

110TH CONGRESS
1ST SESSION

H. R. 3200

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.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2007

Ms. BEAN (for herself and Mr. ROYCE) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To 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.
Sec. 1717. GAO study of insurance sector competitiveness.

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) **ANTI-FRAUD ORGANIZATION.**—The term
20 “anti-fraud organization” means an organization
21 whose purposes include investigation, prevention and
22 detection of insurance-related crime and fraud (in-
23 cluding assistance to and cooperation with state and
24 national public officials and law enforcement officers
25 in their anti-fraud activities) and which is qualified

1 as a not for profit organization under section 501(c)
2 of the Internal Revenue Code of 1986.

3 (3) BUSINESS ENTITY.—The term “business
4 entity” means a corporation, association, partner-
5 ship, trust, limited liability company, limited liability
6 partnership, or other legal entity.

7 (4) BUSINESS OF INSURANCE.—The term
8 “business of insurance” has the meaning given to
9 such term in section 1033(f) of title 18, United
10 States Code.

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

14 (6) CONTROL.—

15 (A) IN GENERAL.—The term “control”, in-
16 cluding the terms “controlling”, “controlled
17 by”, and “under common control with” means
18 the possession, direct or indirect, of the power
19 to direct or cause the direction of the manage-
20 ment and policies of a person, whether through
21 the ownership of voting securities, by contract
22 or otherwise, unless the power is the result of
23 an official position with or corporate office held
24 by a person.

1 (B) SPECIAL RULE.—For purposes of sec-
2 tions 1204(e), 1231, 1243(g), and title IV, con-
3 trol shall be presumed to exist if any person, di-
4 rectly or indirectly, owns, controls, holds with
5 the power to vote, or holds proxies representing,
6 10 percent or more of the voting securities of
7 any other person.

8 (7) CORPORATE GOVERNANCE PROCEDURES.—
9 The term “corporate governance procedures” in-
10 cludes rules governing—

11 (A) corporate finance;

12 (B) shareholders, members, policyholders,
13 directors, and officers and meetings, elections,
14 voting, and notice relating to such persons;

15 (C) indemnification of directors and offi-
16 cers and insurance for indemnification of direc-
17 tors and officers; and

18 (D) the duties of shareholders, directors,
19 and officers (including any duty of care or duty
20 of fair dealing and any business judgment rule).

21 (8) CORPORATION.—The term “Corporation”
22 means the National Insurance Guaranty Corporation
23 established under section 1603.

24 (9) FEDERAL BANKING AGENCIES.—The term
25 “Federal banking agencies” means the Office of the

1 Comptroller of the Currency, the Board of Gov-
2 ernors of the Federal Reserve System, the Federal
3 Deposit Insurance Corporation, and the Office of
4 Thrift Supervision.

5 (10) **FEDERALLY LICENSED INSURANCE PRO-**
6 **DUCER.**—The term “federally licensed insurance
7 producer” means a person, including a national
8 agency and a natural person acting on behalf of a
9 national agency, that is an insurance producer li-
10 censed pursuant to section 1301.

11 (11) **FRAUDULENT INSURANCE ACT.**—The term
12 “fraudulent insurance act” has the meaning given to
13 such term in section 1037A(d)(3) of title 18, United
14 States Code.

15 (12) **FUNCTIONAL REGULATOR.**—The term
16 “functional regulator” means—

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

20 (B) in the case of a State insurer or State
21 insurance producer, the appropriate State in-
22 surance regulator of a State that has jurisdic-
23 tion over such insurer or insurance producer;

1 (C) in the case of a bank holding company
2 or financial holding company, the Federal Re-
3 serve Board;

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

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

8 (F) in the case of a Federal savings bank
9 or Federal savings association, the Office of
10 Thrift Supervision;

11 (G) in the case of a State bank, the appro-
12 priate State banking authority for the State in
13 which the bank is chartered or the Federal De-
14 posit Insurance Corporation, in the case of a
15 State bank that is not a member of the Federal
16 Reserve System, or the Federal Reserve Board,
17 in the case of a State bank that is a member
18 of the Federal Reserve System;

19 (H) in the case of a State savings bank or
20 State savings association, the appropriate bank-
21 ing authority for the State in which the thrift
22 is chartered; and

23 (I) in the case of a commodities company,
24 the Commodities Exchange Commission.

1 (13) FUNCTIONALLY REGULATED AFFILIATE.—

2 The term “functionally regulated affiliate” means—

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

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

8 (C) an investment company that is reg-
9 istered under the Investment Company Act of
10 1940;

11 (D) a State insurer or State insurance pro-
12 ducer that is subject to supervision by a State
13 insurance regulator;

14 (E) a bank holding company or financial
15 holding company registered with or certified by
16 the Federal Reserve Board;

17 (F) a national bank subject to the super-
18 vision of the Office of the Comptroller of the
19 Currency;

20 (G) a State bank subject to the supervision
21 of a State banking regulator;

22 (H) a Federal savings bank or Federal
23 savings association subject to the supervision of
24 the Office of Thrift Supervision;

1 (I) a State savings bank or State savings
2 association subject to the supervision of a State
3 banking regulator; and

4 (J) a business entity that is subject to reg-
5 ulation by the Commodity Futures Trading
6 Commission, with respect to commodities activi-
7 ties of such entity and activities incidental to
8 such commodities activities.

9 (14) INSOLVENCY; INSOLVENT.—

10 (A) IN GENERAL.—The term “insolvency”
11 or “insolvent” means the inability of an insurer
12 to pay its obligations when they are due or
13 when the assets do not exceed liabilities plus
14 the greater of—

15 (i) any capital and surplus required
16 by law for its organization; or

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

19 (B) LIABILITIES.—In this paragraph, the
20 term “liabilities” shall include reserves required
21 by statute or by rule or specific requirements
22 imposed by the Commissioner upon an insurer.

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

25 (A) the business of insurance;

1 (B) all acts and transactions relating to
2 the sale, solicitation, negotiation, and under-
3 writing of insurance;

4 (C) all acts and transactions relating to
5 claims adjustment and settlement;

6 (D) all acts and transactions relating to
7 the establishment of rates, rules, risk classifica-
8 tions, rating classifications, rating territories,
9 and forms (including, endorsements, adden-
10 dums, and policy language) for insurance;

11 (E) all acts and transactions relating to
12 marketing and sales practices;

13 (F) financial condition and solvency;

14 (G) holding company transactions; and

15 (H) corporate governance.

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

19 (17) INSURANCE PRODUCER.—The term “in-
20 surance producer”—

21 (A) means any person, including a national
22 agency and a natural person acting on behalf of
23 a national agency, that sells, solicits, or nego-
24 tiates policies of insurance, non-admitted insur-
25 ance, and surplus lines of insurance; and

1 (B) does not include—

2 (i) a national insurer;

3 (ii) an officer, director, or employee of
4 a national insurer or of an insurance pro-
5 ducer—

6 (I) if the officer, director, or em-
7 ployee does not receive any commis-
8 sion or other compensation on insur-
9 ance policies written or sold by the
10 national insurer or insurance pro-
11 ducer, which commission or other
12 compensation is directly dependent
13 upon the amount of insurance policies
14 written or sold; and

15 (II) if—

16 (aa) the activities of the offi-
17 cer, director, or employee are ex-
18 ecutive, administrative, manage-
19 rial, clerical, or a combination
20 thereof, and are only indirectly
21 related to the sale, solicitation, or
22 negotiation of insurance;

23 (bb) the functions of the of-
24 ficer, director, or employee relate
25 to underwriting, loss control, in-

1 specification, or the processing, ad-
2 justing, investigating, or settling
3 of a claim on a policy of insur-
4 ance; or

5 (cc) the officer, director, or
6 employee is acting in the capacity
7 of a special agent or agency su-
8 pervisor assisting insurance pro-
9 ducers where the person's activi-
10 ties are limited to providing tech-
11 nical advice and assistance to
12 federally licensed insurance pro-
13 ducers, and do not include the
14 sale, solicitation, or negotiation
15 of insurance;

16 (iii) a person who secures and fur-
17 nishes information for the purpose of
18 group insurance policies, or for the pur-
19 pose of enrolling individuals under plans,
20 or issuing certificates under plans, or oth-
21 erwise assisting in administering plans,
22 where no commission or other compensa-
23 tion directly dependent upon the amount of
24 insurance policies written or sold is paid to
25 the person for the service;

1 (iv) an employer or association or its
2 officers, directors, employees, or the trust-
3 ees of an employee trust plan, to the extent
4 that the employer, association, officer, di-
5 rector, employee, or trustee is engaged in
6 the administration or operation of a pro-
7 gram of employee benefits for the employ-
8 er's or association's own employees or the
9 employees of its subsidiaries or affiliates,
10 which program involves the use of insur-
11 ance written by the national insurer, as
12 long as the employer, association, officer,
13 director, employee, or trustee is not in any
14 manner compensated, directly or indirectly,
15 by the national insurer;

16 (v) an employee of a national insurer
17 or an organization employed by a national
18 insurer that is engaging in the inspection,
19 rating, or classification of risks, or in the
20 supervision of the training of insurance
21 producers and that is not individually en-
22 gaged in the sale, solicitation, or negotia-
23 tion of insurance;

24 (vi) a person whose activities are lim-
25 ited to advertising without the intent to so-

1 licit insurance through communications in
2 printed publications or other forms of elec-
3 tronic mass media, provided that the per-
4 son does not sell, solicit, or negotiate in-
5 surance;

6 (vii) a salaried full-time employee who
7 counsels or advises his or her employer rel-
8 ative to the insurance interests of the em-
9 ployer or of the subsidiaries or business af-
10 filiates of the employer provided that the
11 employee does not sell or solicit insurance
12 or receive a commission or other com-
13 pensation directly dependent upon the
14 amount of insurance policies written or
15 sold;

16 (viii) a person that sells, solicits, or
17 negotiates a funding agreement; or

18 (ix) any other kind of person identi-
19 fied by the Commissioner, by regulation, as
20 not being an insurance producer for pur-
21 poses of this Act.

22 (18) INSURANCE SECURITIZATION.—The term
23 “insurance securitization” means the issuance of
24 debt instruments by a national insurer, the proceeds
25 from which support the exposures attributed to a

1 protected cell, where repayment of principal or inter-
2 est, or both, to investors under the transaction terms
3 is contingent upon the occurrence or nonoccurrence
4 of an event with respect to which the national in-
5 surer is exposed to loss under insurance policies or
6 reinsurance contracts it has written.

7 (19) INSURER-AFFILIATED PARTY.—The term
8 “insurer-affiliated party” means—

9 (A) any director, officer, employee, or con-
10 trolling shareholder of, or agent for, a national
11 insurer or a national agency;

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

15 (C) any shareholder, consultant, joint ven-
16 ture partner, and any other person as deter-
17 mined by the Commissioner (by regulation or
18 order) who participates in the conduct of the af-
19 fairs of a national insurer or a national agency;
20 and

21 (D) any independent contractor (including
22 any attorney, actuary, or accountant) of a na-
23 tional insurer or a national agency who in that
24 capacity knowingly or recklessly participates in
25 any violation of any law or regulation, any

1 breach of fiduciary duty, or any conduct that
2 involves an undue risk of loss to the policy-
3 holders of a national insurer as a whole, and
4 which violation, breach, or conduct caused or is
5 likely to cause more than a minimal financial
6 loss to, or a significant adverse effect on, a na-
7 tional insurer or the policyholders as a whole of
8 a national insurer.

9 (20) INSURER IN FRATERNAL FORM.—The
10 term “insurer in fraternal form” means an incor-
11 porated society, order, or supreme lodge, without
12 capital stock (generally known as a fraternal benefit
13 society), that—

14 (A) is conducted solely for the benefit of
15 its members and their beneficiaries and not for
16 profit;

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

19 (C) has a representative form of govern-
20 ment;

21 (D) provides benefits to members and their
22 dependents; and

23 (E) operates for 1 or more social, intellec-
24 tual, educational, charitable, benevolent, moral,
25 fraternal, patriotic, or religious purposes for the

1 benefit of its members, which may also be ex-
2 tended to others.

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

5 (22) NATIONAL AGENCY.—The term “national
6 agency” means a national insurance agency char-
7 tered under section 1201.

8 (23) NATIONAL INSURER.—The term “national
9 insurer” means a national insurance company char-
10 tered under section 1201.

11 (24) NATIONAL LIFE INSURER.—The term “na-
12 tional life insurer” means a national insurer that
13 holds a Federal license to sell, solicit, negotiate, and
14 underwrite 1 or both of life insurance and annuities,
15 provided that a national life insurer may also sell,
16 solicit, negotiate, and underwrite disability income
17 insurance, long-term care insurance, and funding
18 agreements.

19 (25) NATIONAL PROPERTY/CASUALTY IN-
20 SURER.—The term “national property/casualty in-
21 surer” means a national insurer that holds a Fed-
22 eral license to sell, solicit, negotiate, and underwrite
23 any combination of lines of property/casualty insur-
24 ance.

1 (26) NEGOTIATE.—The term “negotiate”, in
2 the context of negotiating insurance, means the act
3 of conferring directly with or offering advice directly
4 to a purchaser or prospective purchaser of a par-
5 ticular policy of insurance concerning any of the
6 substantive benefits, terms, or conditions of the con-
7 tract, provided that the person engaged in that act
8 either sells insurance to or obtains insurance cov-
9 erage for purchasers.

10 (27) NON-ADMITTED INSURANCE.—The term
11 “non-admitted insurance” means any property/cas-
12 ualty insurance permitted to be placed directly or
13 through an insurance producer with a non-admitted
14 insurer eligible to accept such insurance.

15 (28) NON-ADMITTED INSURER.—The term
16 “non-admitted insurer” means an insurer that is not
17 licensed to engage in the business of insurance in a
18 State and that—

19 (A) satisfies the eligibility requirements of
20 the State in which an insured maintains its
21 principal place of business, or, in the case of an
22 individual, maintains a principal residence; and

23 (B) is not a national insurer.

24 (29) NON-UNITED STATES INSURER.—The term
25 “non-United States insurer” means a business entity

1 that is organized under the law of a foreign country
2 to sell, solicit, negotiate, and underwrite insurance,
3 but is not so organized under the laws of a State,
4 and is not a national insurer.

5 (30) OFFICE.—The term “Office” means the
6 Office of National Insurance.

7 (31) PARTICIPATING POLICY PROCEDURES.—
8 The term “participating policy procedures”—

9 (A) means the rules applicable to a life in-
10 surer in mutual form, by which the insurer as-
11 certains divisible surplus and apportions an
12 amount of divisible surplus to participating in-
13 surance policies; and

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

17 (32) PERSON.—The term “person” means any
18 natural person, business entity, governmental body
19 or entity, voluntary organization, or similar organi-
20 zation.

21 (33) POLICY OF INSURANCE; INSURANCE POL-
22 ICY.—The term “policy of insurance” or “insurance
23 policy” means a policy, contract, certificate, or other
24 evidence of insurance. “Policy of insurance” or “in-
25 surance policy” includes an annuity contract and a

1 funding agreement, but does not include a reinsur-
2 ance contract.

3 (34) POLICYHOLDER.—The term “policyholder”
4 of an insurance policy means the person who is iden-
5 tified as the legal owner under the terms of the in-
6 surance policy or who is otherwise vested with legal
7 title to the insurance policy. An assignment, absolute
8 on its face, completed in accordance with the terms
9 of the insurance policy and properly recording the
10 assignee as the policyholder on the books of the in-
11 surer vests legal title in the name of the assignee.
12 The term “policyholder” does not include a person
13 with a mere beneficial interest in an insurance policy
14 or a person to whom an insurance policy is assigned
15 for collateral security purposes.

16 (35) PROPERTY/CASUALTY INSURANCE.—The
17 term “property/casualty insurance”—

18 (A) means a product that insures, guaran-
19 tees, or indemnifies against liability, loss of life,
20 loss of health, or loss through damage to or de-
21 struction of property, including surety bonds,
22 private passenger or commercial automobile,
23 homeowners, mortgage guaranty, financial
24 guaranty, commercial multiperil, general liabil-
25 ity, professional liability, workers’ compensa-

1 tion, fire and allied lines, farm or ranch owners
2 multiperil, aircraft, fidelity, surety, medical
3 malpractice, ocean marine, inland marine, and
4 boiler and machinery insurance; and

5 (B) does not include life insurance, dis-
6 ability income insurance, long-term care insur-
7 ance, health insurance, annuities, a funding
8 agreement, or title insurance.

9 (36) PROTECTED CELL.—The term “protected
10 cell” means an identified pool of assets and liabil-
11 ities of a national insurer segregated and insulated
12 from the remainder of the national insurer’s assets
13 and liabilities. The remainder of the national insur-
14 er’s assets and liabilities includes general account
15 assets and liabilities, separate account assets and li-
16 abilities, and assets and liabilities of other protected
17 cells.

18 (37) PROTECTED CELL ACCOUNT.—The term
19 “protected cell account” means a specifically identi-
20 fied bank or custodial account established by a na-
21 tional insurer for the purpose of segregating the pro-
22 tected cell assets of 1 protected cell from the pro-
23 tected cell assets of other protected cells and from
24 the assets of the national insurer’s general account
25 and separate accounts.

1 (38) SELL.—The term “sell”, in the context of
2 selling a policy of insurance, includes exchanging a
3 policy of insurance by any means, for money or any
4 other valuable consideration, on behalf of an insurer.

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

13 (40) SOLICIT.—The term “solicit”, in the con-
14 text of soliciting a policy of insurance, means at-
15 tempting to sell insurance or asking or urging a per-
16 son to apply for a particular kind of insurance from
17 a particular insurer.

18 (41) STATE.—The term “State” means each of
19 the 50 States, the District of Columbia, the Com-
20 monwealth of Puerto Rico, any territory of the
21 United States, Guam, American Samoa, the Trust
22 Territory of the Pacific Islands, the United States
23 Virgin Islands, and the Commonwealth of the North-
24 ern Mariana Islands.

1 (42) STATE INSURANCE AGENCY.—The term
2 “State insurance agency” means an insurance pro-
3 ducer that is organized under the laws of a State.

4 (43) STATE INSURER.—The term “State in-
5 surer” means an insurer incorporated or organized
6 under the laws of a State.

7 (44) SUBSIDIARY.—The term “subsidiary”
8 means a business entity controlled, directly or indi-
9 rectly, by another business entity. For purposes of
10 this definition—

11 (A) a business entity is conclusively pre-
12 sumed to be controlled by a person that, di-
13 rectly or indirectly, with power to vote, owns,
14 controls, or holds a majority of the outstanding
15 voting securities of such business entity;

16 (B) no presumption, either of control or of
17 absence of control, arises if such ownership,
18 control, or holding of voting securities is less
19 than a majority but more than 5 percent;

20 (C) absence of control is presumed if such
21 ownership, control or holding of voting securi-
22 ties is 5 percent or less; and

23 (D) in determining control, voting securi-
24 ties held in separate accounts of a business en-
25 tity shall be deemed to be owned by the busi-

1 ness entity, but voting securities in an invest-
2 ment advisory account that are not owned by a
3 business entity but are held in an account as to
4 which the business entity is an investment ad-
5 viser shall not be deemed to be controlled or
6 held by such business entity.

7 (45) SURPLUS LINES OF INSURANCE.—The
8 term “surplus lines of insurance” means insurance
9 on properties, risks, or exposures located or to be
10 performed in a State with a non-admitted insurer
11 that is sold, solicited, or negotiated by a national
12 agency, federally licensed insurance producer, or
13 other insurance producer.

14 (46) TITLE INSURANCE.—The term “title in-
15 surance” or “business of title insurance” means any
16 of the following:

17 (A) A contract insuring or indemnifying
18 the owners of real or personal property, or
19 other persons lawfully interested therein,
20 against loss or damage arising from any of the
21 following conditions, or the reinsurance thereof:

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

24 (ii) Unmarketability of the insured
25 title.

1 (iii) Invalidity, lack of priority, or un-
2 enforceability of any liens or encumbrances
3 on the stated property.

4 (iv) Lack of legal right of access to
5 the land.

6 (v) Unenforceability of rights in title
7 to the real or personal property.

8 (B) Insuring the correctness of searches
9 and examinations of all instruments, liens, or
10 charges affecting the title to real or personal
11 property.

12 (C) Procuring and furnishing information
13 relative to the title to real or personal property,
14 including abstracting, searching, and examining
15 titles.

16 (D) Handling escrows, settlements, or clos-
17 ings done in conjunction with subparagraph
18 (A), (B), (C), (E), or (F).

19 (E) Any product or service defined by the
20 laws of any State, whether by statute, regula-
21 tion, or administrative determination, as title
22 insurance.

23 (F) Doing or proposing to do any business
24 substantially equivalent to any of the activities

1 described in this paragraph, in a manner de-
2 signed to evade the provisions of this Act.

3 (47) TITLE INSURER.—The term “title insurer”
4 means a company organized under the laws of a
5 State for the purpose of conducting the business of
6 title insurance.

7 (48) TRUSTEED ASSETS.—The term “trusteed
8 assets” means, with respect to a United States
9 branch, assets required or permitted by this title to
10 be deposited by a non-United States insurer with a
11 qualified trustee for the security of its policyholders
12 and creditors in the United States.

13 (49) TRUSTEED SURPLUS.—The term “trusteed
14 surplus” means, with respect to a United States
15 branch, the value of the insurer’s trusteed assets de-
16 posited with a trustee under section 1202(b), plus
17 accrued investment income thereon where such in-
18 come is collectible by the trustee, less the aggregate
19 net amount of all of its reserves and other liabilities
20 in the United States as determined under section
21 1202(b).

22 (50) UNITED STATES BRANCH.—The term
23 “United States branch” means the business unit
24 through which business is transacted within the
25 United States by a non-United States insurer and

1 the assets and liabilities of the insurer within the
2 United States pertaining to such business.

3 (51) UNITED STATES HOLDING COMPANY.—

4 The term “United States holding company” means,
5 with respect to a national insurer, a person orga-
6 nized or incorporated in a State that directly or indi-
7 rectly controls a national insurer.

8 (52) VIOLATION.—The term “violation” in-
9 cludes any action or inaction (alone or with another
10 or others) for or toward causing, bringing about,
11 participating in, counseling, or aiding or abetting a
12 violation.

13 (53) VOTING SECURITIES.—The term “voting
14 securities” means securities of any class or any own-
15 ership interest having voting power for the election
16 of directors, trustees, or management of a business
17 entity, other than securities having such power only
18 by reason of the happening of a contingency.

19 **TITLE I—OFFICE OF NATIONAL**
20 **INSURANCE**

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

23 **SEC. 1101. ESTABLISHMENT.**

24 (a) IN GENERAL.—There is established, in the De-
25 partment of the Treasury, the Office of National Insur-

1 ance, which shall be headed by the Commissioner of Na-
2 tional Insurance.

3 (b) OFFICES.—The Commissioner shall establish a
4 main office in Washington, DC, not fewer than 6 regional
5 offices, and such additional offices, within or outside the
6 United States, as the Commissioner determines to be nec-
7 essary to carry out the provisions of this Act.

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

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

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

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

20 (a) APPOINTMENT.—

21 (1) IN GENERAL.—The Commissioner of Na-
22 tional Insurance shall be appointed by the President,
23 by and with the advice and consent of the Senate,
24 from among individuals who are citizens of the
25 United States.

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

3 (3) VACANCY.—A vacancy in the position of the
4 Commissioner, which occurs before the expiration of
5 the term for which the Commissioner was appointed
6 shall be filled in the manner established under para-
7 graph (1). The Commissioner appointed to fill the
8 vacancy shall be appointed only for the remainder of
9 the term of the preceding Commissioner.

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

13 (A) such time as a successor has been ap-
14 pointed; or

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

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

1 (6) OVERSIGHT.—The Commissioner shall be
2 subject to the general oversight of the Secretary of
3 the Treasury, who may not intervene in any matter
4 or proceeding before the Commissioner unless other-
5 wise specifically provided by law.

6 (7) EXECUTIVE SCHEDULE.—

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

12 (B) TECHNICAL AMENDMENT.—Section
13 5314 of title 5, United States Code, is amended
14 by inserting “Commissioner of National Insur-
15 ance, Department of the Treasury.” as a new
16 item after “Administrator, Pipeline and Haz-
17 arduous Materials Safety Administration.”.

18 (b) POWERS OF THE COMMISSIONER.—

19 (1) IN GENERAL.—

20 (A) POWERS.—The Commissioner shall—

21 (i) oversee the organization, incorpo-
22 ration, operation, regulation, and super-
23 vision of national insurers and national
24 agencies;

1 (ii) issue charters and licenses for na-
2 tional insurers and national agencies;

3 (iii) license, regulate, and supervise
4 federally licensed insurance producers
5 other than national agencies; and

6 (iv) have exclusive authority to deter-
7 mine whether a person subject to this Act
8 has complied with the Act or the applica-
9 tion of any State law to matters regulated
10 under this Act, including the determination
11 of any complaint raised by any person.

12 (B) FINAL AGENCY ACTION.—A deter-
13 mination of the Commissioner under subpara-
14 graph (A)(iv) shall be the final agency action
15 for purposes of judicial review of that action.

16 (2) RULEMAKING.—

17 (A) ISSUANCE OF REGULATIONS AND
18 OTHER ACTIONS.—The Commissioner may issue
19 such rules, regulations, orders, and interpreta-
20 tions as the Commissioner determines to be
21 necessary to carry out the purposes of this Act.

22 (B) AUTONOMY.—The Secretary of the
23 Treasury may not delay or prevent the issuance
24 of any rule, regulation, order, or interpretation

1 by the Commissioner, unless otherwise specifi-
2 cally authorized by law.

3 (C) NO DELEGATION PERMITTED.—The
4 Commissioner may not delegate any authority
5 conferred under subparagraph (A) to any insur-
6 ance self-regulatory organization.

7 (3) LITIGATION AUTHORITY.—

8 (A) IN GENERAL.—The Commissioner may
9 sue and be sued, complain and defend, and oth-
10 erwise litigate, in the Commissioner’s name and
11 through the Commissioner’s own attorney, in
12 any Federal or State court, other than the Su-
13 preme Court of the United States in which the
14 Commissioner shall be represented by the Solic-
15 itor General of the United States.

16 (B) ENFORCEMENT.—The Commissioner
17 may apply to the United States district court
18 for the jurisdiction in which the main office of
19 a national insurer or national agency is located,
20 or in which any other federally licensed insur-
21 ance producer or other person is located, for the
22 enforcement of any effective and outstanding
23 rule, regulation, order, or interpretation issued
24 pursuant to this Act.

1 (4) CONSULTATION WITH STATE INSURANCE
2 REGULATORS.—The Commissioner may, as appro-
3 priate, consult with State insurance regulators re-
4 sponsible for the supervision of States insurers,
5 State insurance agencies, and State licensed insur-
6 ance producers regarding regulatory and supervisory
7 matters of common interest.

8 (5) INTERNATIONAL COORDINATION AND CO-
9 OPERATION.—

10 (A) IN GENERAL.—The Commissioner may
11 engage in international efforts to secure bilat-
12 eral and multilateral cooperation and agree-
13 ments, as appropriate, with respect to insurance
14 regulation in global markets in order to pro-
15 mote open and fair competition in such markets
16 and to improve the quality and uniformity of in-
17 surance regulation in all countries.

18 (B) FOREIGN INSURANCE REGULATORS.—
19 The Commissioner may provide appropriate
20 technical assistance to, and cooperation with,
21 individual foreign insurance regulators and re-
22 gional and global regulatory organizations in in-
23 surance matters affecting international com-
24 merce, including—

1 (i) the development and implementa-
2 tion of international regulatory standards;
3 and

4 (ii) the development and implementa-
5 tion of bilateral and multilateral mutual
6 recognition agreements on the licensing of
7 insurance companies and insurance pro-
8 ducers.

9 (C) CONSULTATION AND COOPERATION.—

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

12 (i) shall consult and cooperate with
13 the Executive Office of the President and
14 the United States Trade Representative;
15 and

16 (ii) may include a representative of
17 any interested State insurance regulators
18 as the Commissioner determines to be ap-
19 propriate.

20 (6) INDEPENDENCE IN CONGRESSIONAL TESTI-
21 MONY AND RECOMMENDATIONS.—Section 111 of
22 Public Law 93–495 (12 U.S.C. 250) is amended by
23 inserting “the Commissioner of National Insurance,”
24 after “the Director of the Office of Thrift Super-
25 vision,”.

1 (c) GAO AUDIT.—The Commissioner shall make
2 available to the Comptroller General of the United States
3 all books and records necessary to audit all of the activities
4 of the Office.

5 **SEC. 1103. OFFICE PERSONNEL MATTERS.**

6 (a) IN GENERAL.—The Commissioner may employ
7 such examiners, lawyers, accountants, actuaries, and other
8 employees as are necessary to carry out the provisions of
9 this Act.

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

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

24 (d) ACTING COMMISSIONER.—The Commissioner
25 shall designate an employee of the Office to serve as the

1 Acting Commissioner during the absence or disability of
2 the Commissioner.

3 (e) DELEGATION OF POWERS.—

4 (1) EMPLOYEES AND OTHERS.—Unless other-
5 wise prohibited by this Act, the Commissioner may
6 delegate to any employee, representative, or agent
7 any power of the Commissioner.

8 (2) SELF-REGULATORY ORGANIZATIONS.—Un-
9 less otherwise prohibited by this Act, the Commis-
10 sioner may, by regulation, delegate to any insurance
11 self-regulatory organization any power of the Com-
12 missioner in accordance with the terms of section
13 1106.

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

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

17 (b) AUTHORITY.—The Division of Insurance Fraud
18 shall have all powers necessary to enforce the terms of
19 subtitle D, other than the power to execute search and
20 arrest warrants.

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

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

24 (b) AUTHORITY.—The Division of Consumer Affairs
25 shall support the Commissioner in the implementation and

1 enforcement of the market conduct regulations issued pur-
2 suant to section 1216.

