S.C.  
9 1813)) shall not constitute a waiver of, or otherwise  
10 affect, any privilege or other form of legal protection  
11 or exemption from public disclosure to which such  
12 information or material is otherwise subject.

13       (b) PRIVACY.—The Gramm-Leach-Bliley Act (Public  
14 Law 106–102; 113 Stat. 1338) is amended—

15           (1) in section 504(a)(1), by inserting “the Com-  
16 missioner of National Insurance,” after “Federal  
17 banking agencies,”;

18           (2) in section 504(a)(3), by inserting “, except  
19 that, in the case of the Commissioner of National  
20 Insurance, such regulations shall be issued in final  
21 form not later than 12 months after the date of en-  
22 actment of the National Insurance Act of 2007”  
23 after “enactment of this Act”;

24           (3) in section 505(a)(6), by inserting “(other  
25 than a person subject to the jurisdiction of the Of-

1        fice of National Insurance under paragraph (8))”  
2        after “providing insurance”;

3            (4) in section 505(a)—

4            (A) by redesignating paragraph (7) as  
5        paragraph (8); and

6            (B) by inserting after paragraph (6) the  
7        following:

8            “(7) Under subtitle C of title I of the National  
9        Insurance Act of 2007, by the Commissioner of Na-  
10       tional Insurance with respect to any national insurer  
11       or national agency, any subsidiaries of such an enti-  
12       ty (except any financial institution or other person  
13       subject to the jurisdiction of any agency or authority  
14       under paragraphs (1) through (6)), and any feder-  
15       ally licensed insurance producer.”;

16           (5) in section 505(a)(8), as redesignated by  
17        paragraph (4) of this section, by striking “through  
18        (6)” and inserting “through (7)”;

19           (6) in section 505(b)(2), by striking “and (7)”  
20        and inserting “(7), and (8)”;

21           (7) in section 509(2)—

22           (A) by redesignating subparagraphs (E)  
23        and (F) as subparagraphs (F) and (G), respec-  
24        tively; and

1 (B) by inserting after subparagraph (D)  
2 the following:

3 “(E) the Commissioner of National Insur-  
4 ance;”;

5 (8) in section 521(e), by inserting “or Federal”  
6 after “such institution under State”;

7 (9) in section 522(b)(1)—

8 (A) in subparagraph (A)(iv), by striking  
9 “and” after the semicolon;

10 (B) in subparagraph (B), by striking the  
11 period at the end and inserting “; and”; and

12 (C) by inserting after subparagraph (B)  
13 the following:

14 “(C) subtitle C of title I of the National  
15 Insurance Act of 2007, by the Commissioner of  
16 National Insurance with respect to any national  
17 insurer or national agency and any federally li-  
18 censed insurance producer.”; and

19 (10) in section 525, by inserting “the Commis-  
20 sioner of National Insurance,” after “National Cred-  
21 it Union Administration,”.

22 (c) OTHER CONFORMING AMENDMENTS.—The  
23 Gramm-Leach-Bliley Act (Public Law 106–102; 113 Stat.  
24 1338) is amended—

1           (1) in section 104(b), by inserting “, or as re-  
2           quired by the Commissioner of National Insurance  
3           in accordance with the National Insurance Act of  
4           2007” after “subject to subsections (c), (d), and  
5           (e)”;

6           (2) in section 104(f)—

7                 (A) by striking “Subsections (c) and (d)”  
8                 and inserting the following:

9                 “(1) IN GENERAL.—Subsections (c) and (d)”;

10                (B) by striking “(1) the jurisdiction” and  
11                inserting the following: “(A) the jurisdiction”;

12                (C) by striking “(A) to investigate” and in-  
13                serting the following: “(i) to investigate”;

14                (D) by striking “(B) to require” and in-  
15                serting the following: “(ii) to require”;

16                (E) by striking “(2) State laws” and in-  
17                serting the following: “(B) State laws”; and

18                (F) by adding at the end the following:

19                “(2) OTHER.—Notwithstanding any provision  
20                of subsection (d), paragraphs (2) and (3) of sub-  
21                section (d) and subsection (e) shall not apply to any  
22                person to the extent that such person is engaged in  
23                the business of insurance or other insurance oper-  
24                ations pursuant to authority provided under the Na-  
25                tional Insurance Act of 2007.”;