3 **SEC. 1106. INSURANCE SELF-REGULATORY ORGANIZA-**
4 **TIONS.**

5 (a) **AUTHORITY OF THE COMMISSIONER.**—Subject to
6 the terms of this section, and the regulations issued pursu-
7 ant to this section, the Commissioner shall have the au-
8 thority to—

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

11 (2) supervise and regulate any registered insur-
12 ance self-regulatory organization, which shall include
13 the authority to—

14 (A) review, approve, abrogate, modify, or
15 add to the operating rules of an insurance self-
16 regulatory organization;

17 (B) review, approve, abrogate, or modify
18 any disciplinary action taken by an insurance
19 self-regulatory organization;

20 (C) remove, suspend, or bar an individual
21 from serving as an officer or director of an in-
22 surance self-regulatory organization;

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

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

3 (b) **AUTHORITY OF REGISTERED INSURANCE SELF-**
4 **REGULATORY ORGANIZATIONS.**—An insurance self-regu-
5 latory organization that is registered by the Commissioner
6 shall have the authority to—

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

8 (2) enforce compliance by its members with the
9 provisions of this Act, applicable regulations issued
10 by the Commissioner, and the rules of the organiza-
11 tion.

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

14 (1) national insurers;

15 (2) national agencies;

16 (3) federally licensed insurance producers; or

17 (4) any combination of national insurers, na-
18 tional agencies, and federally licensed insurance pro-
19 ducers.

20 (d) **REGULATIONS.**—Not later than 2 years after the
21 date of enactment of this Act, the Commissioner shall
22 issue regulations governing the registration and operations
23 of insurance self-regulatory organizations. Such regula-
24 tions shall establish—

1 (1) the procedures insurance self-regulatory or-
2 ganizations must follow to be registered by the Com-
3 missioner, which shall provide for public notice and
4 an opportunity for public comment on the proposed
5 registration;

6 (2) the standards that the Commissioner shall
7 apply in reviewing a proposed registration, which
8 shall require an insurance self-regulatory organiza-
9 tion to demonstrate that—

10 (A) it has the capacity to—

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

12 and

13 (ii) enforce compliance by its members
14 with the provisions of this Act, applicable
15 regulations, and the rules of the organiza-
16 tion; and

17 (B) its operating rules—

18 (i) assure a fair representation of its
19 members in the selection of its directors
20 and the administration of its affairs;

21 (ii) provide for the equitable allocation
22 of fees, dues, and other charges among its
23 members;

24 (iii) provide for the organization to
25 take appropriate disciplinary actions

1 against members, including the revocation
2 of membership status, for violations of this
3 Act, the regulations issued pursuant to this
4 Act, or the operating rules of the organiza-
5 tion; and

6 (iv) include procedures for members
7 that are subject to disciplinary actions to
8 obtain review of such actions by the Com-
9 missioner;

10 (3) the procedures and standards the Commis-
11 sioner shall follow in reviewing, approving, abro-
12 gating, or modifying any new operating rule or any
13 amendment to an existing operating rule that is pro-
14 posed by an insurance self-regulatory organization,
15 which shall include procedures for public notice and
16 comment on such rule or amendment;

17 (4) the procedures and standards the Commis-
18 sioner shall follow in abrogating, modifying, or add-
19 ing to the operating rules of an insurance self-regu-
20 latory organization;

21 (5) the procedures and standards the Commis-
22 sioner shall follow in reviewing, approving, abro-
23 gating, or modifying any disciplinary action by an
24 insurance self-regulatory organization;

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

5 (7) the procedures and standards the Commis-
6 sioner shall follow in suspending or revoking the reg-
7 istration of an insurance self-regulatory organiza-
8 tion; and

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

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

13 (a) ESTABLISHMENT OF THE OFFICE OF THE OM-
14 BUDSMAN.—There is established within the Office, an Of-
15 fice of the Ombudsman. The Commissioner shall appoint
16 an Ombudsman to administer the Office of the Ombuds-
17 man. The Ombudsman shall report directly to the Com-
18 missioner.

19 (b) DUTIES OF THE OMBUDSMAN.—

20 (1) IN GENERAL.—The Ombudsman shall act
21 as a liaison between the Office and any regulated
22 person adversely affected by the supervisory or regu-
23 latory activities of the Office, including the failure of
24 the Office to take a requested action. The Ombuds-
25 man shall assure that safeguards exist to encourage

1 complainants to come forward and preserve con-
2 fidentiality.

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

7 (c) POWERS OF THE OMBUDSMAN.—The Ombuds-
8 man—

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

12 (2) shall review and report any weakness in pol-
13 icy or procedures to the Commissioner, and make
14 recommendations to the Commissioner regarding
15 changes in such policies or procedures.

16 (d) APPEALABLE MATTERS.—Any regulated person
17 adversely affected by an Office decision or action may seek
18 Ombudsman review of such decision or action, other
19 than—

20 (1) the appointment of a receiver or conser-
21 vator;

22 (2) any preliminary examination conclusions
23 communicated to the regulated person before a final
24 examination report is issued;

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

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

8 (5) any decision or recommended decision fol-
9 lowing a formal adjudication conducted pursuant to
10 subchapter II of chapter 5 of title 5, United States
11 Code; or

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

16 (e) PROCEDURES FOR FILING AN APPEAL TO THE
17 OMBUDSMAN.—A regulated person may seek review of an
18 appealable matter by filing a written appeal with the Of-
19 fice of the Ombudsman. In the case of a regulated person
20 that is an entity, the appeal shall be signed by the Presi-
21 dent or Chief Executive Officer of the regulated person.
22 The appeal shall set forth all of the reasons for the appeal
23 and supporting documentation. The Ombudsman may ar-
24 range for a meeting of Office personnel and the complain-
25 ants to discuss the appeal.

1 (f) DECISIONS OF THE OMBUDSMAN.—After a thor-
2 ough investigation of the matter, and after considering all
3 relevant information provided by the complainant and the
4 Office, the Ombudsman shall issue a written determina-
5 tion of the appeal. Such determination shall become the
6 final decision of the Office, unless reversed, modified, or
7 stayed by the Commissioner.

8 (g) RETALIATION PROHIBITED.—The Office and its
9 staff may not take any adverse action against a complain-
10 ant for appealing any decision or action to the Ombuds-
11 man. Upon learning of any possible retaliatory actions, the
12 Ombudsman shall investigate the matter, and if the Om-
13 budsman determines that reasonable grounds exist to con-
14 clude that retaliation has taken place, shall refer the mat-
15 ter to the Commissioner.

16 **Subtitle B—Supervision of Na-**
17 **tional Insurers and National**
18 **Agencies**

19 **SEC. 1121. EXAMINATION OF NATIONAL INSURERS AND NA-**
20 **TIONAL AGENCIES.**

21 (a) IN GENERAL.—

22 (1) EXAMINATION.—The Commissioner shall
23 provide for examinations of national insurers and
24 national agencies.

1 (2) REGULAR AND SPECIAL EXAMINATIONS OF
2 NATIONAL INSURERS.—Not less than once during
3 each 36-month period, the Commissioner shall con-
4 duct an on-site examination of each national insurer,
5 and may conduct a special examination of a national
6 insurer whenever the Commissioner determines that
7 a special examination is necessary.

8 (3) EXAMINATION OF NATIONAL AGENCIES.—
9 The Commissioner may examine a national agency
10 in response to a complaint or any other evidence
11 that the national agency has violated or is about to
12 violate—

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

14 (B) any condition imposed in writing by
15 the Commissioner in connection with issuing a
16 license for a federally licensed insurance pro-
17 ducer; or

18 (C) any written agreement entered into
19 with the Commissioner.

20 (4) AFFILIATES.—

21 (A) IN GENERAL.—In making examina-
22 tions of national insurers or national agencies,
23 the Commissioner may, to the extent necessary
24 to discover information concerning activities of
25 an affiliate that may have a materially adverse

1 effect on the operations, management, or finan-
2 cial condition of the national insurer or national
3 agency—

4 (i) require an affiliate to make such
5 reports and provide such material as the
6 Commissioner may direct; and

7 (ii) conduct an examination of the af-
8 fairs of an affiliate, if—

9 (I) the Commissioner has reason-
10 able cause to believe that the activities
11 of the affiliate may have such an ef-
12 fect;

13 (II) the examination is limited to
14 the extent necessary to disclose infor-
15 mation related to such effect; and

16 (III) the Commissioner is unable
17 to obtain the necessary information
18 from the national insurer or national
19 agency.

20 (B) ACCEPTANCE OF AVAILABLE INFORMA-
21 TION.—To the extent that the Commissioner re-
22 quires an affiliate to make reports or provide
23 material under subparagraph (A), the Commis-
24 sioner shall, to the fullest extent possible, ac-
25 cept—

1 (i) reports that the affiliate has pro-
2 vided or been required to provide to other
3 Federal or State regulatory authorities or
4 appropriate self-regulatory organizations;

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

7 (iii) audited financial statements.

8 (C) USE OF REGULATORY REPORTS.—If
9 the Commissioner determines to conduct an ex-
10 amination of an affiliate under subparagraph
11 (B) and such affiliate is a functionally regu-
12 lated affiliate, the Commissioner shall, to the
13 fullest extent possible, rely on the examination
14 reports made by the functional regulator of
15 such affiliate.

16 (b) ACCESS TO PEOPLE AND RECORDS.—

17 (1) IN GENERAL.—In the course of examining
18 a national insurer, national agency, or affiliate of a
19 national insurer or national agency, the Commis-
20 sioner, upon request, shall be given prompt and rea-
21 sonable access to officers, employees, agents, books,
22 records, and documents of such insurer, agency, or
23 affiliate.

24 (2) COURT ORDER.—If prompt and reasonable
25 access is not given as required under paragraph (1),

1 the Commissioner may apply to the United States
2 district court for the judicial district in which the
3 main office of the national insurer or the national
4 agency is located, or in which the affiliate or person
5 denying such access resides or conducts business, for
6 an order requiring that such information be prompt-
7 ly provided.

8 (3) SUBPOENA POWER.—In connection with ex-
9 aminations of national insurers, national agencies, or
10 affiliates under this section and the examination of
11 federally licensed insurance producers under section
12 1301, the Commissioner may—

13 (A) administer oaths and affirmations;

14 (B) examine, take, and preserve testimony
15 under oath as to any matter in respect of the
16 affairs or ownership of any such national in-
17 surer, national agency, affiliate, or federally li-
18 censed insurance producer;

19 (C) issue subpoenas; and

20 (D) in order to enforce a subpoena issued
21 under subparagraph (C), apply to the United
22 States district court for the judicial district—

23 (i) in which the main office of the na-
24 tional insurer, national agency, or affiliate
25 is located;

1 (ii) in which the federally licensed in-
2 surance producer is located; or

3 (iii) in which the witness resides or
4 carries on business.

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

6 (a) EXAMINATION FEE.—

7 (1) NATIONAL INSURERS, NATIONAL AGENCIES,
8 AND FEDERALLY LICENSED INSURANCE PRO-
9 DUCERS.—The Commissioner shall assess the cost of
10 conducting examinations of national insurers, na-
11 tional agencies, and federally licensed insurance pro-
12 ducers against each such insurer, agency, or pro-
13 ducer, as the Commissioner determines to be appro-
14 priate.

15 (2) AFFILIATES.—The Commissioner shall as-
16 sess the cost of conducting examinations of affiliates
17 against each such affiliate, as the Commissioner de-
18 termines to be appropriate.

19 (3) REFUSAL TO PAY.—

20 (A) IN GENERAL.—Subject to subpara-
21 graph (B), if any affiliate refuses to pay an as-
22 sessment imposed pursuant to paragraph (2),
23 the Commissioner may assess such cost against
24 the affiliated national insurer or national agen-
25 cy.

1 (B) SHARED AFFILIATES.—If an affiliate
2 is an affiliate of more than 1 national insurer
3 or national agency, the assessment with respect
4 to that affiliate may be assessed against, and
5 collected from, any affiliated national insurer or
6 national agency, in such proportions as the
7 Commissioner may prescribe.

8 (b) PROCESSING FEE.—The Commissioner may as-
9 sess a fee against any person who submits to the Office
10 an application, filing, statement, notice, or request for ap-
11 proval to cover the cost of processing such submission.

12 (c) OTHER ASSESSMENTS.—The Commissioner may
13 assess against national insurers, national agencies, and
14 federally licensed insurance producers such additional fees
15 as the Commissioner determines to be necessary and ap-
16 propriate to fund the expenses of the Office.

17 (d) NOTICE.—The Commissioner shall notify na-
18 tional insurers, national agencies, and federally licensed
19 insurance producers of—

20 (1) the initial fees and assessments imposed
21 under this section; and

22 (2) any change in fees and assessments.

23 (e) TREATMENT OF FEES AND ASSESSMENTS.—

24 (1) DEPOSITS.—Amounts received by the Com-
25 missioner from fees and assessments imposed under

1 this section shall be deposited in the manner pro-
2 vided for in section 5234 of the Revised Statutes of
3 the United States (12 U.S.C. 192) with respect to
4 assessments by the Comptroller of the Currency.

5 (2) GOVERNMENT FUNDS; APPORTIONMENT.—
6 Notwithstanding any other provision of law,
7 amounts received by the Commissioner from any fee
8 or assessment imposed under this section—

9 (A) shall not be considered Government or
10 public funds or appropriated money; and

11 (B) shall not be subject to apportionment
12 for purposes of chapter 15 of title 31, United
13 States Code, or under any other authority.

14 (f) WORKING CAPITAL FUND.—

15 (1) IN GENERAL.—The Commissioner may im-
16 pose fees and assessments pursuant to subsections
17 (a), (b), and (c), in excess of actual expenses for any
18 given year, to maintain an appropriate working cap-
19 ital fund.

20 (2) REFUNDS.—The Commissioner shall remit
21 to the payers of such fees and assessments any
22 funds collected in excess of what the Commissioner
23 determines to be necessary to maintain such working
24 capital fund.

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

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

7 (1) AUTHORIZATION.—The Commissioner may
8 borrow from the Secretary of the Treasury such
9 funds as the Commissioner determines to be nec-
10 essary and appropriate to organize and begin oper-
11 ations of the Office.

12 (2) PAYMENT.—Any loan extended pursuant to
13 paragraph (1) shall be repaid, in full (with interest
14 at a rate set by the Secretary of the Treasury),
15 within 30 years following the date of enactment of
16 this Act, with individual payments on any loan to be
17 made in such amounts and at such times as the
18 Commissioner determines to be appropriate.

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

23 **SEC. 1123. DISCLOSURE OF INFORMATION.**

24 (a) REGULATIONS REQUIRED.—The Commissioner
25 shall, by regulation, establish standards for the disclosure

1 of examination reports, other reports, applications, filings,
2 correspondence, records, and other information prepared
3 by, reported to, obtained by, or submitted to, the Commis-
4 sioner. The regulation shall exclude matters to be ad-
5 dressed under regulations required under section 1161.

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

10 (c) OTHER PRIVILEGES.—The submission by any
11 person of any information to the Commissioner for any
12 purpose in the course of any supervisory or regulatory
13 process of the Commissioner shall not be construed as
14 waiving, destroying, or otherwise affecting any privilege
15 that such person may claim with respect to such informa-
16 tion under Federal or State law as to any person or entity
17 other than the Commissioner.

18 **SEC. 1124. REPORTING REQUIREMENT.**

19 (a) GENERAL AUTHORITY.—The Commissioner is
20 authorized to require national insurers and national agen-
21 cies to make such reports, containing such information
22 and in such form, as the Commissioner may prescribe by
23 regulation.

24 (b) FINANCIAL STATEMENTS.—Each national in-
25 surer holding a Federal license shall submit annual and

1 quarterly financial statements, in compliance with the ac-
2 counting principles and auditing standards specified under
3 section 1212, to the Commissioner at such times and in
4 such form as the Commissioner may require under regula-
5 tions promulgated pursuant to subsection (c).

6 (c) REGULATIONS.—The Commissioner shall promul-
7 gate regulations that—

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

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

14 **SEC. 1125. REGULATORY SUPERVISION AND RELATIONSHIP**
15 **TO STATE LAW.**

16 (a) IN GENERAL.—Except as authorized by this Act
17 or otherwise authorized under Federal law, national insur-
18 ers, national agencies, and federally licensed insurance
19 producers shall not be subject to any form of licensing,
20 examination, reporting, regulation, or other supervision
21 relating to—

22 (1) the sale, solicitation, or negotiation of insur-
23 ance;

24 (2) the underwriting of insurance; or

25 (3) any other insurance operations.

1 (b) APPLICABLE STATE LAWS.—Notwithstanding
2 subsection (a), national insurers, national agencies, and
3 federally licensed insurance producers shall be subject
4 to—

5 (1) applicable State unclaimed property and es-
6 cheat laws;

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

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

16 (A) relates to participation in any vol-
17 untary joint underwriting association or similar
18 arrangement;

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

1 (C) requires a national insurer to use any
2 particular rate, rating element, price, or form;
3 or

4 (D) is inconsistent with any provision of
5 this Act;

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

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

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

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

1 (1) “advisory or statistical organization” does
2 not include the National Association of Insurance
3 Commissioners;

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

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

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

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

16 (1) photographed or microphotographed or oth-
17 erwise reproduced upon film; or

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

20 (A) being read or scanned by computer;

21 and

22 (B) being reproduced from such electronic
23 medium or format by printing any other form
24 or reproduction of electronically stored data.

1 (b) TREATMENT AS ORIGINAL RECORDS.—Any pho-
2 tographs, microphotographs, or photographic film or cop-
3 ies thereof described in subsection (a)(1) or reproduction
4 or electronically stored data described in subsection (a)(2)
5 shall be deemed to be an original record for all purposes,
6 including introduction in evidence in all State and Federal
7 courts or administrative agencies, and shall be admissible
8 to prove any act, transaction, occurrence, or event therein
9 recorded.

10 (c) AUTHORITY OF THE COMMISSIONER.—Any pho-
11 tographs, microphotographs, or photographic film or cop-
12 ies thereof described in subsection (a)(1) or reproduction
13 of electronically stored data described in subsection (a)(2)
14 shall be preserved in such manner as the Commissioner
15 shall prescribe, and the original records, papers, or docu-
16 ments may be destroyed or otherwise disposed of, as the
17 Commissioner may direct.

18 **SEC. 1127. COMPLIANCE WITH ANTI-MONEY LAUNDERING**
19 **REQUIREMENTS.**

20 (a) COMPLIANCE REQUIRED.—The Commissioner
21 shall prescribe regulations requiring national life insurers
22 to establish and maintain procedures reasonably designed
23 to assure and monitor compliance with the requirements
24 of subchapter II of chapter 53 of title 31, United States
25 Code, to the extent applicable.

1 (b) EXAMINATIONS.—Each examination of a national
2 life insurer shall include a review of the procedures re-
3 quired to be established and maintained under subsection
4 (a).

5 (c) ORDER.—The Commissioner shall issue an order,
6 in the manner prescribed in subsection (c) or (d) of section
7 1142, requiring such insurer to cease and desist from a
8 violation of this section or regulations prescribed under
9 this section, if the Commissioner determines that a na-
10 tional life insurer—

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

13 (2) has failed to correct any problem with the
14 procedures maintained by such national life insurer
15 which was previously reported to such insurer by the
16 Commissioner.

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

19 **SEC. 1141. NATIONAL INSURER LICENSE SUSPENSION, RE-**
20 **STRICTION, OR REVOCATION.**

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

1 (1) has engaged in conduct that is hazardous to
2 the national insurer and that involves an undue risk
3 to the policyholders of the national insurer, as a
4 whole;

5 (2) is in a financial or other condition that is
6 not consistent with the continuation of existing oper-
7 ations; or

8 (3) has violated any—

9 (A) applicable law or regulation;

10 (B) order or condition imposed in writing
11 by the Commissioner in connection with the ap-
12 proval of an application, filing, statement, no-
13 tice, or other request by the national insurer; or

14 (C) written agreement entered into be-
15 tween the national insurer and the Commis-
16 sioner.

17 (b) NOTICE TO NATIONAL INSURER.—

18 (1) IN GENERAL.—If the Commissioner deter-
19 mines under subsection (a) that the Federal license
20 of a national insurer should be revoked or restricted,
21 the Commissioner shall—

22 (A) serve the national insurer with written
23 notice of the intent of the Commissioner to re-
24 voke or restrict such Federal license;

1 (B) provide the national insurer with a
2 statement of the basis for the determination to
3 revoke or restrict such Federal license; and

4 (C) notify, not less than 30 days before a
5 hearing under subsection (c), the date and place
6 of the hearing.

7 (2) NOTICE OF SERVICE.—Any service required
8 or authorized to be made by the Commissioner
9 under this section may be made by registered mail,
10 or in such other manner reasonably calculated to
11 give actual notice as the Commissioner may by regu-
12 lation or otherwise provide.

13 (c) REVOCATION OR RESTRICTION HEARING.—

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

19 (2) AUTHORITY TO REVOKE OR RESTRICT FED-
20 ERAL LICENSE.—If, on the basis of the evidence pre-
21 sented at the hearing under paragraph (1) and the
22 written findings of the Commissioner with respect to
23 such evidence, the Commissioner establishes the ex-
24 istence of any conduct, condition, or violation speci-
25 fied in the notice sent to a national insurer under

1 subsection (b), the Commissioner may issue an order
2 revoking or restricting the Federal license of the na-
3 tional insurer, which shall be effective as of a date
4 subsequent to such finding.

5 (3) CONSENT TO REVOCATION OR RESTRIC-
6 TION.—If a duly authorized representative of the na-
7 tional insurer fails to appear at the hearing under
8 this subsection, the national insurer shall be deemed
9 to have consented to the revocation or restriction of
10 its Federal license, and the Commissioner may im-
11 mediately revoke or restrict such Federal license.

12 (d) NOTICE OF REVOCATION OR RESTRICTION RE-
13 QUIRED.—

14 (1) NOTICE BY NATIONAL INSURER.—

15 (A) IN GENERAL.—The national insurer
16 shall give notice of a revocation or restriction of
17 its Federal license under this section to each
18 policyholder affected by the revocation or re-
19 striction.

20 (B) TYPE OF NOTICE.—Notice under this
21 paragraph shall be sent to the last address of
22 record of the policyholder on the books of the
23 national insurer, in such manner and at such
24 time as the Commissioner determines to be nec-
25 essary for the protection of policyholders.

1 (2) NOTICE BY COMMISSIONER.—

2 (A) IN GENERAL.—The Commissioner
3 shall publish notice of a revocation or restric-
4 tion under this section. If the Commissioner de-
5 termines that a national insurer has not given
6 notice of an order under this subsection in ac-
7 cordance with the requirements of the Commis-
8 sioner, the Commissioner may provide such no-
9 tice in such manner as the Commissioner may
10 find to be necessary and proper.

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

14 (e) TEMPORARY SUSPENSION OR RESTRICTION.—

15 (1) IN GENERAL.—If the Commissioner, in the
16 course of a revocation proceeding under this section,
17 finds that the national insurer poses an immediate
18 threat to the interests of its policyholders as a whole
19 or to the public, the Commissioner may issue an
20 order temporarily suspending or restricting the Fed-
21 eral license of the national insurer.

22 (2) NOTICE OF TEMPORARY ORDER.—A na-
23 tional insurer whose Federal license is temporarily
24 suspended or restricted under this subsection shall
25 give notice of an order issued under this paragraph

1 to each affected policyholder in such manner and at
2 such times as the Commissioner may find to be nec-
3 essary and may order for the protection of policy-
4 holders and the public.

5 (3) EFFECTIVE PERIOD OF TEMPORARY
6 ORDER.—A temporary order issued under paragraph
7 (1) shall—

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

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

15 (i) the effective date of an order under
16 subsection (c)(2); or

17 (ii) the date on which the Commis-
18 sioner determines that there is insufficient
19 evidence to revoke or restrict a Federal li-
20 cense under this subsection.

21 (4) JUDICIAL REVIEW.—

22 (A) IN GENERAL.—During the 10-day pe-
23 riod beginning on the date on which a tem-
24 porary order has been issued under paragraph
25 (1), the national insurer may apply to a court

1 described in subparagraph (B) for an injunction
2 setting aside, limiting, or suspending the en-
3 forcement, operation, or effectiveness of such
4 order.

5 (B) JURISDICTION.—The United States
6 District Court for the District of Columbia and
7 the United States district court for the judicial
8 district in which the main office of the national
9 insurer is located shall have jurisdiction to issue
10 an injunction under this paragraph.

11 (f) DECISION TO SUSPEND, RESTRICT, OR RE-
12 VOKE.—

13 (1) IN GENERAL.—Except as provided under
14 paragraph (2), any decision by the Commissioner to
15 suspend, restrict, or revoke a Federal license under
16 this section shall be made by the Commissioner and
17 may not be delegated.

18 (2) EXCEPTION.—The Commissioner may, by
19 order, designate an employee of the Office who may
20 make a decision described in paragraph (1), if the
21 Commissioner is not able to act by reason of recusal
22 or is otherwise disqualified from acting.

23 (g) JUDICIAL REVIEW.—Any national insurer whose
24 Federal license has been revoked or restricted by order
25 of the Commissioner under this section shall have the

1 right of judicial review of such order only to the same ex-
2 tent as provided for the review of orders under section
3 1148.

4 **SEC. 1142. SUSPENSION, RESTRICTION, OR REVOCATION OF**
5 **FEDERAL LICENSE OF NATIONAL AGENCIES**
6 **AND FEDERALLY LICENSED INSURANCE PRO-**
7 **DUCERS.**

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

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

20 (2) provided incorrect, misleading, incomplete,
21 or materially untrue information in an application
22 for a Federal charter or a Federal producer license;

23 (3) used fraudulent, coercive, or dishonest prac-
24 tices; or

1 (4) demonstrated incompetence, untrustworthi-
2 ness, or financial irresponsibility as an insurance
3 producer.

4 (b) NOTICE TO FEDERALLY LICENSED INSURANCE
5 PRODUCER.—If the Commissioner determines that any
6 conduct, breach, or violation specified in subsection (a) re-
7 quires revocation or restriction of the Federal producer li-
8 cense of a national agency or other federally licensed in-
9 surance producer, the Commissioner shall—

10 (1) serve written notice on the national agency
11 or other federally licensed insurance producer of the
12 Commissioner’s intention to revoke or restrict the
13 Federal producer license;

14 (2) provide the national agency or other feder-
15 ally licensed insurance producer with a statement of
16 the basis for the determination to revoke or restrict
17 the Federal producer license; and

18 (3) notify the national agency or other federally
19 licensed insurance producer, not less than 30 days
20 before a hearing under subsection (c), of the date
21 and place of the hearing.

22 (c) REVOCATION OR RESTRICTION HEARING.—

23 (1) IN GENERAL.—Before revoking or restrict-
24 ing a Federal producer license, the Commissioner
25 shall conduct a hearing in accordance with section

1 554 of title 5, United States Code, to determine if
2 the conditions described in subsection (a) exist.

3 (2) AUTHORITY TO REVOKE OR RESTRICT FED-
4 ERAL LICENSE.—If, on the basis of the evidence pre-
5 sented at the hearing under paragraph (1) and the
6 written findings of the Commissioner with respect to
7 such evidence, the Commissioner finds any conduct,
8 condition, or violation specified in the notice sent to
9 a national agency or other federally licensed insur-
10 ance producer under subsection (b), the Commis-
11 sioner may issue an order revoking or restricting the
12 Federal producer license of the national agency or
13 other federally licensed insurance producer, which
14 shall be effective as of a date subsequent to such
15 finding.

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

1 (d) NOTICE OF REVOCATION OR RESTRICTION RE-
2 QUIRED.—

3 (1) NOTICE BY FEDERALLY LICENSED INSUR-
4 ANCE PRODUCER.—Each national agency or other
5 federally licensed insurance producer shall give writ-
6 ten notice of revocation or restriction under this sec-
7 tion to each national insurer or State insurer for
8 which such agency or producer acts as an insurance
9 producer.

10 (2) NOTICE BY COMMISSIONER.—

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

21 (B) COSTS.—The cost of any notice pro-
22 vided under subparagraph (A) shall be paid by
23 the national agency or other federally licensed
24 insurance producer.

25 (e) TEMPORARY SUSPENSION OR RESTRICTION.—

1 (1) IN GENERAL.—If the Commissioner, in the
2 course of a revocation or restriction proceeding
3 under this section, finds that the national agency or
4 other federally licensed insurance producer poses an
5 immediate threat to the interests of the policyholders
6 of a national insurer or a State insurer as a whole,
7 or to the public, the Commissioner may issue a tem-
8 porary order suspending or restricting the Federal
9 producer license of the agency or other producer.

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

17 (3) EFFECTIVE PERIOD OF TEMPORARY
18 ORDER.—Any temporary order issued under para-
19 graph (1) shall—

20 (A) become effective not earlier than 10
21 days from the date of service upon the national
22 agency or other federally licensed insurance
23 producer; and

24 (B) unless set aside, limited, or suspended
25 by a court under paragraph (4), remain effec-

1 tive and enforceable until an order of the Com-
2 missioner under subsection (c) becomes final or
3 until the Commissioner dismisses the pro-
4 ceedings under paragraph (4).

5 (4) JUDICIAL REVIEW.—

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

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

22 (f) JUDICIAL REVIEW.—Any national agency or other
23 federally licensed insurance producer whose Federal pro-
24 ducer license has been revoked or restricted by order of
25 the Commissioner under this subsection shall have the

1 right of judicial review of such order only to the same ex-
2 tent as provided for the review of orders under section
3 1148.

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

5 (a) NOTICE.—

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

12 (A) has engaged, or is about to engage, in
13 conduct that is hazardous to a national insurer
14 or a State insurer and involves an undue risk
15 to the policyholders as a whole of a national in-
16 surer or a State insurer; or

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

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

19 (ii) any condition imposed in writing
20 by the Commissioner in connection with
21 the granting of any application, filing,
22 statement, notice, or other request by the
23 national insurer, national agency, federally
24 licensed insurance producer, or party; or

1 (iii) any written agreement entered
2 into with the Commissioner by such in-
3 surer, agency, producer, or party.

4 (2) CONTENTS.—The notice issued under para-
5 graph (1) shall—

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

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

14 (b) HEARING.—

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

21 (2) CONSENT.—If a duly authorized representa-
22 tive of a party served notice under subsection (a)
23 fails to appear at a hearing under this section, the
24 party shall be deemed to have consented to the
25 issuance of the cease-and-desist order.

1 (c) CEASE-AND-DESIST ORDER.—

2 (1) IN GENERAL.—If the Commissioner finds,
3 upon the record made at a hearing under this sec-
4 tion, that any violation or conduct specified in the
5 notice of charges has been established, or if the
6 party consents, the Commissioner may issue and
7 serve upon the national insurer, national agency,
8 federally licensed insurance producer, or insurer-af-
9 filiated party, an order to cease and desist from any
10 such violation or conduct.

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

13 (A) require the national insurer, national
14 agency, federally licensed insurance producer,
15 or insurer-affiliated party to cease and desist
16 from the alleged violation or conduct; and

17 (B) take affirmative action to correct the
18 conditions resulting from any such violation or
19 conduct.

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

22 (A) take effect on the expiration of the
23 date which is 30 days after the service of such
24 order upon the party or on another date, if
25 issued upon consent; and

1 (B) remain in effect and enforceable as
2 provided therein, unless stayed, modified, termi-
3 nated, or set aside by action of the Commis-
4 sioner or a reviewing court.

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

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

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

22 (1) IN GENERAL.—If the Commissioner deter-
23 mines that the violation, threatened violation, or
24 conduct specified in the notice of charges served
25 under subsection (c)(1) is likely to cause insolvency

1 or significant dissipation of assets or earnings of a
2 national insurer or a State insurer, or is likely to
3 weaken the condition of a national insurer or a State
4 insurer or otherwise prejudice the interests of the
5 policyholders, as a whole, of a national insurer or a
6 State insurer before the completion of the pro-
7 ceedings conducted under subsection (c)(1), the
8 Commissioner may issue a temporary order requir-
9 ing the national insurer, national agency, producer,
10 or party to—

11 (A) cease and desist from any such viola-
12 tion or conduct; and

13 (B) take affirmative action to prevent or
14 remedy such insolvency, dissipation, condition,
15 or prejudice pending completion of such pro-
16 ceedings.

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

18 A temporary cease-and-desist order issued under
19 paragraph (1)—

20 (A) may include any action authorized
21 under section 1144(2);

22 (B) shall become effective upon service to
23 the national insurer, national agency, producer,
24 or party; and

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

4 (i) administrative proceedings pursu-
5 ant to such order are completed;

6 (ii) the Commissioner dismisses the
7 charges specified in such order; or

8 (iii) if a cease-and-desist order is
9 issued against such national insurer, na-
10 tional agency, producer, or party, such
11 order is effective.

12 (3) INJUNCTION.—

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

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

1 the United States district court for the judicial
2 district in which the producer, party, or main
3 office of the national insurer or national agency
4 is located shall have jurisdiction to issue an in-
5 junction under this paragraph.

6 (4) INCOMPLETE OR INACCURATE RECORDS.—

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

- 20 (i) the cessation of any activity or
21 practice which gave rise to the incomplete
22 or inaccurate state of the books or records;
23 or

1 (ii) affirmative action to restore such
2 books or records to a complete and accu-
3 rate state.

4 (B) EFFECTIVE PERIOD.—A temporary
5 order issued under subparagraph (A)—

6 (i) shall become effective upon service;
7 and

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

12 (I) the completion of the pro-
13 ceeding initiated under subsection (a)
14 in connection with the notice of
15 charges; or

16 (II) the date the Commissioner
17 determines, by examination or other-
18 wise, that the books and records of
19 the national insurer accurately reflect
20 the financial condition of the national
21 insurer.

22 **SEC. 1144. AFFIRMATIVE ACTION TO CORRECT CONDITIONS**
23 **RESULTING FROM VIOLATIONS OR CONDUCT.**

24 The authority granted to the Commissioner under
25 this subtitle to issue an order that requires a national in-

1 surer, national agency, federally licensed insurance pro-
2 ducer, or insurer-affiliated party to take affirmative action
3 to correct or remedy any condition resulting from any vio-
4 lation or conduct with respect to which such order is
5 issued includes the authority to require such national in-
6 surer, national agency, producer, or party to—

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

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

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

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

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

17 (A) such national insurer, national agency,
18 producer, or party was unjustly enriched in con-
19 nection with such violation or conduct; or

20 (B) the violation or conduct involved a
21 reckless disregard for the law or any applicable
22 regulations or prior order of the Commissioner.

1 **SEC. 1145. SUSPENSION, REMOVAL, AND PROHIBITION AU-**
2 **THORITY.**

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

9 (1) an insurer-affiliated party has—

10 (A) violated—

11 (i) any law or regulation;

12 (ii) any final cease-and-desist order
13 issued under section 1143;

14 (iii) any condition imposed in writing
15 by the Commissioner in connection with
16 the grant of any application, filing, state-
17 ment, notice, or other request by such na-
18 tional insurer or national agency; or

19 (iv) any written agreement between
20 such national insurer or national agency
21 and the Commissioner;

22 (B) engaged or participated in any conduct
23 that—

24 (i) is hazardous to the national in-
25 surer or national agency; and

1 (ii) involves an undue risk to the pol-
2 icyholders of such national insurer, as a
3 whole, or the policyholders, as a whole,
4 serviced by such national agency; or

5 (C) committed or engaged in any act,
6 omission, or practice, which constitutes a
7 breach of the fiduciary duty of such party;

8 (2) through any violation, conduct, practice, or
9 breach described in paragraph (1)—

10 (A) such national insurer or national agen-
11 cy has suffered, or will probably suffer, finan-
12 cial loss or other damage;

13 (B) the interests of the policyholders of the
14 national insurer or the policyholders serviced by
15 the national agency have been, or could be,
16 prejudiced; or

17 (C) such party has received financial gain
18 or other benefit by reason of such violation,
19 practice, or breach; and

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

21 (A) involves personal dishonesty on the
22 part of such party; or

23 (B) demonstrates willful or continuing dis-
24 regard by such party for the condition of such
25 national insurer or national agency or the inter-

1 ests of the national insurer’s policyholders or
2 the policyholders serviced by the national agen-
3 cy.

4 (b) TEMPORARY SUSPENSION ORDER.—

5 (1) SUSPENSION OR PROHIBITION AUTHOR-
6 IZED.—If the Commissioner serves written notice
7 under subsection (a) on any insurer-affiliated party
8 of the Commissioner’s intention to issue an order
9 under such subsection, the Commissioner may issue
10 a temporary order suspending such party from office
11 or prohibiting such party from further participation
12 in any manner in the conduct of the affairs of the
13 national insurer or national agency, if the Commis-
14 sioner—

15 (A) determines that such action is nec-
16 essary for the protection of the national insurer
17 or its policyholders or the national agency or
18 the policyholders serviced by such Agency; and

19 (B) serves such party with the temporary
20 order of suspension or prohibition.

21 (2) EFFECTIVE PERIOD.—Any temporary order
22 issued under paragraph (1)—

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

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

4 (i) the date the Commissioner dis-
5 misses the charges contained in the notice
6 served under subsection (a) with respect to
7 such party; or

8 (ii) the effective date of an order
9 issued by the Commissioner to such party
10 under subsection (a).

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

17 (c) PROCEDURES.—

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

20 (A) a statement of the grounds for facts
21 underlying such notice; and

22 (B) the time and place of a hearing to be
23 held thereon.

24 (2) HEARING.—The hearing referred to in
25 paragraph (1)(B) shall take place not earlier than

1 30 days nor later than 60 days after the date of
2 service of notice under subsection (a), unless another
3 date is set by the Commissioner at the request of
4 such party.

5 (3) SUSPENSION OR REMOVAL.—

6 (A) FAILURE TO APPEAR.—If a duly au-
7 thorized representative of the party receiving
8 notice of a hearing under this subsection fails
9 to appear at such hearing, such party shall be
10 deemed to have consented to the issuance of an
11 order of such removal or prohibition.

12 (B) SUSPENSION OR REMOVAL.—In the
13 event of such consent, or if upon the record
14 made at any hearing under this subsection the
15 Commissioner finds that any of the grounds
16 specified in such notice have been established,
17 the Commissioner may issue such orders of sus-
18 pension or removal from office, or prohibition
19 from participation in the conduct of the affairs
20 of the national insurer or national agency, as
21 the Commissioner determines to be appropriate.

22 (C) EFFECTIVE DATE.—Any order issued
23 under subparagraph (B) shall become effective
24 on the expiration of 30 days after service upon
25 the national insurer or national agency and

1 such party (except in the case of an order
2 issued upon consent, which shall become effec-
3 tive at the time specified in such order). Such
4 order shall remain effective and enforceable as
5 provided therein, except to such extent as it is
6 stayed, modified, terminated, or set aside by ac-
7 tion of the Commissioner or a reviewing court.

8 (d) INDUSTRYWIDE PROHIBITION.—

9 (1) IN GENERAL.—Except as provided under
10 paragraph (2), any person who, pursuant to any
11 order issued under this section or section 1146, has
12 been removed or suspended from office in a national
13 insurer or national agency or prohibited from par-
14 ticipating in the conduct of the affairs of a national
15 insurer or national agency may not, while such order
16 is in effect—

17 (A) continue or commence to hold any of-
18 fice in, or participate in any manner in the con-
19 duct of the affairs of any national insurer or
20 national agency;

21 (B) solicit, procure, transfer, attempt to
22 transfer, vote, or attempt to vote any proxy,
23 consent, or authorization with respect to any
24 voting rights in any national insurer or national
25 agency;

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

2 (D) act as a federally licensed insurance
3 producer.

4 (2) EXCEPTION.—If, on or after the date on
5 which an order is issued under this subsection that
6 removes or suspends from office any insurer-affili-
7 ated party or prohibits such party from participating
8 in the conduct of the affairs of a national insurer or
9 national agency, such party receives the written con-
10 sent of the Commissioner, paragraph (1) shall, to
11 the extent of such consent, cease to apply to such
12 party with respect to the national insurer or national
13 agency described in each written consent.

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

18 (e) STAY OF SUSPENSION OR PROHIBITION.—Not
19 later than 10 days after any insurer-affiliated party has
20 been suspended from office or prohibited from partici-
21 tion in the conduct of the affairs of a national insurer or
22 national agency by a temporary order issued under sub-
23 section (b), such party may apply to the United States
24 district court for the judicial district in which the main
25 office of the national insurer or national agency is located,

1 or the United States District Court for the District of Co-
2 lumbia, for a stay of such suspension or prohibition pend-
3 ing the completion of the administrative proceedings pur-
4 suant to the notice served upon such party under sub-
5 section (a), and such court shall have jurisdiction to stay
6 such suspension or prohibition.

7 **SEC. 1146. SUSPENSION OR PROHIBITION BASED ON CRIMI-**
8 **NAL ACTIVITY.**

9 (a) SUSPENSION OR PROHIBITION.—

10 (1) IN GENERAL.—The Commissioner may sus-
11 pend an insurer-affiliated party from office or pro-
12 hibit such party from further participation in any
13 manner in the conduct of the affairs of a national
14 insurer or national agency, by written notice served
15 upon such party and the national insurer or national
16 agency, if—

17 (A) continued service or participation by
18 such party may pose a threat to the national in-
19 surer or national agency or the interests of the
20 policyholders of the national insurer, as a
21 whole, or the policyholders, as a whole, serviced
22 by the national agency; and

23 (B) such party is charged in any informa-
24 tion, indictment, or complaint, with the commis-
25 sion of or participation in—

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

5 (ii) a criminal violation of section
6 1956, 1957, or 1960 of title 18, United
7 States Code, or section 5322 or 5324 of
8 title 31, United States Code.

9 (2) EFFECTIVE PERIOD.—A suspension or pro-
10 hibition under paragraph (1) shall remain in effect
11 until the information, indictment, or complaint re-
12 ferred to in paragraph (1)(B) is resolved or other-
13 wise terminated by the Commissioner.

14 (b) REMOVAL OR PROHIBITION.—

15 (1) IN GENERAL.—If a judgment of conviction
16 or an agreement to enter a pretrial diversion or
17 other similar program is entered against an insurer-
18 affiliated party in connection with a crime described
19 in subsection (a)(1)(B)(i), the Commissioner may
20 issue and serve upon such party and the national in-
21 surer or national agency an order removing such
22 party from office or prohibiting such party from fur-
23 ther participation in any manner in the conduct of
24 the affairs of the national insurer or national agency

1 without the prior written consent of the Commis-
2 sioner if—

3 (A) such judgment is not subject to further
4 appellate review; and

5 (B) continued service or participation by
6 such party may pose a threat to the national in-
7 surer or the interests of the policyholders of the
8 national insurer or a national agency or the pol-
9 icyholders serviced by such agency.

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

21 (3) EFFECT ON DIRECTOR OR OFFICER.—An
22 insurer-affiliated party who is a director or officer
23 and who is subject to an order under this subsection,
24 shall cease to be a director or officer of such na-
25 tional insurer or national agency.

1 (4) EFFECT OF ACQUITTAL.—A finding of not
2 guilty or other disposition of the charge shall not
3 preclude the Commissioner from instituting pro-
4 ceedings after such finding or disposition to remove
5 such party from office or to prohibit further partici-
6 pation in national insurer or national agency affairs
7 under subsection (a) or (b) of section 1145.

8 (5) EFFECTIVE PERIOD.—A notice of suspen-
9 sion or order of removal issued under this subsection
10 shall remain effective and outstanding until the com-
11 pletion of any hearing or appeal under subsection (c)
12 or unless the suspension or order of removal is oth-
13 erwise terminated by the Commissioner.

14 (c) ADMINISTRATIVE HEARING.—

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

1 holders or to a national agency or the policyholders
2 serviced by such Agency.

3 (2) TIME AND PLACE.—Upon receipt of a re-
4 quest under paragraph (1), the Commissioner shall
5 set a time and place at which the requesting party
6 may appear, personally or through counsel, before 1
7 or more designated employees of the Commissioner
8 to submit written materials or, at the discretion of
9 the Commissioner, oral testimony, and oral argu-
10 ment. A hearing under this subsection shall take
11 place not later than 30 days after the receipt of a
12 request under paragraph (1), unless extended at the
13 request of the party.

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

18 (A) whether the suspension or prohibition
19 from participation in any manner in the con-
20 duct of the affairs of the national insurer or na-
21 tional agency will be continued, terminated, or
22 otherwise modified;

23 (B) whether the order removing such party
24 from office or prohibiting such party from fur-
25 ther participation in any manner in the conduct

1 of the affairs of the national insurer or national
2 agency will be rescinded or otherwise modified;
3 and

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

6 **SEC. 1147. ANCILLARY PROVISIONS.**

7 (a) **POWERS RELATED TO HEARINGS.**—In the course
8 of or in connection with any proceeding or other action
9 under this subtitle, the Commissioner, and any person des-
10 ignated to conduct any hearing under this section, may—

11 (1) administer oaths and affirmations;

12 (2) take depositions or cause depositions to be
13 taken; and

14 (3) issue, revoke, quash, or modify subpoenas
15 and subpoenas duces tecum.

16 (b) **SUBPOENA POWER.**—

17 (1) **IN GENERAL.**—The Commissioner, or des-
18 ignee of the Commissioner, may require the attend-
19 ance of witnesses and the production of documents
20 provided for in this section from any place in any
21 State or other place subject to the jurisdiction of the
22 United States at any designated place where such
23 proceeding or other action is being conducted.

24 (2) **ENFORCEMENT.**—The Commissioner or any
25 party to proceedings under this section may apply

1 for the enforcement of any subpoena or subpoena
2 duces tecum issued under this section to—

3 (A) the United States District Court for
4 the District of Columbia; or

5 (B) the United States district court for the
6 judicial district in which—

7 (i) such proceeding or other action is
8 being conducted; or

9 (ii) the witness resides or conducts
10 business.

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

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

19 (5) PENALTY FOR NONCOMPLIANCE.—Any per-
20 son who willfully fails or refuses to attend and tes-
21 tify or to answer any lawful inquiry or to produce
22 books, papers, correspondence, memoranda, con-
23 tracts, agreements, or other records, if in such per-
24 son's power so to do, in obedience to the subpoena
25 of the Commissioner, shall be guilty of a mis-

1 demeanor and, upon conviction, shall be subject to
2 a fine of not more than \$1,000 or to imprisonment
3 for a term of not more than 1 year or both.

4 (c) EXPENSES AND ATTORNEY FEES.—

5 (1) IN GENERAL.—Any court having jurisdic-
6 tion of any proceeding or other action instituted
7 under this section by a national insurer or national
8 agency, a federally licensed insurance producer, or
9 an insurer-affiliated party may allow any such in-
10 surer, agency, producer, or party to receive such rea-
11 sonable expenses and attorney fees, as it determines
12 to be just and proper.

13 (2) PAYMENT OF EXPENSES AND FEES.—Ex-
14 penses and fees awarded under paragraph (1) shall
15 be paid by the national insurer or national agency,
16 the federally licensed insurance producer, or the in-
17 surer-affiliated party from the assets of such in-
18 surer, agency, producer, or party.

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

23 (e) EFFECT ON BOARD OF DIRECTORS.—

24 (1) LACK OF QUORUM.—If the suspension of 1
25 or more directors under this subtitle reduces the

1 board of directors of a national insurer or national
2 agency below a quorum, all powers and functions
3 vested in or exercisable by such board shall vest in,
4 and be exercisable by, the director or directors on
5 the board not so suspended, until a quorum is rees-
6 tablished.

7 (2) TEMPORARY APPOINTMENTS.—If all of the
8 directors of a national insurer or national agency are
9 suspended under this subtitle, the Commissioner
10 shall appoint persons to serve temporarily as direc-
11 tors in their place until the earlier of the date on
12 which—

13 (A) the suspensions are terminated; or

14 (B) the suspended directors are replaced
15 on the board of directors of the national insurer
16 or national agency.

17 (f) NOTICE AFTER SEPARATION FROM SERVICE.—
18 The resignation, termination of employment or participa-
19 tion, or separation of an insurer-affiliated party (including
20 a separation caused by the closing of a national insurer
21 or national agency) shall not affect the jurisdiction and
22 authority of the Commissioner to issue any notice against
23 any such party under this subtitle if such notice is served
24 before the end of the 6-year period beginning on the date
25 on which such party ceased to be an insurer-affiliated

1 party with respect to such national insurer or national
2 agency.

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

5 (a) JUDICIAL HEARING.—

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

8 (A) shall be conducted in accordance with
9 the provisions of chapter 5 of title 5, United
10 States Code; and

11 (B) shall be held in the Federal judicial
12 district in which the main office of the national
13 insurer or national agency is located or in
14 which the federally licensed insurance producer
15 or the insurer-affiliated party is located, unless
16 the party afforded the hearing consents to an-
17 other place.

18 (2) JUDGMENT.—After a hearing under this
19 subsection and not later than 90 days after the
20 Commissioner has notified the parties that the case
21 has been submitted to the Commissioner for final
22 decision, the Commissioner shall—

23 (A) render a decision;

1 (B) issue and serve upon each party to the
2 proceeding an order or orders consistent with
3 the provisions of this subtitle; and

4 (C) include findings of fact upon which the
5 decision of the Commissioner is predicated.

6 (b) JUDICIAL REVIEW.—

7 (1) IN GENERAL.—Judicial review of any order
8 under this subtitle shall be limited to the provisions
9 under this section.

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

12 (A) BEFORE APPEAL.—Until a petition for
13 review is timely filed in a court of appeals of
14 the United States, in accordance with para-
15 graph (3), the Commissioner may modify, ter-
16minate, or set aside any order under this sec-
17tion.

18 (B) AFTER APPEAL.—After an appeal de-
19scribed under subparagraph (A) is filed, the
20 Commissioner may not modify, terminate, or
21 set aside any order under this section without
22 the permission of the court.

23 (3) FILING OF PETITION.—

24 (A) IN GENERAL.—Except as provided
25 under subparagraph (B), any party to a pro-

1 ceeding under this section may obtain judicial
2 review of any order served under subsection (a)
3 by filing a written petition in a court of appeals
4 described in subparagraph (C) not later than
5 30 days after the date of service of such order,
6 requesting that the order of the Commissioner
7 be modified, terminated, or set aside.

8 (B) EXCEPTION.—Judicial review shall not
9 be available for an order issued under sub-
10 section (d) with the consent of the national in-
11 surer or national agency, the federally licensed
12 insurance producer, or the insurer-affiliated
13 party.

14 (C) JURISDICTION.—After a petition is
15 filed under this paragraph, the following courts
16 shall have exclusive jurisdiction to modify, ter-
17minate, or set aside, in whole or in part, the
18 order of the Commissioner:

19 (i) The court of appeals of the United
20 States for the circuit in which—

21 (I) the main office of the national
22 insurer or national agency is located;
23 or

1 (II) the federally licensed insur-
2 ance producer or the insurer-affiliated
3 party is located.

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

6 (4) FILING OF RECORD.—The clerk of the court
7 shall transmit a copy of the petition filed under
8 paragraph (3) to the Commissioner, who shall file in
9 the court the record in the proceeding, in accordance
10 with section 2112 of title 28, United States Code.

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

16 (6) FINAL JUDGMENT.—Judicial review under
17 this section shall be subject to chapter 7 of title 5,
18 United States Code. The judgment and decree of the
19 court shall be final, except that the same shall be
20 subject to review by the Supreme Court upon certio-
21 rari, as provided in section 1254 of title 28, United
22 States Code.

23 (c) ENFORCEMENT OF COMMISSIONER ORDER.—

24 (1) APPLICATION.—The Commissioner may
25 submit an application, to enforce any effective and

1 outstanding notice or order issued under this sec-
2 tion, to the United States district court for the judi-
3 cial district in which—

4 (A) the main office of the national insurer
5 or national agency is located;

6 (B) the federally licensed insurance pro-
7 ducer is located; or

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

9 (2) JURISDICTION.—The courts described in
10 paragraph (1)—

11 (A) shall have jurisdiction and power to
12 order and require compliance with an order of
13 the Commissioner under this subtitle; and

14 (B) except as otherwise provided in this
15 subtitle, shall not have jurisdiction to affect, by
16 injunction or otherwise, the issuance or enforce-
17 ment of any notice or order under this subtitle,
18 or to review, modify, suspend, terminate, or set
19 aside any such notice or order.

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

21 (a) CIVIL MONEY PENALTY.—

22 (1) FIRST TIER.—A national insurer or na-
23 tional agency, federally licensed insurance producer,
24 or insurer-affiliated party shall pay a civil penalty of

1 not more than \$5,000 for each day during which
2 such person—

3 (A) violates any law or regulation;

4 (B) violates any final order or temporary
5 order issued pursuant to section 1143, 1144,
6 1145, or 1146;

7 (C) violates any condition imposed in writ-
8 ing by the Commissioner in connection with the
9 grant of any application or other request by
10 such national insurer or national agency, pro-
11 ducer or party; or

12 (D) violates any written agreement be-
13 tween such national insurer or national agency,
14 producer, or party and the Commissioner.

15 (2) SECOND TIER.—Notwithstanding paragraph
16 (1), a national insurer, national agency, federally li-
17 censed insurance producer, or insurer-affiliated
18 party shall pay a civil penalty of not more than
19 \$25,000 for each day—

20 (A) during which such person—

21 (i) commits any violation described in
22 any clause of paragraph (1);

23 (ii) recklessly engages in any conduct
24 that is hazardous to a national insurer,
25 State insurer, or national agency and that

1 involves an undue risk to the policyholders,
2 as a whole, of such national insurer or
3 State insurer, or the policyholders, as a
4 whole, serviced by such national agency; or

5 (iii) breaches any fiduciary duty; and

6 (B) for which such violation, conduct, or
7 breach—

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

9 (ii) causes or is likely to cause more
10 than a minimal loss to such national in-
11 surer or State insurer; or

12 (iii) results in pecuniary gain or other
13 benefit to such national agency, producer,
14 or affiliated party.

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

22 (A) knowingly—

23 (i)(I) commits any violation described
24 in any clause of paragraph (1); or

1 (II) engages in any conduct that is
2 hazardous to a national insurer, State in-
3 surer, or national agency and that involves
4 an undue risk to the policyholders, as a
5 whole, of such national insurer, State in-
6 surer, or the policyholders, as a whole,
7 serviced by such national agency; and

8 (ii) breaches any fiduciary duty; and

9 (B) knowingly or recklessly causes a sub-
10 stantial loss to such national insurer, State in-
11 surer, or national agency or a substantial pecu-
12 niary gain or other benefit to such producer or
13 affiliated party by reason of such violation, con-
14 duct, or breach.

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

21 (5) ASSESSMENT.—

22 (A) WRITTEN NOTICE.—Any penalty im-
23 posed under paragraph (1), (2), or (3) may be
24 assessed and collected by the Commissioner by
25 written notice, which shall contain a statement

1 of the facts constituting the basis for the as-
2 sessment of any penalty imposed under para-
3 graph (1), (2), or (3).

4 (B) FINALITY OF ASSESSMENT.—If, with
5 respect to any assessment under subparagraph
6 (A), a hearing is not requested under para-
7 graph (8) within the period of time allowed
8 under such paragraph, the assessment shall
9 constitute a final and unappealable order.

10 (6) AUTHORITY TO MODIFY OR REMIT PEN-
11 ALTY.—The Commissioner may compromise, modify,
12 or remit any penalty which the Commissioner may
13 assess or had already assessed under paragraph (1),
14 (2), or (3).

15 (7) MITIGATING FACTORS.—In determining the
16 amount of any penalty imposed under paragraph
17 (1), (2), or (3), the Commissioner shall take into ac-
18 count the appropriateness of the penalty in relation
19 to—

20 (A) the size of financial resources and good
21 faith of the national insurer, national agency, or
22 other person charged;

23 (B) the gravity of the violation;

24 (C) the history of previous violations; and

1 (D) such other matters as justice may re-
2 quire.

3 (8) HEARING.—The national insurer, national
4 agency, or other person against whom any penalty is
5 assessed under this paragraph shall be afforded a
6 hearing by the Commissioner if such national in-
7 surer, national agency, or person submits a request
8 for such hearing within 20 days after the issuance
9 of the notice of assessment.

10 (9) COLLECTION.—

11 (A) REFERRAL.—If any national insurer,
12 national agency, or other person fails to pay an
13 assessment after any penalty assessed under
14 this paragraph has become final, the Commis-
15 sioner shall recover the amount assessed by ac-
16 tion in the appropriate United States district
17 court.

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

22 (10) DISBURSEMENT AND USE.—All penalties
23 collected under authority of this paragraph shall be
24 deposited into the Treasury, and shall not be used
25 to fund the compensation of the Commissioner or

1 employees of the Office or the expenses of the Of-
2 fice.

3 (b) PREJUDGMENT ATTACHMENT.—

4 (1) IN GENERAL.—In any action brought by the
5 Commissioner under this section, or in actions
6 brought in aid of, or to enforce an order in, any ad-
7 ministrative or other civil action for money damages,
8 restitution, or civil money penalties brought by the
9 Commissioner, the court may, upon application of
10 the Commissioner, issue a restraining order that—

11 (A) prohibits any person subject to the
12 proceeding from withdrawing, transferring, re-
13 moving, dissipating, or disposing of any funds,
14 assets, or other property; and

15 (B) appoints a temporary receiver to ad-
16 minister the restraining order.

17 (2) STANDARD.—

18 (A) SHOWING.—Rule 65 of the Federal
19 Rules of Civil Procedure shall apply with re-
20 spect to any proceeding under paragraph (1),
21 without regard to the requirement of such rule
22 that the applicant show that the injury, loss, or
23 damage is irreparable and immediate.

24 (B) STATE PROCEEDING.—If, in the case
25 of any proceeding in a State court, the court

1 determines that rules of civil procedure avail-
2 able under the laws of such State provide sub-
3 stantially similar protections to a party's right
4 to due process as rule 65, the relief sought
5 under paragraph (1) may be requested under
6 the laws of such State.

7 (c) CRIMINAL PENALTY.—

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

11 **“§ 404. Violation of order by Commissioner of Na-**
12 **tional Insurance**

13 “Any person who, being subject to an order under
14 section 1145 or 1146 of the National Insurance Act of
15 2007, without the prior written approval of the Commis-
16 sioner of National Insurance, knowingly participates, di-
17 rectly or indirectly, in any manner (including by engaging
18 in an activity specifically prohibited in such an order) in
19 the conduct of the affairs of any national insurer or na-
20 tional agency shall be fined not more than \$1,000,000,
21 imprisoned for not more than 5 years, or both.”.

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions at the beginning of chapter 21 of title 18,
24 United States Code, is amended by adding at the
25 end the following:

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

1 **SEC. 1150. PUBLIC DISCLOSURES OF FINAL ORDERS AND**
2 **AGREEMENTS.**

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

8 (1) any written agreement or other written
9 statement for which a violation may be enforced by
10 the Commissioner;

11 (2) any final order issued with respect to any
12 administrative enforcement proceeding initiated by
13 the Commissioner under this section or any other
14 law; and

15 (3) any modification to or termination of any
16 order or agreement made public pursuant to this
17 paragraph.

18 (b) HEARINGS.—All hearings on the record with re-
19 spect to any notice of charges issued by the Commissioner
20 shall be open to the public, unless the Commissioner deter-
21 mines that holding an open hearing would be contrary to
22 the public interest.

23 (c) TRANSCRIPT OF HEARING.—A transcript con-
24 taining all testimony and other documentary evidence shall
25 be prepared for all hearings commenced pursuant to sec-
26 tion 1148. A transcript of public hearings shall be made

1 available to the public pursuant to section 552 of title 5,
2 United States Code.

3 (d) DOCUMENTS FILED UNDER SEAL.—

4 (1) IN GENERAL.—The Commissioner may file
5 any document or part of a document under seal in
6 any administrative hearing commenced by the Com-
7 missioner if the Commissioner determines that dis-
8 closure of all or part of the document would be con-
9 trary to the public interest.

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

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

17 (1) all the documents described in subsection
18 (a); and

19 (2) all informal enforcement agreements and
20 other supervisory actions and supporting documents
21 issued in connection with any administrative enforce-
22 ment proceeding initiated by the Commissioner.