1 (3) in section 104(g)(4), by striking “business  
2 of insurance.” and inserting “business of insurance,  
3 but only to the extent that such person is doing so  
4 pursuant to a license issued under the authority of  
5 State law.”;

6 (4) in section 112, by inserting in the heading  
7 “**COMMISSIONER OF NATIONAL INSURANCE**”  
8 after “**AUTHORITY OF STATE INSURANCE REGU-**  
9 **LATOR**”;

10 (5) in section 301, by inserting “, except that  
11 the insurance activities of a national insurer, na-  
12 tional agency, and a federally licensed insurance pro-  
13 ducer shall be functionally regulated by the Office of  
14 National Insurance” after “subject to section 104”;  
15 and

16 (6) in section 311, by inserting at the end the  
17 following: “This subtitle shall not apply to a national  
18 insurer in mutual form that is reorganizing into a  
19 mutual holding company.”.

20 **SEC. 1711. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**  
21 **SURANCE ACT.**

22 The Federal Deposit Insurance Act (12 U.S.C. 1811  
23 et seq.) is amended—

24 (1) in section 45, by inserting in the section  
25 heading “, **COMMISSIONER OF OFFICE OF NA-**

1       **TIONAL INSURANCE,**” after “**STATE INSURANCE**  
2       **REGULATOR**”; and

3               (2) in section 47(g)(1)—

4                       (A) in subparagraph (A), by striking “or”  
5                       after the semicolon;

6                       (B) in subparagraph (B), by striking the  
7                       period at the end and inserting “; or”; and

8                       (C) by adding at the end the following:

9                               “(C) any authority of the Commissioner of  
10                               National Insurance under the National Insur-  
11                               ance Act of 2007.”.

12       **SEC. 1712. AMENDMENTS TO THE BANK HOLDING COM-**  
13                       **PANY ACT OF 1956.**

14       The Bank Holding Company Act of 1956 (12 U.S.C.  
15       1841 et seq.) is amended—

16               (1) in section 4(k)(4)(I)(iii), by inserting “or  
17               Federal” after “relevant State”;

18               (2) in section 5(c)(2)(E)(iii), by inserting “or  
19               by or on behalf of the Commissioner of National In-  
20               surance” after “for the supervision of insurance  
21               companies”;

22               (3) in section 5(c)(3)(A)(ii)(I), by inserting “or  
23               the Office of National Insurance” after “Securities  
24               and Exchange Commission”;

1 (4) in section 5(c)(4)(B), by inserting “or the  
2 Commissioner of National Insurance” after “a State  
3 insurance authority”;

4 (5) in section 5(c)(5)(B)(iv), by inserting “or by  
5 the Commissioner of National Insurance” after  
6 “State insurance regulator”;

7 (6) in section 5(g), by inserting in the heading  
8 “, COMMISSIONER OF NATIONAL INSURANCE” after  
9 “STATE INSURANCE REGULATOR”;

10 (7) in section 5(g)(1)(B), by inserting “or the  
11 Commissioner of National Insurance” after “State  
12 insurance authority”;

13 (8) in section 5(g)(2)—

14 (A) in the heading, by inserting “, COM-  
15 MISSIONER OF NATIONAL INSURANCE,” after  
16 “STATE INSURANCE AUTHORITY”; and

17 (B) by inserting “or the Commissioner of  
18 National Insurance” after “the Board shall  
19 promptly notify the State insurance authority”;  
20 and

21 (9) in section 5(g)(3), by inserting “, the Com-  
22 missioner of National Insurance,” after “If the  
23 Board receives a notice described in paragraph  
24 (1)(B) from a State insurance authority”.

1 **SEC. 1713. AMENDMENTS TO TITLE 18 (CRIMES AND CRIMI-**  
2 **NAL PROCEDURE).**

3 (a) AMENDMENTS TO TITLE 18.—Section 1033(b) of  
4 title 18, United States Code, is amended—

5 (1) in paragraph (1)—

6 (A) by inserting “removes, conceals, alters,  
7 destroys,” after “willfully embezzles, abstracts,  
8 purloins,”; and

9 (B) by inserting “assets,” after “moneys,  
10 funds, premiums, credits,”; and

11 (2) in paragraph (2)—

12 (A) in the first sentence, by inserting “re-  
13 moval, concealment, alteration, destruction,”  
14 after “embezzlement, abstraction, purloining,”;  
15 and

16 (B) in the second sentence, by inserting  
17 “removed, concealed, altered, destroyed,” after  
18 “embezzled, abstracted, purloined.”.