23 (f) DISCLOSURES TO CONGRESS.—No provision of
24 this section may be construed to authorize the with-

1 holding, or to prohibit the disclosure, of any information
2 to Congress.

3 **SEC. 1151. FOREIGN INVESTIGATIONS.**

4 (a) REQUESTING ASSISTANCE FROM FOREIGN GOV-
5 ERNMENTS.—In conducting any investigation, examina-
6 tion, or enforcement action under this subtitle, the Com-
7 missioner may request the assistance of any foreign gov-
8 ernment.

9 (b) PROVIDING ASSISTANCE TO FOREIGN GOVERN-
10 MENTS.—

11 (1) IN GENERAL.—The Commissioner may as-
12 sist any foreign government that is conducting an
13 investigation to determine whether any person has
14 violated, is violating, or is about to violate any law
15 or regulation relating to insurance matters or cur-
16 rency transactions administered or enforced by such
17 foreign government.

18 (2) INVESTIGATION BY COMMISSIONER.—The
19 Commissioner may investigate and collect informa-
20 tion and evidence pertinent to a request for assist-
21 ance under paragraph (1). Any such investigation
22 shall comply with the laws of the United States and
23 the policies and procedures of the Commissioner.

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

4 (A) whether the requesting authority has
5 agreed to provide reciprocal assistance with re-
6 spect to insurance matters within the jurisdic-
7 tion of the Commissioner; and

8 (B) whether compliance with the request
9 would prejudice the public interest of the
10 United States.

11 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion shall be construed to limit the authority of the Com-
13 missioner or any other Federal agency to provide or re-
14 ceive assistance or information to or from any foreign gov-
15 ernmental authority with respect to any matter.

16 **SEC. 1152. ACTION OR PROCEEDING AGAINST NON-UNITED**
17 **STATES INSURERS.**

18 (a) IN GENERAL.—The Commissioner may not take
19 any action under this subtitle against a non-United States
20 insurer or any officer, director, employee, or agent of such
21 insurer unless the Commissioner believes that conduct or
22 practice of such insurer or individual has been, is, or is
23 likely to be, carried on in connection with an act or prac-
24 tice within 1 or more States, which constitutes an appro-

1 piate basis for action by the Commissioner under this
2 subtitle.

3 (b) REMOVAL OF OFFICER OR DIRECTOR.—If an of-
4 ficer, director, or other person associated with a non-
5 United States insurer fails to appear promptly as a party
6 in any case in which an action or proceeding is brought,
7 pursuant to an allegation under subsection (a), for the
8 suspension or removal of such officer, director, or other
9 person, or fails to comply with any effective order or judg-
10 ment therein, any failure by the non-United States insurer
11 to secure the removal of the officer, director, or other per-
12 son from any office such person holds in such insurer and
13 from any further participation in its affairs shall con-
14 stitute grounds for ordering the non-United States insurer
15 to terminate the sale, solicitation, negotiation, and under-
16 writing of insurance and all other insurance operations in
17 the United States.

18 (c) VENUE.—

19 (1) IN GENERAL.—Except as provided under
20 paragraph (2), if the venue of any judicial or admin-
21 istrative proceeding under this section is to be deter-
22 mined by reference to the location of the main office
23 of a national insurer, the venue of such a proceeding
24 shall be within the judicial district or other relevant

1 jurisdiction in which the non-United States insurer
2 has 1 or more offices.

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

6 (A) shall be in the jurisdiction within
7 which the office or offices involved in the pro-
8 ceeding are located; and

9 (B) if there is more than 1 jurisdiction
10 under subparagraph (A), shall be proper in any
11 such jurisdiction in which the proceeding is
12 brought or to which it may appropriately be
13 transferred.

14 (d) SERVICE OF PROCESS.—

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

18 (2) EXCEPTION.—If any service of process
19 under paragraph (1) is in connection with an action
20 or proceeding involving 1 or more offices located in
21 any State, service shall be made on at least 1 office
22 so involved.

1 **SEC. 1153. COOPERATION BETWEEN COMMISSIONER AND**
2 **STATE COMMISSIONERS.**

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

8 (1) Revocation, suspension, or restriction of the
9 authority of the national insurer or national agency
10 to transact insurance.

11 (2) The entry of a formal order that the na-
12 tional insurer restrict its premium writing, obtain
13 additional contributions to surplus, reinsure all or
14 any part of its business, or increase capital, surplus,
15 or any other account for the security of policyholders
16 or creditors.

17 (3) The placement of a national insurer into re-
18 ceivership.

19 **Subtitle D—Insurance Fraud**

20 **SEC. 1161. INVESTIGATION OF INSURANCE FRAUD.**

21 (a) INVESTIGATIVE AUTHORITY OF COMMIS-
22 SIONER.—The Commissioner may investigate suspected
23 fraudulent insurance acts by insurance persons engaged
24 in the business of insurance or by other persons.

25 (b) FRAUD WARNING REQUIRED.—The Commis-
26 sioner, by regulation, shall require each national insurer

1 to place a fraud warning on claim forms and applications
2 for policies of insurance written, or to be written, by a
3 national insurer, regardless of the form of transmission.

4 (c) MANDATORY REPORTING OF FRAUDULENT IN-
5 SURANCE ACTS.—A national insurer, or an insurance per-
6 son engaged in the business of insurance, that knows or
7 reasonably believes that a fraudulent insurance act is
8 being, will be, or has been committed, shall submit such
9 information to the Commissioner in a form and manner
10 prescribed by the Commissioner.

11 (d) IMMUNITY FROM LIABILITY.—

12 (1) IN GENERAL.—Except as provided under
13 paragraphs (2) and (3), any person who furnishes,
14 discloses, receives, or uses information concerning a
15 suspected, anticipated, or completed fraudulent in-
16 surance act shall not be liable to any person under
17 any law or regulation of the United States, any con-
18 stitution, law, or regulation of any State or political
19 subdivision of any State, or under any contract or
20 other legally enforceable agreement (including any
21 arbitration agreement), for such act, if the informa-
22 tion is provided to or received from—

23 (A) the Commissioner or any employee,
24 agent, or representative of the Commissioner;

1 (B) Federal, State, or local enforcement or
2 regulatory officials or their employees, agents,
3 or representatives;

4 (C) a self-regulatory organization or its
5 employees, agents, or representatives;

6 (D) a person (including a National In-
7 surer, State Insurer, or anti-fraud organization)
8 involved in the investigation (including coopera-
9 tion or participation in an investigation), pre-
10 vention, and detection of fraudulent insurance
11 acts or that person's agents, employees, or rep-
12 resentatives; or

13 (E) the NAIC or its employees, agents, or
14 representatives.

15 (2) MALICE.—

16 (A) IN GENERAL.—Paragraph (1) shall not
17 apply to false statements made with actual mal-
18 ice.

19 (B) CONTENTS OF COMPLAINT.—In an ac-
20 tion brought against a person for filing a report
21 or furnishing other information concerning a
22 fraudulent insurance act, the party bringing the
23 action shall plead specifically any allegation
24 that paragraph (1) does not apply because the

1 person filed the report or furnished the infor-
2 mation with actual malice.

3 (3) PRESERVATION OF PRIVILEGE AND IMMUNI-
4 TIES.—This subsection does not abrogate or modify
5 any common law or statutory privileges or immuni-
6 ties enjoyed by a person described in paragraph (1).

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

16 **SEC. 1162. PENALTIES.**

17 If a person committing an offense under subsection
18 (a) or (c) of section 1033 of title 18, United States Code,
19 is a national insurer, a national agency, or other federally
20 licensed insurance producer, or an insurer-affiliated party,
21 the Commissioner may, in addition to the punishment set
22 forth in section 1034 of title 18, United States Code—

23 (1) revoke, suspend, or restrict the Federal li-
24 cense of such national insurer, national agency, or

1 other federally licensed insurance producer, or in-
2 surer-affiliated party pursuant to subtitle C; and

3 (2) order such national insurer, national agen-
4 cy, or other federally licensed insurance producer, or
5 insurer-affiliated party to make restitution to per-
6 sons aggrieved by such offenses.

7 **SEC. 1163. CIVIL REMEDY.**

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

12 (1) return of any profit, benefit, compensation,
13 or payment received by the person committing the
14 act;

15 (2) reasonable attorney fees, related legal ex-
16 penses, including internal legal expenses and court
17 costs; and

18 (3) all other economic damages directly result-
19 ing from the act.

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

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

23 (2) may be maintained under this section if a
24 court has ordered restitution to the injured national
25 insurer, national agency, or federally licensed insur-

1 ance producer upon criminal conviction of the person
2 committing the fraudulent insurance act.

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

11 **TITLE II—NATIONAL INSURANCE**
12 **COMPANIES AND NATIONAL**
13 **INSURANCE AGENCIES**
14 **Subtitle A—Organization,**
15 **Licensing, and Operations**

16 **SEC. 1201. ORGANIZATION, OPERATION, AND REGULATION**
17 **OF NATIONAL INSURANCE COMPANIES AND**
18 **NATIONAL INSURANCE AGENCIES.**

19 (a) **AUTHORIZATION.**—

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

24 (A) provide for the organization, incorpora-
25 tion, operation, and regulation of national in-

1 surance companies and national insurance
2 agencies; and

3 (B) issue charters therefor.

4 (2) RULEMAKING.—The Commissioner shall
5 issue regulations that permit the organization of na-
6 tional insurers in stock, mutual, reciprocal, or fra-
7 ternal form, and address such other matters related
8 to the chartering and licensing of national insurers
9 and national agencies, as the Commissioner deter-
10 mines appropriate.

11 (3) ORGANIZATION.—The Commissioner shall
12 require each national agency to be organized as a
13 corporation, partnership, limited liability company,
14 or in such other form as is recognized under State
15 law.

16 (b) CHARTERING CRITERIA.—

17 (1) FACTORS.—In determining whether to issue
18 a charter for a national insurer or national agency,
19 the Commissioner shall consider—

20 (A) the character and competency of the
21 parties seeking the charter; and

22 (B) the financial resources and future
23 prospects of the proposed national insurer or
24 proposed national agency.

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

5 (3) CORPORATE NAME.—

6 (A) NATIONAL INSURERS.—The corporate
7 name of each national insurer shall include at
8 the end the words “national insurer” or the ini-
9 tials “N.I.”.

10 (B) NATIONAL AGENCIES.—The corporate
11 name of each national agency shall include at
12 the end the words “National Insurance Agency”
13 or the initials “N.I.A.”.

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

21 (c) ISSUANCE OR DENIAL OF CHARTER.—

22 (1) DETERMINATION.—Not later than 60 days
23 after the receipt of the articles of incorporation or
24 other organization document from a proposed na-
25 tional insurer or national agency, and such other in-

1 formation required under subsection (b)(2), the
2 Commissioner shall—

3 (A) issue a charter certificate to the appli-
4 cant; or

5 (B) provide the applicant with a written
6 explanation of the grounds for denying a char-
7 ter.

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

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

17 (A) the applicant fails to—

18 (i) comply with all applicable forma-
19 tion requirements; and

20 (ii) provide any information requested
21 by the Commissioner under subsection
22 (b)(2);

23 (B) the applicant lacks—

1 (i) the financial resources necessary to
2 comply with the standards under this Act;

3 or

4 (ii) the character or competence to op-
5 erate the national insurer or national agen-
6 cy in accordance with the standards under
7 this Act; or

8 (C) the Commissioner determines that the
9 national insurer or national agency is being
10 formed for an illegitimate purpose.

11 (d) AMENDMENT OF CHARTER.—The Commissioner
12 may, under such regulations as the Commissioner may
13 prescribe, provide for the amendment of charters issued
14 to national insurers and national agencies.

15 (e) NO DELEGATION PERMITTED.—The Commis-
16 sioner may not delegate to any insurance self-regulatory
17 organization any authority conferred under this section
18 with respect to—

19 (1) the organization, incorporation, and powers
20 of national insurers or national agencies; or

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

23 (f) MAIN OFFICE.—

24 (1) DESIGNATION.—Subject to the approval of
25 the Commissioner, a national insurer or national

1 agency may designate any office at which it conducts
2 insurance operations as its main office.

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

6 (3) CHANGE IN MAIN OFFICE.—With the ap-
7 proval of the Commissioner, a national insurer or
8 national agency may change the designation of its
9 main office, including to another existing office of
10 the national insurer or national agency.

11 (4) CITIZENSHIP.—For purposes of jurisdiction,
12 a national insurer or national agency shall be
13 deemed a citizen of the State in which its main of-
14 fice is located and of the State in which it has its
15 principal place of business.

16 (g) INSURER IN FRATERNAL FORM.—Any charter
17 granted to a national insurer in fraternal form in connec-
18 tion with a conversion from a State insurer shall include
19 provisions that allow the national insurer to operate as
20 an insurer in fraternal form in a manner consistent with
21 the requirements of its former State charter.

22 **SEC. 1202. UNITED STATES BRANCHES OF NON-UNITED**
23 **STATES INSURERS.**

24 (a) AUTHORIZATION OF NON-UNITED STATES IN-
25 SURER.—A non-United States insurer may transact insur-

1 ance in the United States through a United States branch
2 by qualifying and licensing the United States branch to
3 do business as a national insurer under this Act, under
4 such regulations as the Commissioner may prescribe.

5 (b) TRUST ACCOUNT.—

6 (1) IN GENERAL.—The Commissioner shall not
7 license a United States branch until the non-United
8 States insurer establishes a trust account, pursuant
9 to a deed of trust that meets the requirements of
10 this subsection.

11 (2) ASSETS.—The trustee assets of a United
12 States branch shall be held pursuant to a deed of
13 trust with a United States bank that meets such re-
14 quirements as the Commissioner may prescribe, in
15 trust for the exclusive benefit, security, and protec-
16 tion of the policyholders, or policyholders and credi-
17 tors, of the United States branch in the United
18 States maintained as long as there is outstanding
19 any liability of the United States branch arising out
20 of its insurance transactions in the United States.

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

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

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

8 (1) shall be subject to all laws applicable to a
9 national insurer; and

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

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

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

16 (b) ISSUANCE OF FEDERAL LICENSES.—

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

20 (A) permit national insurers to sell, solicit,
21 negotiate, and underwrite lines of insurance;
22 and

23 (B) specify the lines of insurance that each
24 national insurer may sell, solicit, negotiate, and
25 underwrite.

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

4 (A) a national insurer may hold a license
5 to sell, solicit, negotiate, and underwrite prop-
6 erty/casualty insurance;

7 (B) a national insurer that holds a license
8 to sell, solicit, negotiate, and underwrite life in-
9 surance may also sell, solicit, negotiate, and un-
10 derwrite disability income insurance, long-term
11 care insurance, annuities, and funding agree-
12 ments; and

13 (C) no national insurer may obtain—

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

17 (ii) a Federal license to engage in the
18 sale, solicitation, negotiation, and under-
19 writing of life insurance, annuities, or
20 funding agreements.

21 (3) AUTHORITY TO LIMIT SCOPE OF INSUR-
22 ANCE.—Subject to paragraph (2), the regulations
23 prescribed by the Commissioner pursuant to para-
24 graph (1) may provide that a national insurer that
25 holds a license to sell, solicit, negotiate, and under-

1 write specified lines of insurance may not hold a li-
2 cense to sell, solicit, negotiate, and underwrite other
3 specified lines of insurance.

4 (4) TITLE INSURANCE.—The Commissioner
5 shall not license any person to engage in the busi-
6 ness of title insurance, except that nothing in this
7 Act shall prevent a provider of title insurance from
8 being affiliated with a national insurer or national
9 agency.

10 (5) DURATION.—A Federal license issued by
11 the Commissioner pursuant to this subsection shall
12 remain in effect until the license is—

13 (A) surrendered by the national insurer; or

14 (B) revoked or suspended by the Commis-
15 sioner in accordance with the provisions of this
16 Act.

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

18 (1) only reinsure the lines of insurance that the
19 national insurer is—

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

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

24 (2) confine its business to reinsurance.

25 (d) NONDISCRIMINATION.—

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

6 (A) a subsidiary of a non-United States
7 person;

8 (B) partially owned by a non-United States
9 person; or

10 (C) a United States branch of a non-
11 United States insurer.

12 (2) EXCEPTION.—Notwithstanding paragraph
13 (1), the Commissioner may impose conditions for the
14 granting of a Federal license that are different from
15 those imposed on other national insurers—

16 (A) if the conditions attached are imposed
17 on the legal form in which the national insurer
18 chooses to operate; or

19 (B) if the Commissioner makes a written
20 finding that the conditions are related to the
21 protection of policyholders and are the min-
22 imum conditions necessary to achieve the pur-
23 poses of this Act.

1 **SEC. 1204. CORPORATE GOVERNANCE.**

2 (a) COMPLIANCE WITH THIS ACT AND APPLICABLE
3 REGULATIONS.—The corporate governance procedures of
4 a national insurer and a national agency shall be con-
5 sistent with the provisions of this Act and all regulations
6 issued by the Commissioner under this Act.

7 (b) ADHERENCE TO STATE LAW.—

8 (1) IN GENERAL.—Except as provided under
9 paragraph (3), and to the extent not inconsistent
10 with the provisions of this Act or regulations issued
11 by the Commissioner under this Act, each national
12 insurer and national agency shall adhere to cor-
13 porate governance procedures of the relevant State
14 law of the State in which its main office is located
15 or the State in which 1 of its United States holding
16 companies is organized or incorporated.

17 (2) DESIGNATION.—Each national insurer and
18 national agency shall designate in its bylaws the
19 body of relevant State law selected for its corporate
20 governance procedures.

21 (3) DISCRIMINATORY PROVISION.—If the Com-
22 missioner determines that any provision of a State
23 corporate governance law is discriminatory as ap-
24 plied to national insurers or national agencies, such
25 insurer or agency—

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

3 (B) may follow such other provision of law
4 as the Commissioner determines to be appro-
5 priate.

6 (c) INDEPENDENT AUDIT COMMITTEE FOR NA-
7 TIONAL INSURERS.—

8 (1) ESTABLISHMENT.—Each national insurer
9 shall establish an audit committee of its board of di-
10 rectors, which shall be composed entirely of outside
11 directors who are independent of management of the
12 national insurer.

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

15 (A) any person that controls the national
16 insurer has established an audit committee of
17 its board of directors entirely composed of out-
18 side directors who are independent of manage-
19 ment of such controlling person; and

20 (B) the role of the audit committee of the
21 controlling person in subparagraph (A) includes
22 review of financial statements of the national
23 insurer.

1 **SEC. 1205. PARTICIPATING POLICY PROCEDURES.**

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

6 (1) adhere to participating policy procedures of
7 the relevant law of the State in which its main office
8 is located; or

9 (2) adhere to the participating policy proce-
10 dures established by regulation of the Commissioner
11 under subsection (b).

12 (b) REGULATIONS.—The Commissioner shall, by reg-
13 ulation, establish participating policy procedures, as the
14 Commissioner determines to be appropriate to carry out
15 this Act.

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

19 **SEC. 1206. CONVERSION OF STATE INSURER TO NATIONAL**
20 **INSURER OR STATE INSURANCE AGENCY TO**
21 **NATIONAL AGENCY.**

22 (a) AUTHORIZATION TO CONVERT.—

23 (1) IN GENERAL.—Notwithstanding any other
24 provision of law and subject to the approval of the
25 Commissioner, a State insurer may convert to a na-

1 tional insurer and a State insurance agency may
2 convert to a national agency.

3 (2) ORGANIZATIONAL FORM.—A State insurer
4 that converts to a national insurer under paragraph
5 (1) may—

6 (A) retain an organizational form per-
7 mitted under section 1201(a)(2); or

8 (B) change directly to another organiza-
9 tional form that is permitted under section
10 1201(a)(2).

11 (b) CONVERSION PROCEDURES.—

12 (1) IN GENERAL.—The Commissioner may,
13 under such regulations as the Commissioner may
14 prescribe, provide for—

15 (A) the conversion of State insurers into
16 national insurers;

17 (B) the conversion of State insurance
18 agencies to national agencies; and

19 (C) the issuance of charters to such con-
20 verted insurers and agencies.

21 (2) RULEMAKING.—Regulations issued by the
22 Commissioner under this section shall be consistent
23 with—

24 (A) the regulations issued by the Commis-
25 sioner under section 1201; and

1 (B) the provisions of section 1242 or 1243,
2 as applicable, in the case of a change of form
3 effected at the time of a conversion of a State
4 insurer into a national insurer.

5 (c) EFFECT OF CONVERSION.—

6 (1) IN GENERAL.—Except as provided under
7 paragraph (2), a State insurer or State insurance
8 agency that converts under this section—

9 (A) shall be subject to the provisions of
10 this Act and to examination and regulation as
11 provided under this Act to the same extent as
12 other national insurers and national agencies
13 organized under this Act;

14 (B) shall be deemed to be a continuation
15 of the corporate existence of the State insurer
16 or State insurance agency, as applicable; and

17 (C) shall, by operation of law and without
18 further action, hold and be subject to all rights,
19 privileges, liabilities, property interests, and
20 other interests and obligations that the State
21 insurer or State insurance agency held, or was
22 subject to, immediately before the conversion.

23 (2) EXCEPTIONS.—Notwithstanding paragraph
24 (1), a State insurer or State insurance agency that
25 converts under this section—

1 (A) shall not be subject to any requirement
2 to maintain deposits with State insurance regu-
3 latory authorities;

4 (B) shall not hold any State license to sell,
5 solicit, negotiate, and underwrite insurance that
6 was held by the State insurer or State insur-
7 ance agency; and

8 (C) shall obtain, in accordance with section
9 1203 or 1301, as applicable, a Federal license
10 for all lines of insurance that it sells, solicits,
11 negotiates, or underwrites.

12 (d) SPECIAL AUTHORITY.—The Commissioner may,
13 subject to such conditions as the Commissioner may pre-
14 scribe by regulation, permit a national insurer or national
15 agency resulting from the conversion of a State insurer
16 or State insurance agency, as applicable, to retain, hold,
17 or exercise assets, liabilities, powers, and authorities that
18 do not conform to the legal requirements otherwise appli-
19 cable to national insurers or national agencies to the ex-
20 tent the Commissioner determines is appropriate.

21 (e) MUTUAL HOLDING COMPANY CONTROLLING
22 STATE INSURERS IN STOCK FORM.—

23 (1) IN GENERAL.—If a State insurer converting
24 under this section is an insurer in stock form that
25 is controlled by a mutual holding company as a re-

1 sult of a previous conversion under State law from
2 an insurer in mutual form to an insurer in stock
3 form, and, after the conversion under this section,
4 the mutual holding company would not control any
5 other State insurers having policies in force that give
6 rise to membership in the mutual holding company,
7 then, notwithstanding any other provision of law, in
8 accordance with this section and regulations issued
9 by the Commissioner—

10 (A) upon the conversion under this section,
11 the mutual holding company may remain a cor-
12 poration organized under the law of the State
13 under which it was incorporated or may merge
14 into a mutual holding company incorporated
15 under the law of another State; and

16 (B) upon and after the conversion under
17 this section, the mutual holding company—

18 (i) shall, to the extent provided in reg-
19 ulations issued by the Commissioner, be
20 subject to—

21 (I) title V; and

22 (II) examination, reporting, regu-
23 lation, and other supervision under
24 this Act; and

1 (ii) shall not be subject to any form of
2 licensing, examination, reporting, regula-
3 tion, or other supervision by reason of
4 being a mutual holding company or relat-
5 ing to the rights of members, the sale, so-
6 licitation, negotiation, or underwriting of
7 insurance (including all products of na-
8 tional insurers) or any other insurance op-
9 erations except as authorized under Fed-
10 eral law and except as provided in section
11 1125(b), as if the mutual holding company
12 were a national insurer under this Act.

13 (2) CONVERSION TO A CORPORATION IN STOCK
14 FORM.—Notwithstanding any other provision of law
15 and in accordance with this subsection and regula-
16 tions issued by the Commissioner, a mutual holding
17 company described in paragraph (1) may convert to
18 a corporation in stock form in a manner that—

19 (A) is found by the Commissioner to be
20 fair and equitable to the mutual holding com-
21 pany and its members; and

22 (B) is generally similar to conversion of an
23 insurer in mutual form to a national insurer in
24 stock form pursuant to section 1243.

1 (f) NO DELEGATION PERMITTED.—The Commis-
2 sioner may not delegate any authority under this section
3 involving the conversion of a State insurer into a national
4 insurer or a State insurance agency into a national agency
5 to any insurance self-regulatory organization.

6 **SEC. 1207. CONVERSION OF NATIONAL INSURER TO STATE**
7 **INSURER OR NATIONAL AGENCY TO STATE**
8 **AGENCY.**

9 (a) IN GENERAL.—Subject to such notification proce-
10 dures as the Commissioner may prescribe by regulation,
11 a national insurer may convert into a State insurer and
12 a national agency may convert into a State insurance
13 agency, in accordance with applicable State law.

14 (b) SAVINGS PROVISION.—Nothing in this section or
15 in the conversion of a national insurer into a State insurer
16 or a national agency into a State insurance Agency shall
17 operate to abrogate any rights, privileges, liabilities, prop-
18 erty interests, or other interests or obligations that a na-
19 tional insurer or national agency held or was subject to
20 immediately before the conversion.

21 **SEC. 1208. POWERS.**

22 (a) IN GENERAL.—Upon issuance of its charter, a
23 national insurer or national agency shall have the power,
24 subject to such regulations as the Commissioner may pre-
25 scribe—

1 (1) to have, alter, use, and reproduce a cor-
2 porate seal, or a facsimile of it;

3 (2) to have perpetual succession until such time
4 as it is liquidated, dissolved, merged, or otherwise
5 wound up in accordance with applicable law;

6 (3) to adopt, amend, and repeal by-laws;

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

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

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

1 (7) to lend money, invest, and reinvest its funds
2 and receive and hold real and personal property as
3 security for repayment;

4 (8) to participate with others in any corpora-
5 tion, partnership, limited partnership, joint venture,
6 or other association, or in any transaction, under-
7 taking, or arrangement, which the national insurer
8 or national agency would have power to conduct by
9 itself, whether or not such participation involves
10 sharing or delegating control with or to others;

11 (9) to elect or appoint directors, officers, em-
12 ployees, and agents of the national insurer or na-
13 tional agency, define their duties, fix their com-
14 pensation, and lend them money and credit;

15 (10) to pay pensions and establish pension
16 plans, pension trusts, profit-sharing plans, share
17 bonus plans, share option plans, and other benefit or
18 incentive plans for any or all current or former di-
19 rectors, officers, employees, and agents of the na-
20 tional insurer or national agency, its subsidiaries or
21 its affiliates;

22 (11) to provide insurance for its benefit on the
23 life of any of its directors, officers, or employees, or
24 on the life of any shareholder for the purpose of ac-

1 quiring, at the death of such shareholder, shares of
2 its stock owned by such shareholder;

3 (12) in the case of a national life insurer—

4 (A) to establish and maintain 1 or more
5 separate accounts and allocate amounts to such
6 accounts (including any proceeds applied under
7 optional modes of settlement or under dividend
8 options) to provide for life insurance, annuities,
9 disability income insurance, long-term care in-
10 surance, or funding agreements (and incidental
11 benefits), payable in fixed or variable amounts
12 (or both) from such accounts or from the gen-
13 eral account (or both);

14 (B) to hold and accumulate funds pursu-
15 ant to funding agreements; and

16 (C) to provide investment advice and in-
17 vestment management services;

18 (13) in the case of a national insurer—

19 (A) to engage in the sale, solicitation, ne-
20 gotiation, and underwriting of insurance;

21 (B) to establish and maintain 1 or more
22 protected cells in connection with an insurance
23 securitization and attribute to such cells insur-
24 ance and reinsurance obligations with respect to
25 its general account, obligations relating to the

1 insurance securitization, and assets to fund
2 such obligations; and

3 (C) to engage in all other insurance oper-
4 ations and exercise all such incidental powers as
5 shall be necessary to carry on insurance oper-
6 ations;

7 (14) in the case of a national agency—

8 (A) to engage in the sale, solicitation, and
9 negotiation of—

10 (i) policies of insurance issued by any
11 national insurer or State insurer; and

12 (ii) surplus lines insurance and non-
13 admitted insurance for a non-admitted in-
14 surer; and

15 (B) to exercise all such incidental powers
16 as shall be necessary to carry out such activi-
17 ties, including claims adjustment and settle-
18 ment, risk management, employee benefits ad-
19 vice, retirement planning, and any other insur-
20 ance-related consulting activities;

21 (15) to provide benefits or payments to its di-
22 rectors, officers, and employees, subsidiaries or af-
23 filiates, and to their estates, families, dependents, or
24 beneficiaries, in recognition of the past services of
25 the directors, officers, and employees to the national

1 insurer or national agency or its subsidiaries or af-
2 filiates;

3 (16) to make donations and otherwise devote its
4 resources for the public welfare or for charitable, sci-
5 entific, educational, humanitarian, philanthropic, or
6 religious purposes;

7 (17) to serve as a promoter, partner, member,
8 associate, or manager of any business entity;

9 (18) to provide loss control, advice, exposure
10 identification, and reduction strategies, and rec-
11 ommend and expedite risk financing alternatives;

12 (19) to engage in any other lawful activity that
13 is necessary or convenient to further its activities
14 and affairs; and

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

17 (b) EFFECT ON STATE LAW.—No State may, by stat-
18 ute, regulation, order, interpretation, or otherwise, prevent
19 or restrict a national insurer or national agency from exer-
20 cising any power conferred by this section or by any regu-
21 lation authorized by this section.

22 (c) SUBSIDIARIES.—

23 (1) NATIONAL INSURERS.—

24 (A) AUTHORIZATION.—

1 (i) IN GENERAL.—A national insurer
2 may establish, invest in, or otherwise ac-
3 quire 1 or more subsidiaries engaged or or-
4 ganized to engage in any business lawful
5 under the laws of the jurisdictions in which
6 the subsidiaries are organized.

7 (ii) RESTRICTION.—Without the prior
8 written approval of the Commissioner, not
9 more than 20 percent of the national in-
10 surer’s assets may be invested in any 1
11 subsidiary described in clause (i) and not
12 more than 40 percent of a national insur-
13 er’s assets may be invested in 2 or more
14 subsidiaries engaged in such other activi-
15 ties.

16 (B) CALCULATION.—In calculating the
17 amount invested by a national insurer in a sub-
18 sidiary under subparagraph (A), there shall be
19 included only the following:

20 (i) Total net monies or other consider-
21 ation expended and obligations assumed by
22 the national insurer in the acquisition or
23 formation of the subsidiary, including all
24 organizational expenses and contributions
25 to capital and surplus of the subsidiary

1 whether or not represented by the pur-
2 chase of capital stock or issuance of other
3 securities.

4 (ii) All amounts expended by the na-
5 tional insurer in acquiring additional com-
6 mon stock, preferred stock, debt obliga-
7 tions, and other securities of the sub-
8 sidiary.

9 (iii) All contributions by the national
10 insurer to the capital or surplus of the sub-
11 sidiary subsequent to its acquisition or for-
12 mation.

13 (C) QUALIFICATION OF INVESTMENT;
14 WHEN DETERMINED.—Whether any investment
15 made pursuant to subparagraph (A) meets the
16 applicable requirements of such subparagraph
17 shall be determined before the investment is
18 made by calculating the applicable investment
19 limitations as though the investment had al-
20 ready been made, taking into account the then
21 outstanding principal balance on all previous in-
22 vestments in debt obligations, and the value of
23 all previous investments in equity securities as
24 of the day they were made, net of any return
25 of capital invested, not including dividends.

1 (D) EXCEPTION.—The limitations provided
2 for in subparagraph (A) shall not apply to in-
3 vestments by a national insurer in—

4 (i) any subsidiary engaged primarily
5 in the sale, solicitation, negotiation, and
6 underwriting of any line of insurance that
7 the national insurer is authorized to sell,
8 solicit, negotiate, and underwrite; or

9 (ii) any subsidiary whose sole business
10 function is to own assets (including other
11 subsidiaries) that the national insurer
12 itself is authorized to own.

13 (E) NOTICE.—A national insurer shall no-
14 tify the Commissioner, in writing, not later
15 than 20 calendar days after establishing, invest-
16 ing in, or acquiring a subsidiary, unless the
17 transaction requires the prior written approval
18 of the Commissioner under subparagraph (A).

19 (2) NATIONAL AGENCIES.—

20 (A) AUTHORIZATION.—A national agency
21 may establish, invest in, or otherwise acquire 1
22 or more subsidiaries engaged or organized to
23 engage in any business activity that is lawful
24 for a national agency under this Act.

1 (B) NOTICE.—A national agency shall no-
2 tify the Commissioner, in writing, not later
3 than 30 calendar days after establishing, invest-
4 ing in, or acquiring a subsidiary.

5 (d) DIVIDENDS AND DISTRIBUTIONS TO SHARE-
6 HOLDERS.—

7 (1) SHAREHOLDER DIVIDENDS AND DISTRIBUTI-
8 ONS PERMITTED.—A national insurer may declare
9 and pay dividends or make other distributions in
10 cash, bonds, or property on its outstanding shares,
11 unless—

12 (A) the national insurer is insolvent or
13 would be made insolvent by such payment; or

14 (B) the declaration, payment, or distribu-
15 tion would be contrary to any restrictions con-
16 tained in the charter of the national insurer.

17 (2) SOURCE OF SHAREHOLDER DIVIDENDS AND
18 DISTRIBUTIONS.—A national insurer may only de-
19 clare and pay dividends or make other distributions
20 out of surplus if the assets of the national insurer
21 after such declaration, payment, or distribution is
22 not less than the amount of its capital.

23 (3) OTHER PROVISIONS.—Shareholder divi-
24 dends and distributions made pursuant to this sub-
25 section shall be subject to—

1 (A) the standards set forth in section
2 1403(a)(1)(E); and

3 (B) the notice requirements of section
4 1403(b).

5 **SEC. 1209. SEPARATE ACCOUNTS OF NATIONAL LIFE IN-**
6 **SURER.**

7 (a) OWNERSHIP.—Any amount allocated by a na-
8 tional life insurer to a separate account shall be owned
9 by the national life insurer, the assets therein shall be the
10 property of the national life insurer, and no national life
11 insurer by reason of such account shall be or hold itself
12 out to be a trustee.

13 (b) LIABILITIES.—Assets allocated by a national life
14 insurer to a separate account shall not be chargeable with
15 liabilities arising out of any other business of the national
16 life insurer to the extent so provided in the applicable
17 agreements.

18 (c) SECURITY INTERESTS PERMITTED.—A national
19 life insurer may allow for a security interest to attach to
20 assets allocated to a separate account if the security inter-
21 est is in favor of a creditor of the separate account and
22 otherwise allowed under applicable law.

23 **SEC. 1210. PROTECTED CELLS.**

24 (a) ESTABLISHMENT.—A national insurer may, in
25 connection with an insurance securitization, establish 1 or

1 more protected cells with the approval of the Commis-
2 sioner.

3 (b) PROTECTED CELL ASSETS.—

4 (1) OWNERSHIP.—All amounts attributed to a
5 protected cell established under this section, includ-
6 ing assets transferred to a protected cell account,
7 shall be owned by the national insurer.

8 (2) TRUSTEE.—The national insurer may not
9 be, nor hold itself out to be, a trustee with respect
10 to the protected cell assets of the protected cell ac-
11 count described in paragraph (1).

12 (3) LIABILITIES.—The assets of a protected cell
13 established under this section shall not be chargeable
14 with liabilities arising out of any other business of
15 the national insurer.

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

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

23 (1) AVAILABILITY.—Protected cell assets shall
24 only be available to the creditors of a national in-

1 surer that are creditors in respect to that protected
2 cell.

3 (2) RECOURSE.—Creditors with respect to a
4 protected cell shall have no recourse against the pro-
5 tected cell assets of other protected cells or the gen-
6 eral account assets of the national insurer.

7 (3) FRAUD.—The establishment of a protected
8 cell shall not, in and of itself, constitute a fraudulent
9 conveyance, an intent by a national insurer to de-
10 fraud creditors, or the carrying out of business by
11 a national insurer for any other fraudulent purpose.

12 (e) RULEMAKING.—The Commissioner shall promul-
13 gate regulations that establish standards for protected
14 cells established by national insurers.

15 (f) EFFECT ON STATE LAW.—No State may, by stat-
16 ute, regulation, order, interpretation, or otherwise, require
17 licensing or otherwise regulate in any manner—

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

21 (2) an underwriter or selling agent (or its part-
22 ners, directors, officers, members, managers, em-
23 ployees, agents, representatives, or advisors) in an
24 insurance securitization as an insurance or reinsur-
25 ance agent, broker, producer, intermediary, advisor,

1 consultant, or similar insurance professional by vir-
2 tue of its activities in connection with the insurance
3 securitization.

4 **SEC. 1211. CHARTERING AND LICENSING COMMENCEMENT**
5 **DATE.**

6 (a) NATIONAL INSURER.—The Commissioner may
7 not charter or license a national insurer until after the
8 following regulations have been published in final form or
9 interim final form:

10 (1) The fee and assessment regulations required
11 by section 1122.

12 (2) The reporting regulations required by sec-
13 tion 1124.

14 (3) The organizational regulations required by
15 section 1201.

16 (4) The licensing regulations required by sec-
17 tion 1203.

18 (5) The participating policy procedures regula-
19 tions required by section 1205.

20 (6) The charter conversion regulations required
21 by section 1206.

22 (7) The transitional financial regulations re-
23 quired by section 1212.

24 (8) The product regulations required by section
25 1214.

1 (9) The market conduct regulations required by
2 section 1216.

3 (10) The control regulations required by section
4 1231.

5 (11) The merger, consolidation, and acquisition
6 regulations required by section 1232.

7 (12) The bulk transfer regulations required by
8 section 1233.

9 (13) The conversion regulations required by
10 sections 1242 and 1243.

11 (14) The holding company regulations required
12 by sections 1402 and 1403.

13 (15) The receivership regulations required by
14 section 1504.

15 (16) The insolvency protection regulations re-
16 quired by section 1609.

17 (b) NATIONAL AGENCIES.—The Commissioner may
18 charter or license a national agency after the following
19 regulations have been published in final form, including
20 interim final form:

21 (1) The fee and assessment regulations required
22 by section 1122.

23 (2) The reporting regulations required by sec-
24 tion 1124.

1 (3) The organizational regulations required by
2 section 1201.

3 (4) The charter conversion regulations required
4 by section 1206.

5 (5) The market conduct regulations required by
6 section 1216.

7 (6) The merger, consolidation, and acquisition
8 regulations required by section 1232.

9 (7) The producer licensing regulations required
10 by section 1301.

11 (8) The holding company regulations required
12 by sections 1402 and 1403.

13 (c) TIMING AND NOTICE.—

14 (1) TIMING.—The regulations described in sub-
15 sections (a) and (b) shall be published in final form
16 or interim final form, not later than 2 years after
17 the date of the initial appointment and confirmation
18 of the Commissioner.

19 (2) NOTICE.—At such time as the regulations
20 described in subsections (a) or (b) have been issued
21 in final form or interim final form, the Commis-
22 sioner shall publish a notice in the Federal Register
23 announcing that the Office is prepared to act on
24 chartering and licensing applications.

1 (3) CONSIDERING AND ACTING UPON APPLICA-
2 TIONS.—Notwithstanding any challenge to the regu-
3 lations described in subsections (a) and (b), the
4 Commissioner shall have the authority to consider,
5 and act upon, chartering and licensing applications
6 immediately upon publication of the notice described
7 in paragraph (2).

8 **Subtitle B—Financial, Product, and**
9 **Market Regulations**

10 **SEC. 1212. TRANSITIONAL FINANCIAL REGULATIONS.**

11 (a) PROMULGATION OF FINANCIAL REGULATIONS
12 THAT ARE CONSISTENT WITH NAIC STANDARDS AND
13 MODELS.—The Commissioner shall establish, by regula-
14 tion, the following:

15 (1) Accounting principles for a national insurer,
16 which are consistent with the statutory accounting
17 practices promulgated by the NAIC in its “Account-
18 ing Practices and Procedures Manual”.

19 (2) Auditing standards for a national insurer,
20 which are consistent with the guidance prescribed by
21 the NAIC in its “Model Regulation Requiring An-
22 nual Audited Financial Reports”.

23 (3) Investment standards for a national insurer,
24 which are consistent with the “Investment of Insur-
25 ers Model Act (Defined Standards Version)” of the

1 NAIC, except that such investment standards shall
2 not be bound by the provisions of the Model Act re-
3 lated to authorized classes of investments, class or
4 individual investment limitations, or prohibited in-
5 vestments.

6 (4) Risk-based capital standards for a national
7 insurer, which are consistent with the “Risk-Based
8 Capital (RBC) for Insurers Model Act” and the re-
9 lated “RBC Instructions” of the NAIC and non-
10 disclosure rules and remedies for failing to meet
11 such standards.

12 (5) Valuation standards for the obligations and
13 liabilities of a national life insurer, which are con-
14 sistent with the statutory valuation practices pro-
15 mulgated by the NAIC in its “Accounting Practices
16 and Procedures Manual”.

17 (6) Continuing and alternative (nonforfeiture)
18 benefits standards applicable to national life insur-
19 ers, which are consistent with the “Standard Non-
20 forfeiture Law for Life Insurance, Variable Life In-
21 surance Model Regulation, Standard Nonforfeiture
22 Law for Individual Deferred Annuities, Long-Term
23 Care Insurance Model Act, and Long-Term Care In-
24 surance Model Regulation” of the NAIC.

1 (7) Standards for the preparation and filing of
2 an annual actuarial opinion on the adequacy of the
3 assets of a national life insurer to meet its reason-
4 ably expected obligations and liabilities, which are
5 consistent with the “Actuarial Opinion and Memo-
6 randum Regulation” of the NAIC.

7 (8) Standards for the preparation and filing of
8 an annual actuarial opinion on the loss and loss ad-
9 justment expense reserves of a national property/cas-
10 ualty insurer, which are consistent with the NAIC’s
11 “Property and Casualty Actuarial Opinion Model
12 Law” and applicable “NAIC Property and Casualty
13 Annual Statement Instructions”.

14 (b) NAIC STANDARDS, MODELS, PRACTICES, AND
15 INSTRUCTIONS.—The NAIC standards, models, practices,
16 and instructions referred to in subsection (a) shall be the
17 standards, models, practices, and instructions adopted by
18 the NAIC as of May 24, 2007.

19 (c) EFFECTIVE DATE AND FIVE-YEAR TRANSI-
20 TIONAL PERIOD FOR INITIAL FINANCIAL REGULA-
21 TIONS.—The financial regulations specified in subsection
22 (a) shall be issued in final form no later than 2 years fol-
23 lowing the initial appointment and confirmation of the
24 Commissioner, and each regulation shall remain in effect

1 for 5 years following the date upon which it becomes effec-
2 tive.

3 (d) NAIC AMENDMENTS.—If, after May 24, 2007,
4 the NAIC amends any standard, model, practice, or in-
5 struction upon which the initial financial regulations are
6 based, the Commissioner shall determine, by regulation,
7 whether such amendment shall apply to a national insurer.
8 If the Commissioner determines that an NAIC amendment
9 to a standard, model, practice, or instruction should apply
10 to a national insurer, the Commissioner may specify, by
11 regulation, whether the amendment applies in whole or in
12 part.

13 (e) REVISIONS OR MODIFICATIONS TO INITIAL FI-
14 NANCIAL REGULATIONS BY COMMISSIONER.—

15 (1) IN GENERAL.—Subject to paragraph (2),
16 after an initial financial regulation specified in sub-
17 section (a) has been in effect for 5 years, the Com-
18 missioner may, by regulation, revise or modify the
19 regulation.

20 (2) SPECIAL CIRCUMSTANCE.—The Commis-
21 sioner may, by regulation, revise or modify an initial
22 financial regulation at any time if the Commissioner
23 determines that any such revision or modification is
24 necessary to protect policyholders or prevent haz-
25 ardous conduct by a national insurer.

1 (f) ACCOUNTING PRINCIPLES.—Notwithstanding
 2 subsections (c), (d), and (e), accounting principles for a
 3 national property/casualty insurer shall be consistent with
 4 the statutory accounting practices promulgated by the
 5 NAIC for State property/casualty insurers in its “Ac-
 6 counting Practices and Procedures Manual”, including
 7 any amendments thereto.

8 **SEC. 1213. OTHER FINANCIAL REGULATIONS.**

9 In addition to the financial regulations specified in
 10 section 1212, the Commissioner may issue other financial
 11 regulations as the Commissioner determines necessary.

12 **SEC. 1214. PRODUCT REGULATION FOR NATIONAL LIFE IN-**
 13 **SURERS.**

14 (a) APPLICABILITY.—This section shall apply to the
 15 insurance business of national life insurers.

16 (b) UNDERWRITING STANDARDS.—A national in-
 17 surer may classify or underwrite risks if any decision to
 18 refuse to insure, to continue to insure, to limit the amount,
 19 extent, or kind of coverage, or to charge a different rate
 20 for the same coverage is—

21 (1) based on sound actuarial principles; or

22 (2) related to actual or reasonably anticipated
 23 experience.

24 (c) LAW APPLICABLE TO INSURANCE POLICIES OR
 25 OTHER PRODUCTS OF NATIONAL INSURERS.—

1 (1) LAW SPECIFIED BY PARTIES.—Subject to
2 any applicable Federal law, the provisions of any in-
3 surance policy or other product of a national insurer
4 shall be interpreted in accordance with the law of
5 the jurisdiction specified by the parties to the insur-
6 ance policy or other product if the parties have spec-
7 ified the law of—

8 (A) the jurisdiction in which the main of-
9 fice of the national insurer is located;

10 (B) the jurisdiction in which the principal
11 place of business of the national insurer is lo-
12 cated; or

13 (C) the jurisdiction in which the insurance
14 policy or other product is delivered.

15 (2) DEFAULT LAW.—If the parties to an insur-
16 ance policy or other product of a national insurer
17 have not specified the jurisdiction whose law shall
18 govern the provisions of the insurance policy or
19 other product, such provisions shall be interpreted in
20 accordance with the law of the jurisdiction in which
21 the insurance policy or other product is delivered.

22 (3) RULEMAKING.—The Commissioner shall es-
23 tablish, by regulation, choice of law rules and stand-
24 ards under this subsection.

25 (d) STANDARDS FOR POLICIES.—

1 (1) POLICY.—In this subsection, the term “pol-
2 icy”—

3 (A) means a policy, contract, certificate, or
4 other evidence of life insurance, disability in-
5 come insurance, or long-term care insurance, or
6 an annuity contract or a rider or endorsement
7 thereto; and

8 (B) does not include—

- 9 (i) a funding agreement;
10 (ii) a reinsurance contract; or
11 (iii) an agreement, special rider, or
12 endorsement relating only to the manner of
13 distributing benefits or to the reservation
14 of rights and benefits used at the request
15 of the individual policyholder.

16 (2) RULEMAKING.—The Commissioner shall es-
17 tablish, by regulation, standards for policies issued
18 by a national insurer.

19 (3) TYPES OF POLICY REQUIREMENTS.—The
20 standards established under paragraph (2) may in-
21 clude general policy requirements and requirements
22 regarding particular classes of policies.

23 (e) PRODUCT FILINGS.—

1 (1) FORM FILING.—A national insurer shall not
2 issue a policy until the form of the policy has been
3 received by the Commissioner.

4 (2) EXEMPTIONS.—The Commissioner may, by
5 regulation, exempt particular categories of policies
6 from the filing requirement.

7 (3) COMPLIANCE CERTIFICATE.—In accordance
8 with regulations promulgated by the Commissioner,
9 any filing of a policy form shall be accompanied by
10 written certification by an officer of the national in-
11 surer that the policy form complies with the stand-
12 ards applicable to such form.

13 (f) INTERPRETIVE RULINGS.—

14 (1) PROCEDURES.—The Commissioner shall es-
15 tablish procedures by which national insurers may
16 obtain interpretive rulings from the Office regarding
17 the interpretation and application of the standards
18 established under this section.

19 (2) PUBLIC AVAILABILITY.—Except as provided
20 under paragraph (3), requests by national insurers
21 for interpretive rulings from the Office and the com-
22 plete text of such interpretive rulings shall not be
23 made available to the public.

24 (3) PUBLICATION OF SUMMARIES.—Notwith-
25 standing paragraph (2), the Commissioner shall pub-

1 lish a summary of each interpretive opinion, exclud-
2 ing the name of the national insurer and any other
3 identifying information, either promptly after the
4 issuance of such opinion or, upon the request of the
5 national insurer, after such delay as the Commis-
6 sioner determines appropriate.

7 (g) GROUP, BLANKET, AND FRANCHISE INSUR-
8 ANCE.—

9 (1) AUTHORIZATION.—A national insurer
10 may—

11 (A) sell, solicit, negotiate, and underwrite
12 group, blanket, and franchise insurance policies;
13 and

14 (B) extend group, blanket, or franchise in-
15 surance policies to insure the dependents of em-
16 ployees or members, or any class of employees
17 or members.

18 (2) RULEMAKING.—The Commissioner shall, by
19 regulation, establish standards for kinds and quali-
20 fications of permissible groups for group, blanket,
21 and franchise insurance policies.

22 (h) INSURABLE INTEREST.—

23 (1) REGULATIONS REQUIRED.—The Commis-
24 sioner shall, by regulation—

25 (A) define the term “insurable interest”;

1 (B) identify what persons have an insur-
2 ance interest in the health and bodily safety of
3 an individual;

4 (C) establish circumstances under which
5 an insurance policy issued with respect to an in-
6 dividual, other than a group insurance policy,
7 may be effectuated, including any insured con-
8 sent requirements; and

9 (D) establish rules for insurance policy
10 transfers and assignments, which transactions
11 shall be permitted for insurance policies written
12 or sold in compliance with the regulations.

13 (2) LIMITATION ON APPLICABILITY.—The regu-
14 lations required by paragraph (1) shall not apply to
15 an annuity contract or a funding agreement.

16 (i) EFFECT OF STATE LAW.—No State may, by stat-
17 ute, regulation, order, interpretation, or otherwise, impose
18 any standard, relating to any matter addressed in this sec-
19 tion, on national insurers or persons who purchase insur-
20 ance from national insurers.

21 **SEC. 1215. PRODUCT REGULATION FOR NATIONAL PROP-**
22 **ERTY/CASUALTY INSURERS.**

23 (a) APPLICATION.—This section shall apply to the
24 business of national property/casualty insurers.

1 (b) MAINTENANCE OF COPIES OF POLICIES.—A na-
2 tional insurer shall maintain for inspection a copy of every
3 insurance policy form that it uses to insure risks.

4 (c) ANNUAL POLICY FORM LISTING.—A national in-
5 surer shall annually provide the Commissioner with a list
6 of all standard policy forms it uses to insure risks and
7 a copy of every such form.

8 (d) RATES, RATING ELEMENTS, PRICE, AND
9 FORMS.—The Act does not authorize the Commissioner
10 to require a national insurer to use any particular rate,
11 rating element, price, or form.

12 **SEC. 1216. REGULATION OF SALES AND MARKETING.**

13 (a) PURPOSE.—The purpose of this section is to en-
14 sure appropriate Federal regulation of the sales and mar-
15 keting practices of national insurers, national agencies,
16 and federally licensed insurance producers to prevent un-
17 fair methods of competition and unfair and deceptive acts
18 and practices in the advertising, sale, issuance, distribu-
19 tion, and administration of insurance policies and other
20 products of national insurers, and claims under insurance,
21 policies and other products of national insurers.

22 (b) RULEMAKING.—The Commissioner shall promul-
23 gate such regulations, applicable to national insurers, na-
24 tional agencies, and federally licensed insurance pro-
25 ducers, as the Commissioner determines to be necessary

1 to carry out the purpose of this section, including rules
2 governing the advertising, sale, issuance, distribution, and
3 administration of insurance policies and other products of
4 national insurers and claims under insurance policies and
5 other products of national insurers.

6 **SEC. 1217. PROMPT CORRECTIVE ACTION.**

7 (a) RULEMAKING.—

8 (1) IN GENERAL.—Not later than the expira-
9 tion of the 6-month period beginning upon the date
10 of submission of the report under subsection (b)(3)
11 to the Commissioner, the Commissioner shall pro-
12 mulgate such regulations, applicable to national in-
13 surers, as the Commissioner determines appropriate
14 and consistent with the recommendation in that re-
15 port to ensure that prompt corrective action is taken
16 to resolve any hazardous financial condition of a na-
17 tional insurer.

18 (2) AUTHORIZED CONTENT.—Rules required by
19 this subsection may include such capital measures
20 and categories, capital standards, supervisory cri-
21 teria, restrictions on permissible actions of such in-
22 surers, requirements for such insurers, procedures,
23 provisions regarding conservatorship and receiver-
24 ship of such insurers, and other provisions as the
25 Commissioner considers are appropriate and con-

1 sistent with any recommendations in the report and
2 the regulations issued pursuant to section
3 1212(a)(4).

4 (b) GAO STUDY AND REPORT.—

5 (1) IN GENERAL.—The Comptroller General of
6 the United States shall conduct a study to identify
7 an appropriate structure of procedures and require-
8 ments for taking prompt corrective actions with re-
9 spect to national insurers, to ensure that any haz-
10 ardous financial condition of such a national insurer
11 is resolved effectively and efficiently, with the fewest
12 possible losses.

13 (2) REQUIREMENTS.—In conducting the study
14 required by this subsection, the Comptroller General
15 shall analyze and evaluate various proposals, struc-
16 tures, methods, and systems for taking prompt cor-
17 rective actions with respect to various financial enti-
18 ties and institutions, including—

19 (A) the prompt corrective action require-
20 ments under section 38 of the Federal Deposit
21 Insurance Act (12 U.S.C. 1831o) with respect
22 to insured depository institutions; and

23 (B) the “Model Regulation to Define
24 Standards and Commissioner’s Authority for
25 Companies Deemed to be in Hazardous Finan-

1 cial Condition” of the NAIC, as updated in
2 2006.

3 (3) REPORT.—

4 (A) IN GENERAL.—Not later than the ex-
5 piration of the 6-month period beginning on the
6 date of enactment of this Act, the Comptroller
7 General shall submit a report to the Committee
8 on Banking, Housing, and Urban Affairs of the
9 Senate, the Committee on Financial Services of
10 the House of Representatives, and the Commis-
11 sioner, regarding the study required under this
12 subsection.

13 (B) CONTENTS.—The report required
14 under this paragraph shall describe the study
15 and the results of the evaluations conducted
16 under the study, and shall include a specific
17 recommendation to the Commissioner for estab-
18 lishment of an appropriate structure of proce-
19 dures and requirements for taking prompt cor-
20 rective actions with respect to national insurers,
21 to ensure that any hazardous financial condi-
22 tion of a national insurer is resolved effectively
23 and efficiently with the fewest possible losses.

1 **Subtitle C—Reinsurance**

2 **SEC. 1221. FEDERAL LICENSING OF REINSURERS.**

3 (a) **AUTHORITY TO LICENSE.—**

4 (1) **IN GENERAL.—**The Commissioner may—

5 (A) license insurers that are not National
6 Insurers to provide reinsurance; and

7 (B) prescribe, by regulation, the standards
8 and procedures for granting such licenses.

9 (2) **CRITERIA.—**The standards prescribed under
10 paragraph (1)(B) shall give due consideration to—

11 (A) the public interest in providing secure
12 and sufficient reinsurance capacity in the
13 United States; and

14 (B) the need for promoting fair and effec-
15 tive competition.

16 (b) **DETERMINATION AND FINDING; ISSUANCE OF LI-**
17 **CENSE.—**

18 (1) **EXAMINATION AND INVESTIGATION.—**Upon
19 the receipt of an application for a license under this
20 section, the Commissioner shall examine the infor-
21 mation submitted by the applicant and may conduct
22 further examinations and investigations, as nec-
23 essary, to determine whether the applicant satisfies
24 the standards for a license under this section.

1 (2) PUBLICATION OF FINDINGS.—The Commis-
2 sioner shall publish the Commissioner’s findings and
3 determination under paragraph (1).

4 (3) ISSUANCE OF FEDERAL LICENSE.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), if the Commissioner deter-
7 mines that the applicant has satisfied the appli-
8 cable requirements of this section, the Commis-
9 sioner shall issue a Federal license to provide
10 reinsurance.

11 (B) RESTRICTION.—The Commissioner
12 shall not issue a Federal license for reinsurance
13 until after the Commissioner is authorized to
14 charter and license a National Insurer pursuant
15 to section 1211.

16 (c) MINIMUM STANDARDS FOR LICENSING OF NON-
17 UNITED STATES INSURERS.—The Commissioner shall not
18 issue a license under this section to any insurer that is
19 not a State insurer or a United States branch of a non-
20 United States insurer unless the insurer agrees to—

21 (1) report its financial statements to the Com-
22 missioner on a basis that the Commissioner deter-
23 mines to be—

24 (A) substantially similar to that required
25 of National Insurers under section 1124; or

1 (B) in conformance with International Fi-
2 nancial Reporting Standards (IFRS);

3 (2) submit to the jurisdiction of Federal courts
4 in the United States; and

5 (3) demonstrate that all judgments of all
6 United States courts would be enforceable and col-
7 lectible by—

8 (A) being organized or incorporated in a
9 jurisdiction—

10 (i) with which the United States has
11 entered into a treaty on the recognition
12 and enforcement of judgments rendered by
13 Federal, State, and local courts in the
14 United States;

15 (ii) which is a signatory to the United
16 Nations Convention on the Recognition
17 and Enforcement of Foreign Arbitral
18 Awards, and agreeing to include in the re-
19 insurance contract a clause that is satisfac-
20 tory to the Commissioner requiring that all
21 disputes arising out of the interpretation of
22 the reinsurance contract be submitted to
23 arbitration; or

24 (iii) which the Commissioner deter-
25 mines has, by statutory, regulatory, and

1 judicial law, consistently given recognition
2 and enforcement to judgments rendered by
3 Federal, State and local courts in the
4 United States; or

5 (B) agreeing to post judgment security
6 in the United States upon the commencement
7 of any litigation or arbitration in the United
8 States, subject to such regulations as the Com-
9 missioner may prescribe.

10 (d) REVOCATION OF LICENSE.—

11 (1) IN GENERAL.—The Commissioner may re-
12 voke, suspend, or restrict a Federal reinsurer's li-
13 cense in accordance with subtitle C of title I.

14 (2) STATUS OF FEDERALLY LICENSED REIN-
15 SURER.—For purposes of this subsection, a federally
16 licensed reinsurer shall be deemed to be a National
17 Insurer under subtitle C of title I.

18 (e) ANNUAL REPORTS.—The Commissioner shall re-
19 quire each reinsurer licensed under this section to submit
20 an annual report of its financial condition.

21 **SEC. 1222. CREDIT FOR INSURANCE CEDED BY A NATIONAL**
22 **INSURER OR FEDERALLY LICENSED REIN-**
23 **SURER.**

24 (a) CREDIT FOR INSURANCE CEDED TO A NATIONAL
25 INSURER OR A FEDERALLY LICENSED REINSURER.—A

1 national insurer may establish an asset or reduce its liabil-
2 ities, to the extent of such liabilities, for insurance ceded
3 to another national insurer or federally licensed reinsurer.

4 (b) OTHER ASSET OR REDUCTION FROM LIABILITY
5 FOR INSURANCE CEDED.—A national insurer may estab-
6 lish an asset or reduce its liabilities, to the extent of such
7 liabilities, for insurance—

8 (1) that is ceded to—

9 (A) a State insurer;

10 (B) a United States branch entered
11 through a State; or

12 (C) a non-United States insurer; and

13 (2) if such insurance is ceded consistent with
14 the standards established by the Commissioner pur-
15 suant to subsection (c).

16 (c) REGULATION.—The Commissioner shall establish,
17 by regulation, security standards governing the ceding of
18 insurance by a National Insurer to any of the entities list-
19 ed in subsection (b)(1) in order to protect the policy-
20 holders of a National Insurer, which standards shall not
21 be applied in a discriminatory manner with respect to any
22 such entity.