19 (b) INSURANCE FRAUD.—Title 18, United States  
20 Code, is amended by inserting after section 1037 the fol-  
21 lowing:

22 **“§ 1037A. Insurance fraud**

23 “(a) Whoever commits a fraudulent insurance act or  
24 whoever knowingly and intentionally interferes with the  
25 enforcement of the provisions of subtitle D of title I of  
26 the National Insurance Act of 2007 or investigations of

1 suspected or actual violations of this section shall be pun-  
2 ished as provided in subsection (b).

3 “(b)(1) Except as provided in paragraph (2), the  
4 punishment for an offense under subsection (a) is a fine  
5 as provided under this title or imprisonment for not more  
6 than 10 years, or both.

7 “(2) Where the person committing an offense under  
8 subsection (a) is a national insurer, national agency, in-  
9 surer-affiliated party, or a federally licensed insurance  
10 producer, punishment for an offense under subsection (a)  
11 shall be a fine, the maximum of which is the greater of—

12 “(A) \$1,000,000 per violation; or

13 “(B) a fine as provided under this title, or im-  
14 prisonment for not more than 10 years, or both.

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 1 year, or both.

19 “(4) The punishment in this subsection shall be in  
20 addition to any other penalties under the National Insur-  
21 ance Act of 2007.

22 “(5) Any person convicted of an offense under sub-  
23 section (a) shall be ordered to make monetary restitution  
24 for any financial loss or damage sustained by any other  
25 person as a result of such offense. Such restitution shall

1 be the exclusive monetary remedy available to the victim  
2 at law or in equity after entry of judgment. However,  
3 nothing in this paragraph shall preclude the maintenance  
4 of an action pursuant to section 1163 of the National In-  
5 surance Act of 2007, absent a conviction. If the person  
6 convicted of an offense under subsection (a) holds an occu-  
7 pational license under any provision of State or Federal  
8 law, the court shall notify the appropriate licensing au-  
9 thority of the conviction.

10       “(c)(1) Any individual who has been convicted of any  
11 criminal felony involving dishonesty or breach of trust,  
12 and who participates in the business of insurance, shall  
13 be fined as provided in this title or imprisoned not more  
14 than 5 years, or both.

15       “(2) Any insurance person who is engaged in the  
16 business of insurance who knowingly and intentionally  
17 permits the participation described in paragraph (1) shall  
18 be fined as provided in this title or imprisoned not more  
19 than 5 years, or both.

20       “(3) A person described in paragraph (1) or (2) may  
21 participate in the business of insurance or permit such  
22 participation, as the case may be, if such person has the  
23 written consent of the Commissioner of National Insur-  
24 ance.

25       “(d) In this section—

1           “(1) the terms ‘Commissioner,’ ‘insurance pol-  
2           icy,’ ‘insurance producer,’ ‘insurer-affiliated party,’  
3           ‘national agency,’ ‘national insurer,’ ‘person,’ and  
4           ‘policy of insurance’ have the meanings given to the  
5           terms in section 3 of the National Insurance Act of  
6           2007;

7           “(2) the term ‘business of insurance’ has the  
8           meaning given to the term in section 1033(f)(1);

9           “(3) the term ‘fraudulent insurance act’ means  
10          an act or omission committed by a person who,  
11          knowingly and with intent to defraud, and for the  
12          purpose of depriving another of property or for pecu-  
13          niary gain, commits, participates in, or aids, abets,  
14          or conspires to commit or solicits another person to  
15          commit, or permits its employees or its agents to  
16          commit, 1 or more of the following—

17               “(A) presenting, causing to be presented or  
18               preparing with knowledge or belief that it will  
19               be presented to or by a national insurer, na-  
20               tional agency, or an insurance producer acting  
21               with respect to a policy of insurance written by  
22               a national insurer, false information as part of,  
23               in support of or concerning a fact material to  
24               1 or more of the following—

1           “(i) an application for a new or re-  
2           newal of an insurance policy or reinsurance  
3           contract;