23 (d) ANNUAL REPORTS.—As a condition of the asset
24 or reduction of liabilities treatment, the Commissioner
25 may require any entity listed in subsection (b)(1) to sub-

1 mit an annual report on the condition of any trust fund
2 required as security under this section in such form as
3 may be prescribed by the Commissioner.

4 **SEC. 1223. RELATIONSHIP TO STATE LAW.**

5 (a) DOMICILIARY STATE DISCRIMINATION PROHIB-
6 ITED.—Except as provided in section 1224(b), no State
7 may, by statute, regulation, order, interpretation, or other-
8 wise, prevent or interfere with a State insurer domiciled
9 in such State or a United States branch entered through
10 such State from establishing an asset or reducing its liabil-
11 ity as a result of insurance ceded to a national insurer
12 or a federally licensed reinsurer, to the same extent as the
13 State would allow such insurer, if the insurance were
14 ceded to another State insurer domiciled in such State.

15 (b) NON-DOMICILIARY ACTION PROHIBITED.—No
16 State may, by statute, regulation, order, interpretation, or
17 otherwise, prevent or interfere with a State insurer not
18 domiciled in that State or a United States branch entered
19 through another State from establishing an asset or reduc-
20 ing its liability as a result of insurance ceded to a national
21 insurer or a federally licensed reinsurer, if the domicile
22 of the ceding insurer allows such asset or reduction.

23 **SEC. 1224. FREEDOM OF COMMERCIAL CONTRACT.**

24 (a) PROHIBITION.—Except as provided in subsection
25 (b), a State may not—

1 (1) deny a State insurer or a United States
2 branch entered through a State all or part of any
3 asset, or require any increase in liability for insur-
4 ance ceded to any national insurer or federally li-
5 censed reinsurer because its reinsurance contract
6 contains, or does not contain, 1 or more specific con-
7 tract terms; or

8 (2) otherwise require specific language or terms
9 in any reinsurance contract.

10 (b) CONSTRUCTION.—Notwithstanding subsection
11 (a), a State may require a State insurer domiciled in such
12 State or a United States branch entered through that
13 State to use contract terms that are substantially equiva-
14 lent to those required under section 1222(c).

15 **SEC. 1225. REVIEW BY THE COMMISSIONER.**

16 (a) REVIEW.—The Commissioner shall review any
17 State action taken pursuant to subsection (b) of section
18 1224 to determine if the State action meets the standards
19 set forth in that subsection.

20 (b) STANDARDS OF REVIEW.—Any State action
21 taken pursuant to section 1224(b) shall meet the stand-
22 ards of this section, if—

23 (1) it is closely based on standards established
24 by the Commissioner pursuant to section 1222(c);

1 (2) it is made in consultation with the Commis-
2 sioner;

3 (3) it serves a legitimate State interest; and

4 (4) it does not frustrate the subject reinsurance
5 contract.

6 (c) NOTICE OF FAILURE; EFFECT OF FAILURE.—If
7 the Commissioner finds that any State action taken pursu-
8 ant to subsection (b) of section 1224 fails to meet any
9 of the standards set forth in that subsection, the Commis-
10 sioner shall provide the applicable State and State insurer
11 with notice of, and reasons for, such failure, and such
12 State action shall be deemed to be subject to section
13 1224(a), notwithstanding the terms of section 1224(b).

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 review by the Commissioner of any State
18 action taken pursuant to section 1224(b).

19 **Subtitle D—Acquisitions of Con-**
20 **trol; Mergers; Bulk Transfers;**
21 **Domestication**

22 **SEC. 1231. ACQUISITION OF CONTROL OF NATIONAL INSUR-**
23 **ERS.**

24 (a) DEFINITIONS.—For purposes of this section—

1 (1) the term “national insurer” includes any
2 person controlling a national insurer; and

3 (2) the term “person” does not include any se-
4 curities broker holding, in the usual and customary
5 functions of the broker, less than 20 percent of the
6 voting securities of a national insurer or of any per-
7 son who controls a national insurer.

8 (b) COMMISSIONER APPROVAL REQUIRED.—

9 (1) IN GENERAL.—No person, other than the
10 issuer, shall make a tender offer for, make a request
11 or invitation for tenders of, or enter into any agree-
12 ment to exchange securities for, or acquire, in the
13 open market or otherwise, any voting security of a
14 national insurer if, after the consummation of such
15 transaction, such person would, directly or indirectly
16 (or by conversion or by exercise of any right to ac-
17 quire) be in control of the national insurer. No per-
18 son shall enter into an agreement to merge with or
19 otherwise acquire control of a national insurer or
20 any person controlling a national insurer unless, at
21 the time the offer, request, or invitation is made or
22 the agreement is entered into, or before the acquisi-
23 tion of the securities if no offer or agreement is in-
24 volved—

1 (A) such person has filed with the Com-
2 missioner and has sent to the national insurer,
3 a statement that complies with the regulations
4 prescribed under paragraph (3); and

5 (B) the offer, request, invitation, agree-
6 ment, or acquisition has been approved by the
7 Commissioner.

8 (2) SAVINGS PROVISION.—Nothing in this sub-
9 section shall be construed to prohibit a person from
10 making an offer, request, or invitation or entering
11 into an agreement to acquire control of a national
12 insurer, if such transaction is conditioned upon ob-
13 taining the approval of the Commissioner in accord-
14 ance with paragraph (1).

15 (3) FORM AND CONTENT OF STATEMENT.—The
16 Commissioner shall, by regulation, prescribe the
17 form and content of the statement to be filed under
18 paragraph (1)(A).

19 (4) APPROVAL BY COMMISSIONER.—The Com-
20 missioner shall approve any merger or other acquisi-
21 tion of control referred to in this subsection unless
22 the Commissioner finds that—

23 (A) after the acquisition of control, the na-
24 tional insurer would not be able to satisfy the
25 requirements for the issuance of a Federal li-

1 cense to write the line or lines of insurance for
2 which the national insurer was previously li-
3 censed;

4 (B) the financial condition of any acquir-
5 ing person may jeopardize the financial stability
6 of the national insurer or be hazardous to the
7 policyholders of the national insurer;

8 (C) the plans or proposals of the acquiring
9 person to liquidate the national insurer, sell its
10 assets, consolidate or merge it with any person,
11 or make any other material change in its busi-
12 ness or corporate structure or management, are
13 unfair and unreasonable to policyholders of the
14 national insurer and not in the public interest;

15 (D) those persons who would control the
16 operation of the national insurer lack the com-
17 petence, experience, or integrity required to pro-
18 tect the interests of policyholders of the na-
19 tional insurer; or

20 (E) the acquisition is likely to be haz-
21 ardous to the insurance-buying public.

22 (c) HEARING.—

23 (1) IN GENERAL.—The Commissioner may, in
24 his sole discretion, hold a hearing on a merger or
25 other acquisition of control that is subject to this

1 section and for which a statement has been filed
2 under subsection (b)(1)(A).

3 (2) PROCEDURES.—A hearing under this sub-
4 section shall be subject to the procedures under sec-
5 tion 1148, except that the Commissioner may deter-
6 mine the location of such hearing.

7 (d) EXEMPTIONS.—The provisions of this section
8 shall not apply to—

9 (1) any offer, request, invitation, agreement, or
10 acquisition exempted by the Commissioner for not
11 having been made or entered into for the purpose,
12 and not having the effect, of changing or influencing
13 the control of a national insurer, or as otherwise not
14 comprehended within the purposes of this section; or

15 (2) a merger, consolidation, or acquisition sub-
16 ject to section 1232.

17 (e) VOTING OF SECURITIES.—

18 (1) PROHIBITION.—No security which is the
19 subject of any agreement or arrangement regarding
20 acquisition, or which is acquired or to be acquired,
21 in contravention of the provisions of this section may
22 be voted at any shareholder meeting, or may be
23 counted for quorum purposes.

24 (2) EFFECT ON SHARES.—Any action of share-
25 holders requiring the affirmative vote of a percent-

1 age of shares may be taken as though the securities
2 described under paragraph (1) were not issued and
3 outstanding.

4 (3) INVALIDATION OF ACTION.—No action
5 taken at any meeting described under paragraph (1)
6 shall be invalidated by the voting of the securities,
7 unless—

8 (A) the action would affect control of the
9 national insurer; or

10 (B) such invalidation is ordered by a court.

11 (4) ACQUISITION IN CONTRAVENTION OF THIS
12 ACT.—If a national insurer or the Commissioner has
13 reason to believe that any security of the national in-
14 surer has been or is about to be acquired in con-
15 travention of the provisions of this section, the na-
16 tional insurer or the Commissioner may apply to the
17 United States district court for the judicial district
18 in which the main office of the national insurer is
19 located or the United States District Court for the
20 District of Columbia—

21 (A) to enjoin any offer, request, invitation,
22 agreement, or acquisition made in contravention
23 of this section;

24 (B) to enjoin the voting of any security so
25 acquired;

1 (C) to void any vote of the security already
2 cast at any meeting of shareholders; and

3 (D) for such other equitable relief as the
4 nature of the case and the interest of the na-
5 tional insurer's policyholders, the creditors and
6 shareholders of the national insurer or the pub-
7 lic may require.

8 (f) SEQUESTRATION OF VOTING SECURITIES.—

9 (1) IN GENERAL.—If a person has acquired or
10 is proposing to acquire any voting securities in viola-
11 tion of this section, the national insurer or the Com-
12 missioner may request the United States district
13 court for the judicial district in which the main of-
14 fice of the national insurer is located or the United
15 States District Court for the District of Columbia
16 to—

17 (A) seize or sequester any voting securities
18 of the national insurer owned directly or indi-
19 rectly by the person; and

20 (B) issue such order as may be appropriate
21 to carry out the provisions of this section.

22 (2) SITUS OF OWNERSHIP.—Notwithstanding
23 any other provision of law, for the purposes of this
24 section, the situs of ownership of the securities of a
25 national insurer shall be deemed to be the State in

1 which the main office of the national insurer is lo-
2 cated.

3 (g) CONFLICT WITH OTHER FEDERAL LAWS.—This
4 section shall be interpreted and applied so as not to con-
5 flict with or supersede the provisions of any other Federal
6 law or regulation governing the regulation of holding com-
7 panies, including financial holding companies (as defined
8 in section 2(p) of the Bank Holding Company Act of 1956
9 (12 U.S.C. 1841(p))).

10 (h) NO DELEGATION PERMITTED.—The Commis-
11 sioner may not delegate to any insurance self-regulatory
12 organization any authority conferred under this section
13 with respect to any merger or other acquisition of control
14 of a national insurer.

15 **SEC. 1232. MERGERS, CONSOLIDATIONS, AND ACQUI-**
16 **TIONS OF NATIONAL INSURERS.**

17 (a) NATIONAL INSURER AS RESULTING INSURER.—

18 (1) IN GENERAL.—Notwithstanding any other
19 provision of law, except as provided under subsection
20 (e), a national insurer may, with the approval of the
21 Commissioner, merge, consolidate with, acquire all
22 or substantially all the assets of, or assume all or
23 substantially all the liabilities of, another national
24 insurer or a State insurer in a transaction in which
25 a national insurer is the resulting insurer, the ac-

1 quiring insurer, or the assuming insurer, regardless
2 of whether the insurers involved in the transaction
3 are in stock form, mutual form, or fraternal form.

4 (2) MERGER, CONSOLIDATION, AND ACQUISITION PROCEDURES.—The Commissioner shall establish, by regulation, procedures for—

7 (A) the merger or consolidation of a national insurer with another national insurer or
8 a State insurer in a transaction in which a national insurer is the resulting insurer; and

11 (B) the acquisition or assumption by a national insurer of all or substantially all the assets or liabilities of another national insurer or
12 a State insurer in a transaction in which the national insurer is the acquiring insurer or assuming insurer.

17 (3) EFFECT OF MERGER OR CONSOLIDATION.—
18 Upon the merger or consolidation of a national insurer with another national insurer or a State insurer under this section—

21 (A) the corporate existence of each of the
22 merging or consolidating insurers shall be merged or consolidated into the resulting insurer, and the resulting insurer shall be deemed

1 to be the same corporation as each insurer par-
2 ticipating in the merger or consolidation;

3 (B) except as provided under subpara-
4 graph (D), the resulting insurer shall hold and
5 be subject to all rights, privileges, liabilities,
6 property interests, and other interests and obli-
7 gations that each insurer participating in the
8 merger or consolidation held or was subject to
9 immediately prior to the merger or consolida-
10 tion;

11 (C) the resulting insurer shall obtain, in
12 accordance with section 1203, a Federal license
13 for all lines of insurance that it sells, solicits,
14 negotiates, or underwrites, except for those
15 lines of insurance for which a national insurer
16 participating in the merger or consolidation
17 held a Federal license immediately before the
18 merger or consolidation; and

19 (D) the resulting insurer shall not hold any
20 State license to sell, solicit, negotiate, or under-
21 write insurance that was held by a State in-
22 surer participating in the merger or consolida-
23 tion.

24 (4) SPECIAL AUTHORITY.—The Commissioner
25 may, subject to such conditions as the Commissioner

1 shall prescribe, permit a national insurer resulting
2 from a merger or consolidation under this section to
3 retain, hold, or exercise such assets, liabilities, pow-
4 ers, and authorities that do not conform to the legal
5 requirements applicable to national insurers, as the
6 Commissioner determines appropriate.

7 (b) STATE INSURER AS RESULTING INSURER.—

8 (1) IN GENERAL.—Subject to applicable State
9 law and such notification procedures as the Commis-
10 sioner shall prescribe by regulation, a State insurer
11 may merge with, consolidate with, acquire assets of,
12 or assume liabilities of, a national insurer in a trans-
13 action in which a State insurer is the resulting in-
14 surer.

15 (2) SAVINGS PROVISION.—Nothing in this sub-
16 section or in a transaction under this subsection
17 shall abrogate any rights, privileges, liabilities, prop-
18 erty interests, or other interests or obligations that
19 the national insurer held or was subject to imme-
20 diately before the transaction.

21 (c) EFFECT OF ASSUMPTION OF LIABILITIES.—If the
22 liabilities of a national insurer are assumed by another
23 national insurer or a State insurer in accordance with this
24 Act, the national insurer shall be released from all such

1 liabilities upon their assumption by the other national in-
2 surer or a State insurer.

3 (d) NO DELEGATION PERMITTED.—The Commis-
4 sioner may not delegate to any insurance self-regulatory
5 organization any authority conferred under this section
6 with respect to any merger, consolidation, acquisition of
7 assets, or assumption of liabilities involving a national in-
8 surer.

9 (e) COORDINATION.—This section shall not apply to
10 any bulk transfer (as defined in section 1233(a)(2)) that
11 is subject to approval of the Commissioner in accordance
12 with section 1233(b).

13 **SEC. 1233. BULK TRANSFERS.**

14 (a) DEFINITIONS.—In this section, the following defi-
15 nitions shall apply:

16 (1) ASSUMING INSURER.—The term “assuming
17 insurer” means the insurer that purchases or other-
18 wise acquires existing insurance policies from an-
19 other insurer by bulk transfer.

20 (2) BLOCK OF BUSINESS.—The term “block of
21 business” means all those insurance policies of an
22 insurer under a particular policy form.

23 (3) BULK TRANSFER.—The term “bulk trans-
24 fer”—

1 (A) means the transfer by an insurer to
2 another insurer of existing insurance policies
3 constituting all or substantially all of 1 or more
4 of its lines of business or blocks of business;
5 and

6 (B) does not include—

7 (i) any sale in which the transferring
8 insurer retains direct or indirect control of
9 the assets supporting the transferred in-
10 surance policies;

11 (ii) any transaction effected by an
12 agreement under which the transferring in-
13 surer continues to remain directly liable to
14 the policyholders under the insurance poli-
15 cies;

16 (iii) the substitution of 1 insurer for
17 another upon the expiration of insurance
18 coverage pursuant to statutory or contrac-
19 tual requirements and the issuance of a
20 new policy of insurance by that insurer;

21 (iv) the transfer of policies of insur-
22 ance pursuant to merger or consolidation
23 of 2 or more insurers to the extent that
24 those transactions are regulated by statute;

1 (v) any transaction effected by an in-
2 surer subject to a judicial order of receiver-
3 ship, liquidation, or rehabilitation; or

4 (vi) any transfer of liabilities from 1
5 insurer to another under a single group in-
6 surance policy upon the request of the
7 group policyholder.

8 (4) PERMITTED NATIONAL INSURER.—The
9 term “permitted national insurer” means—

10 (A) a State insurer that is converting to a
11 national insurer under section 1206; or

12 (B) a national insurer that is being newly
13 chartered under section 1201 and licensed
14 under section 1203.

15 (5) TRANSFERRED INSURANCE POLICIES.—The
16 term “transferred insurance policies” means the in-
17 surance policies that are subject to the bulk transfer.

18 (6) TRANSFERRING INSURER.—The term
19 “transferring insurer” means the insurer in privity
20 of contract with the policyholders under the existing
21 insurance policies that are subject to the bulk trans-
22 fer.

23 (b) BULK TRANSFERS AUTHORIZED.—The following
24 bulk transfers are authorized:

1 (1) A State insurer as the transferring insurer
2 and a permitted national insurer as the assuming in-
3 surer.

4 (2) A permitted national insurer as the trans-
5 ferring insurer and a State insurer as the assuming
6 insurer.

7 (3) A national insurer as the transferring in-
8 surer and a national insurer as the assuming in-
9 surer.

10 (4) A State insurer as the transferring insurer
11 and a national insurer that is not a permitted na-
12 tional insurer as the assuming insurer.

13 (5) A national insurer that is not a permitted
14 national insurer as the transferring insurer and a
15 State insurer as the assuming insurer.

16 (c) COMMISSIONER APPROVAL.—

17 (1) IN GENERAL.—A national insurer shall not
18 effect a bulk transfer as either the transferring in-
19 surer or the assuming insurer as authorized under
20 paragraph (1), (2), (3), or (5) of subsection (b)
21 without the prior approval of the Commissioner, in
22 accordance with such regulations as the Commis-
23 sioner shall prescribe.

24 (2) STANDARD OF APPROVAL.—The Commis-
25 sioner shall approve a bulk transfer under paragraph

1 (1), after notice and a hearing, unless the Commis-
2 sioner determines that the bulk transfer is likely to
3 be hazardous to policyholders of transferred insur-
4 ance policies, policyholders of the transferring in-
5 surer, or policyholders of the assuming insurer.

6 (d) POLICYHOLDER CONSENT.—

7 (1) NO CONSENT REQUIRED.—Notwithstanding
8 any other provision of law, a national insurer may,
9 upon the approval of the Commissioner, effect a bulk
10 transfer under paragraph (1) or (2) of subsection
11 (b), as either the transferring insurer or the assum-
12 ing insurer, without obtaining policyholder consent.

13 (2) BETWEEN NATIONAL INSURERS.—Notwith-
14 standing any other provision of law, a national in-
15 surer may, upon the approval of the Commissioner,
16 effect a bulk transfer under subsection (b)(3) as ei-
17 ther the transferring insurer or the assuming in-
18 surer, in accordance with the requirements pre-
19 scribed by the Commissioner. Such requirements
20 shall specify whether policyholder consent to such a
21 bulk transfer is required and, if policyholder consent
22 is required, the form in which such consent is re-
23 quired to be given.

24 (3) ADDITIONAL PROVISIONS.—In addition to
25 any policyholder consent required by any other appli-

1 cable provision of law, the Commissioner may pre-
2 scribe, by regulation, whether policyholder consent is
3 required for a bulk transfer authorized under sub-
4 section (b)(5) and, if policyholder consent is re-
5 quired, the form in which such consent is required
6 to be given.

7 (e) RELEASE FROM LIABILITY.—Upon the comple-
8 tion of a bulk transfer under this section, the transferring
9 insurer shall be released from its obligations under the
10 transferred insurance policies.

11 (f) STATE LAW.—

12 (1) PROHIBITION.—Except as provided in para-
13 graph (2), a State may not, by statute, regulation,
14 order, interpretation, or otherwise—

15 (A) require a national insurer, a permitted
16 national insurer, or a State insurer to—

17 (i) obtain policyholder consent to a
18 bulk transfer; or

19 (ii) submit the bulk transfer to State
20 review or action (including approval and
21 nondisapproval); or

22 (B) prevent or significantly interfere with
23 a bulk transfer effected pursuant to this sec-
24 tion.

1 (2) CONSTRUCTION.—Paragraph (1) shall not
2 be construed to prohibit any State from—

3 (A) collecting, reviewing, and taking action
4 (including approval or disapproval) on applica-
5 tions and other documents or reports con-
6 cerning a proposed bulk transfer permitted
7 under—

8 (i) paragraph (2), (4), or (5) of sub-
9 section (b) to which a State insurer (other
10 than a permitted national insurer) domi-
11 ciled in that State is a party; or

12 (ii) paragraph (4) or (5) of subsection
13 (b) to which a State insurer (other than a
14 permitted national insurer), other than a
15 State insurer domiciled in that State, is a
16 party, if the review or action meets the
17 standards set forth in paragraph (3); or

18 (B) requiring policyholder consent of a
19 proposed bulk transfer permitted under para-
20 graph (4) or (5) of subsection (b).

21 (3) STANDARDS.—A review or action meets the
22 standards under this paragraph, if it—

23 (A) is based on standards that are not
24 more onerous than those imposed by the Com-
25 missioner;

1 (B) occurs within a reasonable time frame
2 that advances the purposes of this section;

3 (C) is made in close consultation and co-
4 operation with the Commissioner;

5 (D) is without bias or discrimination to-
6 ward either the transferring insurer or the as-
7 suming insurer;

8 (E) serves a legitimate State interest; and

9 (F) does not frustrate the proposed bulk
10 transfer.

11 (4) NOTICE OF FAILURE.—If the Commissioner
12 finds that any State review or action under para-
13 graph (2)(A) fails to meet any of the standards set
14 forth in paragraph (3), the Commissioner may pro-
15 vide the applicable State with notice of such failure
16 and the reasons for such failure.

17 (g) DIFFERENTIAL TREATMENT PROHIBITED.—A
18 State may not, by statute, regulation, order, interpreta-
19 tion, or otherwise, treat a national insurer, a permitted
20 national insurer, or a State insurer entering into a bulk
21 transfer agreement with a national insurer, a permitted
22 national insurer, a State insurer, or any affiliate or sub-
23 sidiary of such insurer, differently than any other insurer
24 operating in that State.

1 (h) NO DELEGATION PERMITTED.—The Commis-
2 sioner may not delegate to any insurance self-regulatory
3 organization any authority conferred under this section
4 with respect to any bulk transfer involving a national in-
5 surer.

6 **SEC. 1234. DOMESTICATION OF UNITED STATES BRANCH**
7 **OF A NON-UNITED STATES INSURER.**

8 (a) DOMESTICATION PERMITTED.—Notwithstanding
9 any other provision of law, any non-United States insurer
10 having its United States branch entered through a State
11 or established pursuant to section 1202, and owning bene-
12 ficially, directly or indirectly, all outstanding shares of a
13 national insurer may, upon the written approval by the
14 Commissioner, domesticate its United States branch by
15 agreeing in writing with such national insurer to the ac-
16 quisition of the business and assets, and the assumption
17 of all liabilities, of the United States branch, by the na-
18 tional insurer for no consideration except such assump-
19 tion.

20 (b) APPROVAL BY COMMISSIONER.—If the Commis-
21 sioner determines that the domestication of a United
22 States branch of a non-United States insurer complies
23 with the provisions of this section and that the interests
24 of policyholders and creditors of the United States branch
25 are not materially affected in an adverse manner by such

1 domestication, the Commissioner may approve the domes-
2 tication in accordance with this section.

3 (c) EFFECTIVE DATE OF DOMESTICATION.—

4 (1) IN GENERAL.—The domestication of the
5 United States branch shall be effective on the date
6 on which a certified copy of the instrument of trans-
7 fer and assumption is filed with the Commissioner.

8 (2) EFFECT OF DOMESTICATION.—On the date
9 described in paragraph (1)—

10 (A) all rights, franchises, and interests of
11 such United States branch in and to every spe-
12 cies of property, real, personal, and mixed, and
13 things in action belonging to such branch, shall
14 be deemed transferred to and vested in the ac-
15 quiring national insurer;

16 (B) the acquiring national insurer shall be
17 deemed to have assumed all liabilities of the
18 United States branch;

19 (C) all deposits of the United States
20 branch held by State officers or other State
21 regulatory agencies under State law shall be re-
22 leased; and

23 (D) the non-United States insurer and the
24 United States branch shall be released from all
25 liabilities so assumed.

1 (d) RELEASE OF DEPOSITS.—At the time of the do-
2 mestication of a United States branch under this section,
3 the Commissioner shall—

4 (1) transfer to the account of the acquiring na-
5 tional insurer the securities deposited by such
6 United States branch in compliance with the provi-
7 sions of this Act; and

8 (2) consent that the trustee of the trustee'd as-
9 sets deposited by such United States branch in com-
10 pliance with the provisions of this Act shall with-
11 draw from the trust and transfer and deliver to the
12 acquiring national insurer all assets held by such
13 trustee.

14 (e) WITHDRAWAL AND TRANSFER OF TRUSTEED AS-
15 SETS.—

16 (1) IN GENERAL.—At the time of the domes-
17 tication of a United States branch established under
18 State law, the trustee of any trustee'd assets depos-
19 ited by such United States branch in compliance
20 with applicable State law shall, with the consent of
21 the Commissioner—

22 (A) withdraw the trustee'd assets from the
23 trust; and

24 (B) transfer and deliver to the acquiring
25 national insurer all assets held by such trustee.

1 (2) LIMITATION.—No State may, by statute,
2 regulation, order, interpretation, or otherwise, pre-
3 vent, significantly interfere with, review, approve, or
4 disapprove the withdrawal of trusteed assets or other
5 deposits of a United States branch established under
6 State law that is domesticated pursuant to this sec-
7 tion, if such withdrawal is made contemporaneously
8 with or subsequent to the consummation of a domes-
9 tication of the United States branch under this sec-
10 tion.

11 (f) NO DELEGATION PERMITTED.—The Commis-
12 sioner may not delegate to any insurance self-regulatory
13 organization any authority under this section with respect
14 to the domestication of a United States branch of a non-
15 United States insurer.

16 **SEC. 1235. MERGERS, CONSOLIDATIONS, AND ACQUI-**
17 **TIONS OF NATIONAL AGENCIES.**

18 (a) NATIONAL AGENCY RESULTING.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law, a national agency may, with the ap-
21 proval of the Commissioner, merge, consolidate with,
22 acquire all or substantially all the assets of, or as-
23 sume all or substantially all the liabilities of, another
24 national agency or a State insurance agency in a
25 transaction in which a national agency is the result-

1 ing agency, the acquiring agency, or the assuming
2 agency.

3 (2) MERGER, CONSOLIDATION, AND ACQUISITION PROCEDURES.—The Commissioner is authorized, under such regulations as the Commissioner
4 may prescribe, to provide for—
5 may prescribe, to provide for—
6 may prescribe, to provide for—

7 (A) the merger or consolidation of a national agency with another national agency or a
8 State insurance agency in a transaction in
9 which a national agency is the resulting agency;
10 and
11 and

12 (B) the acquisition or assumption by a national agency of all or substantially all the assets or all or substantially all the liabilities of
13 another national agency or a State insurance
14 agency in a transaction in which the national
15 agency is the acquiring or assuming agency.
16 agency is the acquiring or assuming agency.
17 agency is the acquiring or assuming agency.

18 (3) EFFECT OF MERGER OR CONSOLIDATION.—
19 Upon the merger or consolidation of a national
20 agency with another national agency or a State insurance agency under this section—
21 insurance agency under this section—

22 (A) the corporate existence of each of the
23 merging or consolidating agencies shall be
24 merged or consolidated into the resulting agency,
25 and the resulting agency shall be deemed to

1 be the same corporation as each agency partici-
2 pating in the merger or consolidation; and

3 (B) except as provided under paragraph
4 (4), the resulting agency shall have all the
5 rights, privileges, liabilities, property interests,
6 and other interests and obligations that each
7 agency participating in the merger or consolida-
8 tion had immediately before the merger or con-
9 solidation.

10 (4) LIMITATION.—Upon a merger or consolida-
11 tion under this subsection, the resulting agency—

12 (A) shall not hold any State license to sell,
13 solicit, or negotiate insurance that was held by
14 a State agency participating in the merger or
15 consolidation; and

16 (B) shall obtain, in accordance with section
17 1301, appropriate licenses for all lines of insur-
18 ance that it sells, solicits, or negotiates except
19 for those lines of insurance for which a national
20 agency participating in the merger or consolida-
21 tion held a Federal producer's license imme-
22 diately before the merger or consolidation.

23 (5) SPECIAL AUTHORITY.—The Commissioner
24 may, subject to such regulations as the Commis-
25 sioner may prescribe, permit a national agency re-

1 sulting from a merger or consolidation under this
2 subsection to retain, hold, or exercise such assets, li-
3 abilities, powers, and authorities that do not con-
4 form to the legal requirements applicable to national
5 agencies as the Commissioner determines to be ap-
6 propriate.

7 (b) STATE INSURANCE AGENCY RESULTING.—

8 (1) IN GENERAL.—Subject to such notification
9 procedures as the Commissioner may prescribe by
10 regulation, a State insurance agency may merge,
11 consolidate with, acquire assets of, or assume liabil-
12 ities of, a national agency in a transaction in which
13 a State insurance agency is the resulting agency, in
14 accordance with applicable State law.

15 (2) SAVINGS PROVISION.—Nothing in this sub-
16 section or in a transaction pursuant to this sub-
17 section shall abrogate any rights, privileges, liabil-
18 ities, property interests, other interests, or obliga-
19 tions that the national agency had immediately be-
20 fore the transaction.

21 (c) EFFECT OF ASSUMPTION OF LIABILITIES.—If the
22 liabilities of a national agency are assumed by another na-
23 tional agency or a State insurance agency in accordance
24 with the provisions of this Act, such national agency from
25 whom the liabilities are assumed shall be released from

1 all liabilities so assumed upon their assumption by the
2 other national agency or a State insurance agency.

3 (d) NO DELEGATION PERMITTED.—The Commis-
4 sioner may not delegate to any insurance self-regulatory
5 organization any authority conferred under this section
6 with respect to any merger, consolidation, or acquisition
7 of assets or assumption of liabilities involving a national
8 agency.

9 **Subtitle E—Conversions**

10 **SEC. 1241. DEFINITIONS.**

11 In this subtitle, the following definitions shall apply:

12 (1) ADOPTION DATE.—The term “adoption
13 date” means the date on which the board of direc-
14 tors of the converting mutual insurer or converting
15 stock insurer adopts the plan of conversion.

16 (2) CONVERTED MUTUAL INSURER.—The term
17 “converted mutual insurer” means the national life
18 insurer in mutual form into which a stock life in-
19 surer has been converted in accordance with the pro-
20 visions of section 1242.

21 (3) CONVERTED STOCK INSURER.—The term
22 “converted stock insurer” means the national in-
23 surer in stock form into which a mutual insurer has
24 been converted in accordance with the provisions of
25 section 1243.

1 (4) CONVERTING MUTUAL INSURER.—The term
2 “converting mutual insurer” means the mutual in-
3 surer that is converting under a plan of conversion
4 under section 1243.

5 (5) CONVERTING STOCK INSURER.—The term
6 “converting stock insurer” means the stock life in-
7 surer that is converting under a plan of conversion
8 under section 1242.

9 (6) MEMBERSHIP INTERESTS.—The term
10 “membership interests”—

11 (A) means the interests of members and
12 policyholders of the mutual insurer arising
13 under the charter and bylaws of the mutual in-
14 surer or otherwise by applicable law;

15 (B) includes the right to vote for directors
16 of the mutual insurer and the right to vote on
17 any plan of merger or consolidation of the mu-
18 tual insurer; and

19 (C) does not include rights in surplus, if
20 any.

21 (7) MUTUAL INSURER.—The term “mutual in-
22 surer” means the State insurer in mutual form or
23 national insurer in mutual form that is converting to
24 a national insurer in stock form pursuant to a plan

1 of conversion adopted in accordance with section
2 1243.

3 (8) PLAN OF CONVERSION OR PLAN.—The
4 terms “plan of conversion” and “plan” mean a plan
5 of conversion adopted by a stock life insurer or a
6 mutual insurer in accordance with this subtitle.

7 (9) RIGHTS IN SURPLUS.—The term “rights in
8 surplus”—

9 (A) means rights, if any, of members or
10 policyholders of the mutual insurer to a return
11 of that portion of the surplus that has not been
12 apportioned or declared by the board of direc-
13 tors for policyholder dividends;

14 (B) includes rights of members or policy-
15 holders of the mutual insurer to a distribution
16 of surplus in liquidation or conservation of the
17 insurer under applicable law, or in a dissolution
18 or winding up; and

19 (C) does not include any right expressly
20 conferred solely by the terms of an insurance
21 policy.

22 (10) STOCK LIFE INSURER.—The term “stock
23 life insurer” means the State life insurer in stock
24 form or national life insurer in stock form that is
25 converting to a national life insurer in mutual form

1 pursuant to a plan of conversion adopted in accord-
2 ance with section 1242.

3 **SEC. 1242. CONVERSION OF STOCK LIFE INSURER TO NA-**
4 **TIONAL LIFE INSURER IN MUTUAL FORM.**

5 (a) **AUTHORITY TO CONVERT.**—Notwithstanding any
6 other provision of law, a stock life insurer may convert
7 to a national insurer in mutual form in accordance with
8 a plan of conversion approved by the Commissioner under
9 this section that meets the requirements of this section,
10 and by complying with the requirements of this section
11 and rules issued by the Commissioner under this Act.

12 (b) **PLAN OF CONVERSION.**—

13 (1) **IN GENERAL.**—The plan of conversion re-
14 quired by this section—

15 (A) shall be adopted by the board of direc-
16 tors of the converting stock insurer; and

17 (B) shall provide for the conversion of the
18 converting stock insurer into a national life in-
19 surer in mutual form.

20 (2) **ISSUANCE OF STOCK AFTER ADOPTION**
21 **DATE.**—No additional shares of capital stock shall
22 be issued after the adoption date, except that—

23 (A) stock options to purchase capital stock
24 may continue to be issued under existing con-
25 tracts; and

1 (B) outstanding options may continue to
2 be exercised until the effective date of the plan
3 of conversion.

4 (3) CONTENTS.—The plan of conversion shall
5 provide for—

6 (A) the purchase by the converting stock
7 insurer of all of its outstanding capital stock, at
8 a price either specified in the plan or to be de-
9 termined under a formula specified in the plan,
10 for cash or other consideration as set forth in
11 the plan; and

12 (B) the termination, upon terms specified
13 in the plan, of any contractual obligation incon-
14 sistent with the nature of a mutual insurer, in-
15 cluding any obligation to issue stock options or
16 issue capital stock upon exercise of options.

17 (c) APPROVAL OF PLAN BY COMMISSIONER.—The
18 Commissioner shall approve the plan of conversion re-
19 quired by this section, if the Commissioner finds, after a
20 hearing, that—

21 (1) the plan is fair and equitable to the policy-
22 holders, shareholders, and holders of options to ac-
23 quire capital stock of the converting stock insurer;

24 (2) the plan does not violate the law; and

1 (3) the converted mutual insurer will, after the
2 conversion, satisfy the requirements for the issuance
3 of a license to write the lines of insurance for which
4 it is licensed.

5 (d) VOTE ON APPROVAL OF PLAN.—

6 (1) STOCKHOLDERS.—The plan of conversion
7 shall be submitted to the holders of record on the
8 adoption date of the converting stock insurer's
9 shares entitled to vote thereon and shall be subject
10 to approval of the holders of a majority of such
11 shares.

12 (2) POLICYHOLDERS.—

13 (A) SUBMISSION.—The plan of conversion
14 shall be submitted to policyholders of the con-
15 verting stock insurer—

16 (i) who are insured for at least
17 \$1,000; and

18 (ii) whose policy of insurance is in
19 force—

20 (I) for a period of at least 1 year
21 before the adoption date;

22 (II) on the adoption date; and

23 (III) on the date of the meeting
24 of policyholders called for the purpose
25 of approving the plan of conversion.

1 (B) APPROVAL.—The plan of conversion
2 shall be subject to the approval of a majority of
3 the votes cast by the policyholders described in
4 subparagraph (A).

5 (e) EFFECT OF CONVERSION ON CONVERTED MU-
6 TUAL INSURERS.—

7 (1) IN GENERAL.—On the effective date of the
8 plan of conversion, the stock insurer shall become a
9 national life insurer in mutual form and share-
10 holders eligible to receive consideration under the
11 plan of conversion are entitled to receive the consid-
12 eration specified in the plan in exchange for their
13 shares of capital stock of the converting stock in-
14 surer.

15 (2) NO EFFECT ON EXISTING RIGHTS AND LI-
16 ABILITIES.—The converted mutual insurer is a con-
17 tinuation of the original stock life insurer, and the
18 conversion shall not annul, modify, or change any of
19 the original stock life insurer's existing suits, rights,
20 contracts, or liabilities, except as provided in the
21 plan of conversion.

22 (3) RIGHTS AFTER CONVERSION.—After con-
23 version, the converted mutual insurer shall—

24 (A) exercise all the rights and powers and
25 perform all the duties conferred or imposed by

1 law upon insurers writing the classes of insur-
2 ance written by the converted mutual insurer;
3 and

4 (B) retain the rights and contracts existing
5 prior to conversion, subject to the effect of the
6 plan.

7 (f) TIME LIMITS FOR PLAN ACTIONS.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law, actions concerning any plan of con-
10 version or proposed plan of conversion under this
11 section or any acts taken or proposed to be taken
12 under this section shall be commenced not later than
13 30 days after the date on which the plan of conver-
14 sion is approved by the Commissioner under sub-
15 section (c).

16 (2) PLAN WITHDRAWN.—If the plan of conver-
17 sion is withdrawn, the actions described in para-
18 graph (1) shall be commenced not later than 30
19 days after the date on which the board of directors
20 approves a resolution to withdraw the plan.

21 (g) EFFECT ON STATE LAW.—No State may, by stat-
22 ute, regulation, order, interpretation, or otherwise, prevent
23 or interfere with a conversion under this section or impede
24 the activities of, take any action against, or apply any pro-
25 vision of law or regulation to, any such stock life insurer

1 because the stock life insurer plans to convert, or has con-
2 verted, to a national life insurer in mutual form under this
3 section.

4 (h) NO DELEGATION PERMITTED.—The Commis-
5 sioner may not delegate to any insurance self-regulatory
6 organization any authority under this section with respect
7 to the conversion of a stock life insurer.

8 **SEC. 1243. CONVERSION OF MUTUAL INSURER TO NA-**
9 **TIONAL INSURER IN STOCK FORM.**

10 (a) AUTHORITY TO CONVERT.—Notwithstanding any
11 other provision of law, a mutual insurer may convert to
12 a national insurer in stock form in accordance with a plan
13 of conversion approved by the Commissioner under this
14 section that meets the requirements of this section, and
15 by complying with the requirements of this section and
16 the rules issued by the Commissioner under this Act.

17 (b) PLAN OF CONVERSION.—

18 (1) IN GENERAL.—The plan of conversion—

19 (A) shall be adopted by the board of direc-
20 tors of the converting mutual insurer;

21 (B) shall provide for the conversion of the
22 converting mutual insurer into a national in-
23 surer in stock form; and

1 (C) may provide for effecting the conver-
2 sion by merger of the mutual insurer with an-
3 other company.

4 (2) CONTENTS.—The plan of conversion shall
5 provide that—

6 (A) all membership interests and rights in
7 surplus are extinguished;

8 (B) each eligible person will receive, with-
9 out payment by the person, consideration that
10 is allocated among the eligible persons using a
11 fair and equitable formula; and

12 (C) eligible persons may receive 1 or more
13 kinds of consideration, including—

14 (i) cash;

15 (ii) shares of capital stock of the con-
16 verting mutual insurer;

17 (iii) shares of capital stock (or inter-
18 ests in shares of capital stock) of a cor-
19 poration that, after the conversion, directly
20 or indirectly, controls the converted stock
21 insurer;

22 (iv) premium credits;

23 (v) enhanced insurance benefits; or

24 (vi) in the case of a converting mutual
25 insurer that is a life insurer, credits to in-

1 surance policy account values, as set forth
2 in the plan.

3 (c) APPROVAL OF PLAN BY COMMISSIONER.—The
4 Commissioner shall approve the plan of conversion re-
5 quired by this section, if the Commissioner finds, after a
6 hearing, that—

7 (1) the plan is fair and equitable to the insurer
8 and its policyholders;

9 (2) the plan does not violate the law; and

10 (3) the converted stock insurer will, after the
11 conversion, satisfy the requirements for the issuance
12 of a license to write the line or lines of insurance for
13 which it is licensed.

14 (d) VOTE ON APPROVAL OF PLAN.—The plan of con-
15 version shall be submitted to those persons who are eligible
16 to vote on the plan and shall be subject to approval of
17 a majority of the votes cast by such persons.

18 (e) EMPLOYEE STOCK PURCHASES; STOCK OP-
19 TIONS.—Subject to regulations prescribed by the Commis-
20 sioner, the converted insurer or a corporation that, after
21 the conversion, directly or indirectly, controls the con-
22 verted insurer, may establish stock option, incentive, and
23 share ownership plans customary for publicly traded com-
24 panies in the same and similar industries.

1 (f) EFFECT OF CONVERSION ON CONVERTED STOCK
2 INSURERS.—

3 (1) IN GENERAL.—On the effective date of the
4 plan of conversion—

5 (A) the mutual insurer shall become a na-
6 tional insurer in stock form;

7 (B) all membership interests and rights in
8 surplus shall be extinguished; and

9 (C) persons eligible to receive consideration
10 under the plan of conversion shall be entitled to
11 receive the consideration specified in the plan in
12 exchange for membership interests and liquida-
13 tion of rights in surplus.

14 (2) NO EFFECT ON EXISTING RIGHTS AND LI-
15 ABILITIES.—The converted stock insurer is a con-
16 tinuation of the original mutual insurer, and the
17 conversion shall not annul, modify, or change any of
18 the original mutual insurer's existing suits, rights,
19 contracts, or liabilities, except as provided in the
20 plan of conversion.

21 (3) RIGHTS AFTER CONVERSION.—After con-
22 version, the converted stock insurer shall—

23 (A) exercise all the rights and powers and
24 perform all the duties conferred or imposed by
25 law upon insurers writing the classes of insur-

1 ance written by the converted stock insurer;
2 and

3 (B) retain the rights and contracts existing
4 prior to conversion, subject to the effect of the
5 plan.

6 (g) LIMITATIONS ON ACQUIRING CONVERTED STOCK
7 INSURER.—

8 (1) IN GENERAL.—During the 5-year period be-
9 ginning on the effective date of the plan of conver-
10 sion, no person or group of persons acting in concert
11 shall directly or indirectly offer to acquire, or ac-
12 quire in any manner, the beneficial ownership of 5
13 percent or more of any class of voting securities of
14 a converted insurer or of a person that controls the
15 converted insurer, without the prior consent of the
16 Commissioner.

17 (2) EFFECT OF VIOLATION.—Upon the viola-
18 tion of paragraph (1), or any action that, if con-
19 summated, would constitute such a violation, all vot-
20 ing securities of the converted insurer or of the per-
21 son acquired by any person in excess of the max-
22 imum amount permitted to be acquired by the per-
23 son under paragraph (1) shall be deemed to be non-
24 voting securities of the converted stock insurer or of
25 that person.

1 (3) ENFORCEMENT.—

2 (A) COMMENCEMENT.—A violation or ac-
3 tion described in paragraph (1) may be en-
4 forced or enjoined by appropriate proceeding
5 commenced by the converted stock insurer or
6 the Commissioner in—

7 (i) the United States district court for
8 the judicial district in which the main of-
9 fice of the converted stock insurer is lo-
10 cated;

11 (ii) the United States District Court
12 for the District of Columbia; or

13 (iii) any other court having jurisdic-
14 tion.

15 (B) ORDER.—The court may issue any
16 order it finds necessary to cure the violation or
17 to prevent the proposed action.

18 (h) TIME LIMITS FOR PLAN ACTIONS.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law, actions concerning any plan of con-
21 version or proposed plan of conversion under this
22 section or any acts taken or proposed to be taken
23 under this section shall be commenced not later than
24 30 days after the date on which the plan of conver-

1 sion is approved by the Commissioner under sub-
2 section (c).

3 (2) PLAN WITHDRAWN.—If the plan of conver-
4 sion is withdrawn, the actions shall be commenced
5 not later than 30 days after the date on which the
6 board of directors approves a resolution to withdraw
7 the plan.

8 (i) EFFECT ON STATE LAW.—No State may, by stat-
9 ute, regulation, order, interpretation, or otherwise, prevent
10 or interfere with a conversion under this section or impede
11 the activities of, take any action against, or apply any pro-
12 vision of law or regulation to, any such mutual insurer
13 because that mutual insurer plans to convert, or has con-
14 verted, to a national insurer in stock form under this sec-
15 tion.

16 (j) NO DELEGATION PERMITTED.—The Commis-
17 sioner may not delegate to any insurance self-regulatory
18 organization any authority under this section with respect
19 to the conversion of a mutual insurer.

20 **Subtitle F—State Taxation**

21 **SEC. 1251. STATE TAXATION OF NATIONAL INSURERS.**

22 (a) STATE TAXATION RULE.—Except as provided in
23 subsection (b) and section 1610, a national insurer doing
24 business in any State shall be subject to all applicable
25 State and local taxes, assessments, and charges including

1 insurance retaliatory taxes or other similar taxes, and
2 shall be entitled to all applicable tax credits, deductions,
3 and offsets provided under State law, as well as all policy-
4 holder surcharge provisions under State law, to the same
5 extent and in the same manner as an insurer licensed to
6 do business in such State and chartered in the State where
7 the national insurer is considered domiciled under sub-
8 section (c) or (d), except that, such national insurer shall
9 not be subject to—

10 (1) any additional taxes, assessments, and
11 charges imposed by such State (or local government)
12 by reason of the failure of the national insurer to be
13 licensed or otherwise authorized to conduct business
14 or write or sell insurance policies, by such State; or
15 (2) special assessments and charges that fund
16 services that the State does not provide with respect
17 to the national insurer.

18 (b) EXCEPTION.—No State shall have power to im-
19 pose an insurance retaliatory tax on any national insurer,
20 unless—

21 (1) for any tax purpose for which State of
22 domicile is relevant, every national insurer is treated
23 by such State as domiciled in the State designated
24 by each national insurer under subsection (c); and

1 (2) the insurance retaliatory tax is imposed by
2 such State on every national insurer to the same ex-
3 tent and in the same manner as it is imposed on
4 every insurer chartered in the State where the na-
5 tional insurer is considered domiciled under sub-
6 section (c).

7 (c) DESIGNATION OF DOMICILE.—

8 (1) IN GENERAL.—A national insurer may des-
9 ignate, as its State of domicile, by filing such des-
10 igation in writing with the Commissioner—

11 (A) the State in which the national insur-
12 er's principal place of business in the United
13 States is located; or

14 (B) in the case of an insurer that has con-
15 verted from a State insurer to a national in-
16 surer under this Act, the State in which such
17 insurer was domiciled immediately before such
18 conversion.

19 (2) NO DESIGNATION BY NATIONAL INSURER.—

20 If a national insurer does not make a designation of
21 a State of domicile under this subsection, the na-
22 tional insurer shall be deemed to have designated as
23 its State of domicile the State in which its principal
24 place of business in the United States is located.

1 (d) CHANGE IN DOMICILE.—A national insurer may
2 change its State of domicile, with the approval of the Com-
3 missioner, to any other State meeting the requirements
4 under subsection (c).

5 (e) STATUS OF NATIONAL INSURER.—For purposes
6 of State taxation, a national insurer—

7 (1) shall not be considered a department, agen-
8 cy, or instrumentality of the Federal Government;
9 and

10 (2) except as provided in this section, a national
11 insurer shall not be exempt from any State tax or
12 subject to a lesser burden of any State tax, solely by
13 reason of its status as a national insurer under this
14 Act.

15 **SEC. 1252. STATE TAXATION OF NATIONAL AGENCIES.**

16 (a) STATE TAXATION RULE.—A national agency
17 shall be subject to all taxes imposed under any applicable
18 provision of State law, to the same extent and in the same
19 manner as an agency chartered in the State in which the
20 national agency is considered domiciled pursuant to sub-
21 section (b).

22 (b) STATE OF DOMICILE.—For purposes of this sec-
23 tion, the State of domicile of a national agency shall be
24 deemed to be the State in which the principal place of

1 business of the national agency in the United States is
2 located.

3 (c) STATUS OF NATIONAL AGENCY.—For purposes
4 of State taxation, a national agency shall not—

5 (1) be considered to be a department, agency,
6 or instrumentality of the Federal Government; and

7 (2) except as provided in this section, be ex-
8 empt from any State tax or subject to a lesser bur-
9 den of any State tax, solely by reason of its status
10 as a national agency under this Act.

11 **SEC. 1253. STATE TAXATION OF NON-ADMITTED AND SUR-**
12 **PLUS LINES INSURANCE.**

13 (a) IN GENERAL.—No State, other than the State in
14 which an insured maintains its principal place of business
15 or, in the case of an individual, maintains a principal resi-
16 dence, may require any Premium Tax for Non-Admitted
17 Insurance or Surplus Lines Insurance.

18 (b) DEFINITION.—For purposes of this section, the
19 term “Premium Tax for Non-Admitted or Surplus Lines
20 Insurance” means any tax, fee, assessment, or other
21 charge imposed by a State on an insured, either directly
22 or through a producer that is based upon any payment
23 made as consideration for Non-Admitted Insurance or
24 Surplus Lines Insurance, and any other compensation
25 given in consideration for a contract of insurance.

1 **TITLE III—INSURANCE PRO-**
2 **DUCERS AND OTHER INSUR-**
3 **ANCE SERVICING PERSONS**

4 **SEC. 1301. FEDERAL LICENSING OF INSURANCE PRO-**
5 **DUCERS.**

6 (a) COMMISSION AUTHORITY.—The Commissioner—

7 (1) shall have authority to issue Federal pro-
8 ducer licenses; and

9 (2) shall, by regulation—

10 (A) define the line or lines of insurance for
11 which a person may obtain a Federal producer
12 license, which shall include surplus lines of in-
13 surance or non-admitted insurance; and

14 (B) specify educational and examination
15 requirements for persons seeking a Federal pro-
16 ducer license, other than national agencies that
17 are subject to chartering criteria under section
18 1201.

19 (b) NATIONAL AGENCIES.—The Commissioner shall
20 issue a Federal producer license to a national agency upon
21 the issuance of a charter certificate to such Agency pursu-
22 ant to section 1201.

23 (c) AUTHORITY OF PERSON HOLDING A FEDERAL
24 PRODUCER LICENSE.—A Federal producer license issued
25 under this section authorizes the person to sell, solicit, or

1 negotiate insurance in any State for any line or lines of
2 insurance specified in such license, and exercise all such
3 incidental powers, as shall be necessary to carry out such
4 activities, including claims adjustments and settlement,
5 risk management, employee benefits advice, retirement
6 planning, and any other insurance-related consulting ac-
7 tivities.

8 (d) EXAMINATIONS AND REPORTS.—In addition to
9 the examination and reporting requirements applicable to
10 national agencies pursuant to sections 1124 and 1125, the
11 Commissioner may—

12 (1) provide for the examination of federally li-
13 censed insurance producers that are not national
14 agencies only in response to a complaint or any evi-
15 dence that the federally licensed insurance producer
16 has violated or is about to violate—

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

18 (B) any condition imposed in writing by
19 the Commissioner in connection with issuing a
20 Federal producer license; or

21 (C) any written agreement entered into
22 with the Commissioner; and

23 (2) require federally licensed insurance pro-
24 ducers that are not national agencies to make such
25 reports, containing such information and in such

1 form, as the Commissioner may prescribe by regula-
2 tion, to the extent necessary to require compliance
3 with this Act.

4 (e) INFORMATION PRACTICES.—The Commissioner
5 may, by regulation, provide that there shall be no civil li-
6 ability imposed on and no cause of action shall arise from
7 a national insurer or national agency, an insurer-affiliated
8 party, or a federally licensed insurance producer submit-
9 ting any statement or information required under this Act
10 or any regulation thereunder or requested in writing by
11 the Commissioner relating to the conduct of a federally
12 licensed insurance producer, provided that—

13 (1) this protection may not apply to false state-
14 ments made with actual malice; and

15 (2) such regulation shall not abrogate or modify
16 any existing common law or statutory privileges or
17 immunities.

18 (f) AUTHORITY OF STATE LICENSED INSURANCE
19 PRODUCER.—An insurance producer licensed by a State
20 may sell, solicit, or negotiate insurance in such State on
21 behalf of a national insurer without a Federal producer
22 license.

23 **SEC. 1302. PRODUCER DATABASE.**

24 (a) IN GENERAL.—The Commissioner shall adopt
25 regulations for the development of an electronic database

1 consisting of information relating to federally licensed in-
2 surance producers and an electronic communication net-
3 work that links the Commissioner with State insurance
4 regulators and insurers for an electronic exchange of such
5 information.

6 (b) MAINTENANCE.—The Commissioner, by rule or
7 order, may delegate authority over the maintenance of
8 each database described in subsection (a) to an insurance
9 self-regulatory organization. In making any such rule or
10 entering any such order, the Commissioner shall take into
11 consideration the regulatory capabilities and procedures of
12 the insurance self-regulatory organization, availability of
13 staff, convenience of location, avoidance of unnecessary
14 regulatory duplication, and any other factors the Commis-
15 sioner may consider appropriate to the protection of pol-
16 icyholders, the efficiency of the producer licensing system,
17 and the cooperation and coordination among regulatory
18 organizations.

19 **SEC. 1303. SUPERVISION AND OVERSIGHT OF FEDERALLY**
20 **LICENSED INSURANCE PRODUCERS.**

21 (a) PURPOSE.—The purpose of this section is to es-
22 tablish when a national insurer, national agency, or other
23 federally licensed insurance producer has a duty to super-
24 vise a federally licensed insurance producer who is an indi-
25 vidual. The duty to supervise as required in this section

1 shall be in addition to the authority of the Commissioner
2 to exercise its powers under section 1102(b).

3 (b) DUTY TO SUPERVISE.—

4 (1) NATIONAL INSURERS.—A national insurer
5 shall have a duty to supervise the sales and mar-
6 keting practices of a federally licensed insurance
7 producer who is an individual with respect to the
8 sale, solicitation, or negotiation of insurance policies
9 of such national insurer, if—

10 (A) such producer is an—

11 (i) employee of the national insurer;

12 or

13 (ii) agent of the national insurer; and

14 (B) the entire or principal business activity
15 of such producer is devoted to the sale, sollicita-
16 tion, or negotiation of insurance policies for
17 such insurer, the supervision of the agents for
18 such insurer, or both.

19 (2) NATIONAL AGENCIES AND OTHER FEDER-
20 ALLY LICENSED PRODUCERS.—A national agency or
21 other federally licensed insurance producer has a
22 duty to supervise the sales and marketing practices
23 of a federally licensed insurance producer who is an
24 individual with respect to the sale, solicitation, or
25 negotiation of insurance policies, if such producer—

1 (A) is an employee of such agency or other
2 producer, and the sale, solicitation, and negotia-
3 tion of insurance is within the scope of employ-
4 ment of the producer; or

5 (B) is an agent of such agency or other
6 producer, and the sale, solicitation, and negotia-
7 tion of insurance is pursuant to the terms of an
8 agreement between the agent and such national
9 agency or other producer.

10 (3) STANDARDS FOR SUPERVISION.—The Com-
11 missioner shall, by regulation, establish standards
12 for the duties established in paragraphs (1) and (2).
13 Such standards shall not conflict with the rules
14 adopted by any self-regulatory organization approved
15 by the Securities and Exchange Commission pursu-
16 ant to its authority under section 19(b)(1) of the Se-
17 curities Exchange Act of 1934 (15 U.S.C. 78s(b)(1))
18 for broker-dealer supervision of registered represent-
19 atives.

20 (4) EXEMPTION.—The Commissioner may, by
21 regulation, exempt any class of persons from the du-
22 ties established under paragraphs (1) and (2), if the
23 Commissioner determines that, given the nature of
24 the business relationship with the federally licensed
25 insurance producer who is an individual, it would be

1 unreasonable or inappropriate to require the class
2 member to supervise such producer.

3 (5) NO DUTY.—A national insurer, national
4 agency, or other federally licensed insurance pro-
5 ducer shall not have a duty to supervise the sales
6 and marketing practices of persons not described in
7 paragraph (1) or (2).

8 (6) OVERSIGHT OF INDIVIDUAL INDEPENDENT
9 FEDERALLY LICENSED INSURANCE PRODUCERS.—

10 (A) IN GENERAL.—The sales and mar-
11 keting practices of a federally licensed insur-
12 ance producer who is an individual with respect
13 to the sale, solicitation, or negotiation of insur-
14 ance policies shall be subject to the direct over-
15 sight of the Commissioner, if such producer is
16 not a person subject to supervision under the
17 terms of paragraph (1) or (2).

18 (B) STANDARDS AND PROCEDURES.—The
19 Commissioner shall, by regulation, establish
20 standards and procedures for the direct over-
21 sight of the sales and marketing practices of
22 federally licensed insurance producers described
23 in subparagraph (A).

24 (c) WHOLESALE LIFE INSURANCE BROKERAGE
25 AGENCIES.—This section shall not apply to any wholesale

1 life insurance brokerage agency, as that term is defined
2 by the Commissioner.

3 **SEC. 1304. RELATIONSHIP TO STATE LAW.**

4 (a) NO STATE RESTRICTIONS.—No State may, by
5 statute, regulation, order, interpretation, or otherwise,
6 prevent or restrict a national insurer from engaging in the
7 acts described in subsection (b) for any person, or from
8 engaging the services of a person who engages in such acts
9 for the national insurer, nor shall any State require that
10 a person be licensed by reason of engaging in such acts
11 for a national insurer.

12 (b) ACTS PROTECTED FROM STATE RESTRIC-
13 TIONS.—The acts referred to in subsection (a) are the fol-
14 lowing:

15 (1) Investigating, evaluating, ascertaining, or
16 determining the amount of or negotiating, settling,
17 or adjusting or otherwise participating in the dis-
18 posal of claims, losses, or damages arising under in-
19 surance policies written by a national insurer,
20 whether the person performing the act is called an
21 adjuster, independent adjuster, or another name.

22 (2) Soliciting, negotiating, or placing reinsur-
23 ance cessions or retrocessions on behalf of a ceding
24 national insurer without the authority or power to
25 bind reinsurance on behalf of such national insurer,

1 whether the person performing the act is called a re-
2 insurance intermediary or another name.

3 (3) Having authority to bind or manage all or
4 part of the assumed reinsurance business of a na-
5 tional insurer that is a reinsurer (including the man-
6 agement of a separate division, department, or un-
7 derwriting office) and acting as an agent for such
8 reinsurer, whether the person performing the act is
9 called a reinsurance intermediary-manager, man-
10 ager, or another name.

11 (4) Directly or indirectly underwriting, col-
12 lecting charges or premiums, or adjusting or settling
13 claims, in connection with policies of insurance writ-
14 ten by a national insurer.

15 (c) ACTIVITIES OF FEDERALLY LICENSED INSUR-
16 ANCE PRODUCERS.—No State may—

17 (1) by statute, regulation, order, interpretation,
18 or otherwise, prevent or restrict a federally licensed
19 insurance producer from engaging in any activity
20 within the scope of authority granted under section
21 1301(c); or

22 (2) require such producer to be licensed by rea-
23 son of engaging in such acts on behalf of a national
24 insurer, State insurer, or a United States branch of
25 a non-United States insurer.