4           “(ii) the rating of a national insurer  
5           that writes an insurance policy or enters  
6           into a reinsurance contract;

7           “(iii) a claim for payment or benefit  
8           pursuant to an insurance policy or reinsur-  
9           ance contract;

10           “(iv) premiums paid on an insurance  
11           policy or reinsurance contract;

12           “(v) payments made in accordance  
13           with the terms of an insurance policy or  
14           reinsurance contract;

15           “(vi) a document filed with the Com-  
16           missioner;

17           “(vii) the financial condition of a na-  
18           tional insurer;

19           “(viii) the formation, acquisition,  
20           merger, consolidation, dissolution, or with-  
21           drawal from 1 or more lines of insurance  
22           or reinsurance by a national insurer;

23           “(ix) the issuance of evidence of in-  
24           surance, whether in writing, electronic  
25           form, or otherwise; or

1                   “(x) the reinstatement of an insurance  
2                   policy;

3                   “(B) solicitation or acceptance of new or  
4                   renewal insurance risks on behalf of a national  
5                   insurer, national agency, or other persons en-  
6                   gaged in the business of insurance by a person  
7                   who knows or should know that the national in-  
8                   surer or other person responsible for the risk is  
9                   insolvent at the time of the transaction;

10                  “(C) removal, concealment, alteration, or  
11                  destruction of the records of a national insurer,  
12                  national agency, or other person engaged in the  
13                  business of insurance;

14                  “(D) transaction of the business of insur-  
15                  ance in violation of laws requiring a license  
16                  therefore under the National Insurance Act of  
17                  2007; or

18                  “(E) attempting to commit, aiding or abet-  
19                  ting in the commission of, or conspiracy to com-  
20                  mit the acts or omissions specified in, this para-  
21                  graph; and

22                  “(4) the term ‘insurance person’ means officers,  
23                  directors, agents, or employees of national insurers  
24                  or national agencies, or other persons authorized to

1 act on behalf of national insurers or national agen-  
2 cies.”.

3 **SEC. 1714. AMENDMENTS TO THE AMERICANS WITH DIS-**  
4 **ABILITIES ACT OF 1990.**

5 Section 501(c) of the Americans with Disabilities Act  
6 of 1990 (42 U.S.C. 12201(c)) is amended—

7 (1) in paragraph (1), by inserting “or Federal”  
8 after “based on or not inconsistent with State”;

9 (2) in paragraph (2), by inserting “or Federal”  
10 after “based on or not inconsistent with State”; and

11 (3) in paragraph (3), by inserting “or Federal”  
12 after “subject to State”.

13 **SEC. 1715. AMENDMENT TO THE AGE DISCRIMINATION IN**  
14 **EMPLOYMENT ACT.**

15 Section 12(c)(2) of the Age Discrimination in Em-  
16 ployment Act of 1967 (29 U.S.C. 631(c)(2)) is amended  
17 by inserting “and the Commissioner of National Insur-  
18 ance” after “after consultation with the Secretary of the  
19 Treasury”.

20 **SEC. 1716. AMENDMENTS TO THE FAIR CREDIT REPORTING**  
21 **ACT.**

22 Section 621 of the Fair Credit Reporting Act (15  
23 U.S.C. 1681s) is amended—

24 (1) in subsection (b)—

1 (A) in paragraph (5), by striking “and”  
2 after the semicolon;

3 (B) in paragraph (6), by striking the pe-  
4 riod at the end and inserting “; and”;

5 (C) by inserting after paragraph (6) the  
6 following:

7 “(7) subtitle C of title I of the National Insur-  
8 ance Act of 2007, by the Commissioner of National  
9 Insurance with respect to any national insurer, na-  
10 tional agency, and any federally licensed insurance  
11 producer.”; and

12 (D) by adding at the end of the undesig-  
13 nated matter at the end the following: “The  
14 terms used in paragraph (7) that are not de-  
15 fined in this title shall have the meaning given  
16 to them in section 3 of the National Insurance  
17 Act of 2007.”; and

18 (2) in subsection (e), by adding at the end the  
19 following:

20 “(3) The Commissioner of National Insurance  
21 shall prescribe such regulations as are necessary to  
22 carry out the purpose of this title with respect to  
23 any persons identified in subsection (b)(7).”.

○