1 (d) ACTIVITIES OF STATE PRODUCERS.—No State
2 may, by statute, regulation, order, interpretation, or other-
3 wise, prevent or restrict an insurance producer licensed
4 by such State from selling, soliciting, or negotiating insur-
5 ance in such State on behalf of a national insurer.

6 **SEC. 1305. LICENSING COMMENCEMENT DATE.**

7 (a) FEDERALLY LICENSED INSURANCE PRO-
8 DUCERS.—The Commissioner shall not license a Federal
9 insurance producer until after the following regulations
10 have been published in final form or interim final form:

11 (1) The fee and assessment regulations required
12 by section 1122.

13 (2) The reporting regulations required by sec-
14 tion 1124.

15 (3) The market conduct regulations required by
16 section 1216.

17 (4) The producer licensing regulations required
18 by section 1301.

19 (5) Such other regulations that the Commis-
20 sioner determines, at the discretion of the Commis-
21 sioner, to be necessary prior to the initial licensing
22 of Federal insurance producers.

23 (b) TIMING AND NOTICE.—

24 (1) TIMING.—The regulations described in sub-
25 section (a) shall be published in final form, not later

1 than 2 years after the initial appointment and con-
2 firmation of the Commissioner.

3 (2) NOTICE.—At such time as the regulations
4 described in subsection (a) have been issued in final
5 form, the Commissioner shall publish a notice in the
6 Federal Register announcing that the Office is pre-
7 pared to act on licensing applications under this
8 title.

9 **TITLE IV—HOLDING COMPANIES**

10 **SEC. 1401. DEFINITIONS.**

11 In this title, the following definitions shall apply:

12 (1) EXTRAORDINARY DIVIDEND OR DISTRIBUTION.—Except as may otherwise be specified by the
13 Commissioner by regulation, the term “extraor-
14 dinary dividend or distribution” means a dividend or
15 distribution of cash or other property on its out-
16 standing shares (excluding pro rata distributions of
17 any class of the national insurer’s own shares),
18 whose fair market value, together with that of other
19 dividends or distributions made within the prior 12
20 months, exceeds the greater of—

21 (A) 10 percent of the policyholder surplus
22 of the national insurer, as of the prior Decem-
23 ber 31; or
24

1 (B) the net income of the national insurer
2 for the 12-month period ending on the prior
3 December 31.

4 (2) INSURANCE HOLDING COMPANY SYSTEM.—
5 The term “insurance holding company system”
6 means 2 or more affiliated persons, 1 or more of
7 which is a national insurer.

8 **SEC. 1402. REGISTRATION.**

9 (a) REGISTRATION.—Each national insurer that is a
10 member of an insurance holding company system shall
11 register with the Commissioner.

12 (b) REGISTRATION STATEMENT.—The Commissioner
13 shall, by regulation, prescribe—

14 (1) the form and content of the registration
15 statement to be filed pursuant to subsection (a); and

16 (2) the time and place where the registration
17 statement is required to be filed with the Commis-
18 sioner.

19 (c) TERMINATION OF REGISTRATION.—The Commis-
20 sioner shall terminate the registration of any national in-
21 surer which demonstrates that it no longer is a member
22 of an insurance holding company system.

23 (d) CONSOLIDATED REGISTRATION STATEMENT.—
24 The Commissioner may require or allow 2 or more affili-

1 ated national insurers to file a consolidated registration
2 statement.

3 (e) EXEMPTIONS.—The provisions of this section
4 shall not apply to any national insurer, information, or
5 transaction if, and to the extent that, the Commissioner
6 by regulation or order, exempts such insurer, information,
7 or transaction from the provisions of this section.

8 (f) DISCLAIMER.—Any person may file with the Com-
9 missioner a disclaimer of affiliation with any national in-
10 surer or a disclaimer may be filed by the national insurer
11 or any member of an insurance holding company system.
12 The disclaimer shall fully disclose all material relation-
13 ships and bases for affiliation between the person and the
14 national insurer as well as the basis for disclaiming the
15 affiliation. After a disclaimer has been filed, the national
16 insurer shall be relieved of any duty to register or report
17 under this section which may arise out of the national in-
18 surer's relationship with the person unless and until the
19 Commissioner disallows the disclaimer. The Commissioner
20 shall disallow a disclaimer only after furnishing all parties
21 in interest with notice and opportunity to be heard and
22 after making specific findings of fact to support the dis-
23 allowance.

1 **SEC. 1403. STANDARDS AND MANAGEMENT OF A NATIONAL**
2 **INSURER WITHIN AN INSURANCE HOLDING**
3 **COMPANY SYSTEM.**

4 (a) **TRANSACTIONS WITHIN AN INSURANCE HOLDING**
5 **COMPANY SYSTEM.—**

6 (1) **STANDARDS.—**Transactions within an in-
7 surance holding company system to which a national
8 insurer subject to registration under section 1402 is
9 a party shall be subject to the following standards:

10 (A) The terms shall be fair, reasonable,
11 and at least as favorable to the national insurer
12 as those that would be offered to, or would
13 apply to, a nonaffiliate.

14 (B) Charges or fees for services performed
15 shall be reasonable and at least as favorable to
16 the national insurer as those that would be of-
17 fered to, or would apply to, a nonaffiliate.

18 (C) Expenses incurred and payment re-
19 ceived shall be allocated to the national insurer
20 in conformity with customary insurance ac-
21 counting practices consistently applied.

22 (D) The books, accounts, and records of
23 each party to all such transactions shall be so
24 maintained as to clearly and accurately disclose
25 the nature and details of the transactions in-
26 cluding such accounting information as is nec-

1 essary to support the reasonableness of the
2 charges or fees to the respective parties.

3 (E) The national insurer's surplus fol-
4 lowing any dividends or distributions to share-
5 holders shall be reasonable in relation to the
6 outstanding liabilities of the national insurer
7 and adequate to meet its financial needs.

8 (2) APPROVAL OF CERTAIN TRANSACTIONS.—

9 The Commissioner shall, by regulation, specify cer-
10 tain transactions involving a national insurer and
11 any person in its insurance holding company system
12 that are not permissible for a national insurer unless
13 the national insurer has notified the Commissioner
14 in writing of its intention to enter into the trans-
15 action and the Commissioner either has approved or
16 not disapproved the transaction within a specified
17 time period.

18 (3) COMPLIANCE WITH STANDARDS.—The
19 Commissioner, in reviewing any transaction for
20 which notice is required pursuant to paragraph (2),
21 shall consider whether the transaction complies with
22 the standards set forth in paragraph (1) and wheth-
23 er the transaction may adversely affect the interests
24 of policyholders.

25 (b) EXTRAORDINARY DIVIDENDS.—

1 (1) IN GENERAL.—No national insurer that is
2 a member of an insurance holding company system
3 shall pay any extraordinary dividend or distribution
4 to its shareholders until 30 days after the Commis-
5 sioner has received notice of the declaration in a
6 form prescribed by the Commissioner.

7 (2) CONDITIONAL DIVIDEND OR DISTRIBUTION.—A national insurer that is a member of an
8 insurance holding company system may declare an
9 extraordinary dividend or distribution which is con-
10 ditional upon the Commissioner’s approval, and the
11 declaration shall confer no rights upon shareholders
12 unless—
13 unless—

14 (A) the Commissioner has approved the
15 payment of the dividend or distribution; or

16 (B) the Commissioner has not disapproved
17 payment within the 30-day period referred to in
18 paragraph (1).

19 **SEC. 1404. RELATIONSHIP TO STATE LAW.**

20 (a) PERMITTED AFFILIATION.—A national insurer
21 that is part of an insurance holding company system may
22 be affiliated with an insurer or agency that is not char-
23 tered or licensed under this Act.

24 (b) REINSURANCE POOLING AGREEMENTS.—The
25 Commissioner shall have exclusive jurisdiction over rein-

1 surance pooling agreements to which 1 or more national
2 property/casualty insurers and affiliated State property/
3 casualty insurers, or agency are parties under which poli-
4 cies of insurance sold, solicited, negotiated, and under-
5 written by and reinsurance assumed by affiliated national
6 property/casualty insurers and State property/casualty in-
7 surers are pooled.

8 **SEC. 1405. CONFLICT WITH OTHER FEDERAL LAWS.**

9 This title shall be interpreted and applied so as not
10 to conflict with or supersede the provisions of any other
11 Federal law or regulation governing the regulation of hold-
12 ing companies, including financial holding companies, as
13 defined in section 2 of the Bank Holding Company Act
14 of 1956 (12 U.S.C. 1841), and saving and loan holding
15 companies, as defined in section 10 of the Homeowners'
16 Loan Act (12 U.S.C. 1467a).

17 **SEC. 1406. NO DELEGATION PERMITTED.**

18 The Commissioner may not delegate to any insurance
19 self-regulatory organization any authority conferred under
20 this title with respect to regulation of a national insurer
21 that is a member of an insurance holding company system.

22 **TITLE V—RECEIVERSHIP**

23 **SEC. 1501. APPOINTMENT OF OFFICE AS RECEIVER.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of Federal or State law, if any of the grounds under

1 subsection (c) exist, at the discretion of the Commissioner,
2 the Commissioner may establish a receivership for a na-
3 tional insurer for the purpose of rehabilitation or liquida-
4 tion, as appropriate.

5 (b) APPOINTMENT.—In any receivership established
6 under this title, the Commissioner shall appoint the Office
7 as receiver.

8 (c) GROUNDS FOR APPOINTMENT.—The grounds for
9 establishing a receivership for the purpose of rehabili-
10 tating or liquidating a national insurer are as follows:

11 (1) INSOLVENCY.—The national insurer is in-
12 solvent.

13 (2) SUBSTANTIAL DISSIPATION.—The national
14 insurer has substantial dissipation of assets or earn-
15 ings due to—

16 (A) any violation of any provision of Fed-
17 eral or State law; or

18 (B) any hazardous practice.

19 (3) HAZARDOUS CONDITION.—The national in-
20 surer is in such condition that the further trans-
21 action of business would be hazardous, financially or
22 otherwise, to policyholders, creditors, or the public.

23 (4) CEASE-AND-DESIST ORDERS.—The national
24 insurer has willfully violated a cease-and-desist order
25 that has become final.

1 (5) CONCEALMENT.—The national insurer has
2 concealed the books, papers, records, or assets of the
3 national insurer, or has refused to submit the books,
4 papers, records, or affairs of the national insurer,
5 for inspection to any examiner or to any lawful
6 agent of the Commissioner.

7 (6) INABILITY TO MEET OBLIGATIONS.—The
8 national insurer is likely to be unable to pay its obli-
9 gations or meet the demands of its creditors in the
10 normal course of business.

11 (7) VIOLATIONS OF LAW.—The national insurer
12 has willfully and continuously violated any law or
13 regulation, or committed any hazardous practice or
14 condition, that is likely to—

15 (A) cause insolvency or substantial dissipa-
16 tion of assets or earnings; or

17 (B) weaken the condition of the national
18 insurer.

19 (8) CONSENT.—The national insurer, by resolu-
20 tion of its board of directors or its shareholders or
21 members, consents to the appointment.

22 (9) MONEY LAUNDERING.—The Attorney Gen-
23 eral notifies the Commissioner in writing that the
24 national insurer has been found guilty of a criminal
25 offense under section 1956 or 1957 of title 18,

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

3 (d) DIRECTORS NOT LIABLE.—The members of the
4 board of directors of a national insurer shall not be liable
5 to the shareholders, members, policyholders, or creditors
6 of the insurer for acquiescing in, or consenting in good
7 faith to, the appointment of the Office as a receiver.

8 (e) OFFICE NOT SUBJECT TO ANY OTHER FEDERAL
9 AGENCY.—When acting as receiver, the Office shall not
10 be subject to the direction or supervision of any other
11 agency of the United States or any State in the exercise
12 of the rights, powers, and privileges of the Office.

13 **SEC. 1502. EFFECT OF RECEIVERSHIP PROCEEDING.**

14 Any order issued placing a national insurer into a re-
15 ceivership under this title for purposes of liquidation shall
16 be deemed to be and have the effect of an order of liquida-
17 tion by a court of competent jurisdiction with a finding
18 of insolvency against the insurer for purposes of any provi-
19 sion of State law relating to guaranty associations.

20 **SEC. 1503. POWERS AND DUTIES.**

21 (a) IN GENERAL.—The Office, as receiver, shall have
22 all of the powers of the directors, officers, and managers
23 of the national insurer, whose authority shall be sus-
24 pended, except as they are redelegated by the receiver.

1 (b) SPECIFIC POWERS.—In addition to those powers
2 otherwise provided by this title, the Office, as receiver,
3 shall have the power to—

4 (1) use, sell, or lease property of the insurer;

5 (2) after notice and a hearing, borrow money
6 on the security of the national insurer's assets, bor-
7 row money without security, and execute and deliver
8 all documents necessary to such transaction for the
9 purpose of facilitating the receiver;

10 (3) collect all debts and monies due and claims
11 belonging to the national insurer, wherever located;

12 (4) institute and pursue legal actions and to
13 continue any pending action, in any jurisdiction;

14 (5) suspend, limit, or permit insurance policy
15 withdrawals in connection with insurance policies;

16 (6) do other acts as are necessary or expedient
17 to collect, marshal, or protect the assets or property,
18 including the power to sell, compound, compromise,
19 or assign debts for purposes of collection upon such
20 terms and conditions as the receiver considers best
21 and that are consistent with this title;

22 (7) enter into contracts necessary to carry out
23 the order of rehabilitation or liquidation;

24 (8) hold hearings, subpoena witnesses to compel
25 their attendance, administer oaths, examine a person

1 under oath, and compel a person to subscribe to the
2 person's testimony after it has been correctly re-
3 duced to writing and, in connection with these pow-
4 ers, require the production of books, papers, records,
5 or other documents that the receiver considers rel-
6 evant to the inquiry; and

7 (9) exercise all powers held or conferred upon
8 receivers by the laws of the United States that are
9 not inconsistent with the provisions of this title.

10 **SEC. 1504. RULEMAKING.**

11 (a) IN GENERAL.—The Commissioner shall establish,
12 by regulation, standards and procedures for receivership
13 proceedings commenced under this title, including provi-
14 sions regarding automatic stays and other stays of pro-
15 ceedings, procedures, and priorities for the allowance or
16 disallowance of claims, standards for the treatment of re-
17 insurance, and such other matters as the Commissioner
18 determines appropriate.

19 (b) MODEL.—Except as otherwise provided in this
20 title, the regulations issued by the Commissioner under
21 subsection (a) shall be substantially similar to the cor-
22 responding provisions of the Uniform Receivership Law
23 adopted by the Interstate Insurance Receivership Compact
24 Commission in September 1998.

1 (c) RULES REGARDING COORDINATION WITH STATE
2 GUARANTY ASSOCIATIONS.—In order to facilitate insol-
3 vency protection of consumers pursuant to title VI, the
4 regulations issued by the Commissioner under subsection
5 (a) shall contain provisions that are substantially similar
6 to sections 8I, 8J, 8K, and 14C of the Life and Health
7 Insurance Guaranty Association Model Act, as promul-
8 gated by the NAIC, and in effect on May 24, 2007, and
9 provisions substantially similar to sections 405 and 612
10 of the Insurer Receivership Model Act, promulgated by the
11 NAIC in December 2005.

12 **SEC. 1505. JUDICIAL REVIEW.**

13 (a) NATIONAL INSURERS.—

14 (1) IN GENERAL.—Whenever the Office is ap-
15 pointed as a receiver for a national insurer, the na-
16 tional insurer may, within 30 days of such appoint-
17 ment, bring an action in the United States District
18 Court for the judicial district in which the principal
19 place of business of such insurer is located, or in the
20 United States District Court for the District of Co-
21 lumbia, for an order requiring the Office to remove
22 itself as receiver.

23 (2) REVIEW.—Upon the filing of an action
24 under paragraph (1), the court shall, upon the mer-

1 its dismiss such action or direct the Office to remove
2 itself as such receiver.

3 (b) CLAIMANTS.—If the Office, acting as a receiver,
4 disallows a claim against the receivership, a claimant may,
5 within 60 days of the notice of disallowance, bring an ac-
6 tion in the United States District Court for the judicial
7 district in which the principal place of business of the na-
8 tional insurer is located, or in the United States District
9 Court for the District of Columbia, to challenge the dis-
10 allowance.

11 **TITLE VI—INSOLVENCY** 12 **PROTECTION**

13 **SEC. 1601. PARTICIPATION IN GUARANTY ASSOCIATIONS.**

14 (a) PARTICIPATION IN STATE GUARANTY ASSOCIA-
15 TIONS.—

16 (1) NATIONAL INSURERS.—A national insurer
17 shall become and continue as a member of a quali-
18 fied association, as provided in section 1602, for
19 each line of insurance covered in each State in which
20 the national insurer is doing business.

21 (2) ASSESSMENTS.—Qualified associations shall
22 be authorized to levy assessments on national insur-
23 ers. National insurers shall be obligated to pay such
24 assessments, to the extent that they are levied on
25 the same terms that State insurers are obligated to

1 pay assessments to the association or fund under ap-
2 plicable State law.

3 (b) PARTICIPATION IN NATIONAL INSURANCE GUAR-
4 ANTY CORPORATION.—A national insurer or a State in-
5 surer that offers a line of insurance in a State that does
6 not have a qualified association for such line of insurance
7 shall become and continue to be a member of the Corpora-
8 tion, if such line of insurance is the subject of coverage
9 by the Corporation.

10 **SEC. 1602. QUALIFIED AND NONQUALIFIED ASSOCIATIONS.**

11 (a) QUALIFIED ASSOCIATION.—In this title, the term
12 “qualified association” means a State insurance guaranty
13 association or State insurance guaranty fund that—

14 (1) admits as members both State and national
15 insurers;

16 (2) in the event that a member is placed into
17 receivership, provides benefits or coverage to the pol-
18 icyholders of such member that are not less than the
19 benefits or coverage described in section 1604 (for
20 life and health insurance guaranty associations or
21 funds) or section 1605 (for property and casualty
22 guaranty funds); and

23 (3) has a board of directors that is—

1 (A) representative of insurers on a basis
2 that does not unfairly discriminate against na-
3 tional insurers; and

4 (B) fairly representative of insurers of dif-
5 ferent sizes and lines of insurance written.

6 (b) DETERMINATION, ELECTION, AND RECERTIFI-
7 CATION.—

8 (1) DETERMINATION.—Before the third anni-
9 versary of the date of enactment of this Act (re-
10 ferred to in this section as the “pre-publication pe-
11 riod”), the Commissioner shall—

12 (A) review all existing State insurance
13 guaranty associations and State insurance
14 guaranty funds;

15 (B) publish a list of those associations and
16 funds that the Commissioner has determined to
17 be qualified associations in accordance with the
18 requirements of subsection (a); and

19 (C) give the reasons why any State insur-
20 ance association or State insurance guaranty
21 fund is not determined to be a qualified associa-
22 tion, in accordance with the requirements of
23 subsection (a).

24 (2) PETITION AND ELECTION.—After the pre-
25 publication period, any association or fund—

1 (A) that is not identified on the list pub-
2 lished pursuant to paragraph (1) may petition
3 the Commissioner for a determination that the
4 association or fund is a qualified association,
5 and the Commissioner shall make such a deter-
6 mination if the association or fund establishes
7 to the satisfaction of the Commissioner that the
8 requirements of subsection (a) have been met;
9 and

10 (B) that is named on the list published
11 pursuant to paragraph (1) shall have an addi-
12 tional 1-year period of time following the pre-
13 publication period (referred to in this section as
14 the “post-publication period”) in which to no-
15 tify the Commissioner of the decision of the as-
16 sociation or fund to be a nonqualified associa-
17 tion, as defined in subsection (d).

18 (3) PREEMPTION.—Any association or fund
19 that elects to be a nonqualified association shall be
20 subject to Federal preemption according to sub-
21 sections (e) and (f).

22 (4) RECONSIDERATION.—

23 (A) LETTER TO COMMISSIONER.—A State
24 insurance guaranty association or State insur-
25 ance guaranty fund may seek qualification as a

1 qualified association by letter to the Commis-
2 sioner, if the Commissioner—

3 (i) determines that a State insurance
4 guaranty association or State insurance
5 guaranty fund does not meet the require-
6 ments of subsection (a), after the reasons
7 for such denial have been addressed; or

8 (ii) revokes the status of a State in-
9 surance guaranty association or State in-
10 surance guaranty fund as a qualified asso-
11 ciation pursuant to subsection (c), after
12 the reasons for such revocation have been
13 addressed.

14 (B) OTHER ELECTIONS.—An association
15 or fund may seek qualification as a qualified as-
16 sociation by letter to the Commissioner after it
17 meets the terms of the definition of a qualified
18 association, as set forth in subsection (a), in
19 any case in which a State insurance guaranty
20 association or State insurance guaranty fund—

21 (i) elects to be a nonqualified associa-
22 tion pursuant to paragraph (2)(B); or

23 (ii) refuses to assume responsibilities
24 of a qualified association pursuant to sub-
25 section (f).

1 (c) REVOCATION.—The Commissioner shall revoke a
2 determination that an association or fund is a qualified
3 association, if, at any time, the Commissioner determines
4 that the association or fund fails to satisfy the terms of
5 the definition of a qualified association, as set forth in
6 subsection (a). In such event, the Commissioner shall pro-
7 vide a written notice of the revocation to the affected asso-
8 ciation or fund, and the relevant State insurance regu-
9 lator, and the association or fund or the State insurance
10 regulator may seek a review of the revocation under the
11 terms of section 1706.

12 (d) NONQUALIFIED ASSOCIATION.—For purposes of
13 this title, any State insurance guaranty association or
14 State insurance guaranty fund that is not a qualified asso-
15 ciation shall be a “nonqualified association”.

16 (e) PREEMPTION.—

17 (1) CONSERVATION, REHABILITATION, OR LIQ-
18 UIDATION.—Except as provided in paragraph (2)
19 and in subsection (f), a nonqualified association may
20 not levy an assessment upon a national insurer or
21 State insurer to pay claims for a member insurer
22 that is subject to an order of conservation, rehabili-
23 tation, or liquidation.

24 (2) EXCEPTION.—In the event that a conserva-
25 tion, rehabilitation, or liquidation of a national in-

1 surer or State insurer referred to in paragraph (1)
2 commences at a time when a State insurance guar-
3 anty association or State insurance guaranty fund is
4 a qualified association, but such association or fund
5 subsequently becomes a nonqualified association,
6 such association or fund shall be entitled to levy as-
7 sessments in respect of such pending conservation,
8 rehabilitation, or liquidation on all companies doing
9 business in the State where the association or fund
10 resides as if the association or fund remained a
11 qualified association, unless the Commissioner finds
12 that such association or fund has failed to provide
13 protection to consumers in accordance with State
14 law or is unfairly discriminating in coverage or as-
15 sessments between national insurers and State in-
16 surers (in which case the Commissioner may, by
17 order, transfer all coverage responsibilities and as-
18 sessment powers of the association or fund to the
19 Corporation).

20 (3) CORPORATION AUTHORITY.—The Corpora-
21 tion may contract with a nonqualified association de-
22 scribed in paragraph (2) for the purpose of assum-
23 ing the responsibilities of such nonqualified associa-
24 tion. The Corporation also may contract with a
25 State insurance guaranty association or State insur-

1 ance guaranty fund that has been determined to be
2 a qualified association pursuant to subsection (b)(4)
3 for the purpose of permitting such association or
4 fund to assume the responsibilities of the Corpora-
5 tion in a State where the association or fund resides
6 in respect to a conservation, rehabilitation, or liq-
7 uidation that commenced at a time when such asso-
8 ciation or fund was a nonqualified association.

9 (f) TEMPORARY PERIOD.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), in the event of a conservation, rehabilita-
12 tion, or liquidation of a State insurer or national in-
13 surer during the temporary period, a State insur-
14 ance guaranty association or State insurance guar-
15 anty fund, in addition to its existing powers under
16 State law, may—

17 (A) assess national insurers in an insol-
18 veny of a State insurer; and

19 (B) assess State insurers and national in-
20 surers in an insolvency of a national insurer.

21 (2) EXCEPTION.—Assessments may not be
22 made under paragraph (1) if, not later than 6
23 months after the date of enactment of this Act or
24 on the date of levying any such assessment, which-
25 ever occurs first, the State association or fund pro-

1 vides notice to the Commissioner that it does not in-
2 tend to levy such assessments or provide coverage or
3 benefits to persons holding insurance policies issued
4 by national insurers. If a State association or fund
5 provides such notice and does not withdraw the no-
6 tice during the temporary period, the Corporation
7 shall provide coverage or benefits in respect to any
8 conservation, rehabilitation, or liquidation that
9 would have otherwise been the responsibility of the
10 State association or fund during the temporary pe-
11 riod.

12 (3) DEFINITION.—In this subsection, the term
13 “temporary period” means the 4-year period begin-
14 ning on the date of enactment of this Act.

15 **SEC. 1603. ESTABLISHMENT OF THE NATIONAL INSURANCE**
16 **GUARANTY CORPORATION.**

17 (a) ESTABLISHMENT OF THE CORPORATION.—

18 (1) IN GENERAL.—In the event that the list
19 published under section 1602(b)(1) indicates that in
20 any State, the principal life and health or property
21 and casualty guaranty association or fund (or both)
22 in such State has not been determined to be a quali-
23 fied association, and if the Commissioner has not
24 granted any petition to reconsider any such deter-
25 mination before the end of the 4-year period begin-

1 ning on the date of enactment of this Act, the Com-
2 missioner shall establish the National Insurance
3 Guaranty Corporation (in this section referred to as
4 the “Corporation”), in accordance with this section.

5 (2) NONPROFIT AND SUCCESSION.—The Cor-
6 poration shall be a nonprofit corporation and shall
7 have succession until dissolved by an Act of Con-
8 gress.

9 (3) APPLICATION OF DISTRICT OF COLUMBIA
10 NONPROFIT CORPORATION ACT.—The Corporation
11 shall, except as otherwise provided in this title, be
12 subject to, and have all the powers conferred upon
13 a nonprofit corporation by the District of Columbia
14 Nonprofit Corporation Act (D.C. Code, 29–301.01
15 et seq., or any successor thereto).

16 (b) MEMBERSHIP OF THE CORPORATION.—

17 (1) IN GENERAL.—The membership of the Cor-
18 poration shall consist of member insurers.

19 (2) DEFINITION.—In this title, the term “mem-
20 ber insurer”—

21 (A) means any national insurer or a State
22 insurer that operates in a State that does not
23 have a qualified association for the line of in-
24 surance offered by such national insurer or
25 State insurer in such State, if such line of in-

1 surance is the subject of coverage by the Cor-
2 poration; and

3 (B) does not include—

4 (i) a hospital or medical service orga-
5 nization, whether for profit or not-for-prof-
6 it;

7 (ii) a health maintenance organiza-
8 tion;

9 (iii) a fraternal benefit society;

10 (iv) a mandatory or voluntary State
11 pooling plan;

12 (v) a mutual assessment company or
13 other person that operates on an assess-
14 ment basis;

15 (vi) a surplus lines carrier, a risk re-
16 tention group, or a State insurer writing
17 business on a non-admitted or unlicensed
18 basis;

19 (vii) an organization whose lines of
20 business include only charitable gift annu-
21 ities; or

22 (viii) an entity similar to any entity
23 described in any of clauses (i) through
24 (vii).

25 (c) CORPORATE GOVERNANCE.—

1 (1) GOVERNING BODY.—The board of directors
2 of the Corporation shall be the governing body of the
3 Corporation and shall be vested with all powers nec-
4 essary for the management and administration of
5 the affairs of the Corporation and the promotion of
6 the purposes of the Corporation, as authorized by
7 this Act. The authority of the board of directors
8 shall be specified in the bylaws of the Corporation.

9 (2) ELECTION OR APPOINTMENT.—The initial
10 board of directors of the Corporation shall be elected
11 by the membership of the Corporation, provided that
12 if the membership fails to elect the initial board of
13 the Corporation on or before the end of the 4-year
14 period specified in section 1602(f), then the initial
15 board shall be appointed from among the member-
16 ship by the Commissioner. Membership on the board
17 of directors shall be fairly representative of members
18 of differing size and lines of business written.

19 (3) INITIAL BYLAWS AND RULES.—The Com-
20 missioner shall prescribe the initial bylaws and rules
21 governing the Corporation, which shall set forth the
22 composition of the board of directors, the term of
23 board members, filling of board vacancies, board
24 compensation, election of officers and procedures to
25 call board meetings, and all matters necessary for

1 the governance of the Corporation not addressed by
2 the District of Columbia Nonprofit Corporation Act
3 (D.C. Code, 29–301.01 et seq.).

4 (4) AMENDMENTS TO BYLAWS AND RULES.—

5 An amendment to the bylaws and rules of the Cor-
6 poration following the establishment of the initial by-
7 laws and rules as provided in paragraph (3) shall be
8 adopted by the board of directors of the Corporation
9 following the approval of the amendment by the
10 Commissioner.

11 (d) RELATIONSHIP OF CORPORATION TO THE FED-
12 ERAL GOVERNMENT.—

13 (1) SUPERVISION AND OVERSIGHT.—The Cor-
14 poration shall be subject to supervision and over-
15 sight by the Commissioner.

16 (2) NOT AN AGENCY OR INSTRUMENTALITY OF
17 THE FEDERAL GOVERNMENT.—The Corporation
18 shall not be an agency or instrumentality of the
19 United States Government.

20 (3) FULL FAITH AND CREDIT.—The obligations
21 of the Corporation shall not be backed, directly or
22 indirectly, by the full faith and credit of the United
23 States. The Corporation shall receive no financial as-
24 sistance from or have any authority to borrow from
25 the United States.

1 (4) FUNDS NOT INCLUDED IN THE FEDERAL
2 BUDGET.—Funds held by or due to the Corporation
3 shall not be included in the budget of the United
4 States, nor may the United States borrow or pledge
5 such funds.

6 (e) CONTRACTING WITH PERSON TO ADMINISTER
7 BENEFITS.—The Corporation may contract, with the ap-
8 proval of the Commissioner, with another person to ad-
9 minister the benefits to be provided by the Corporation,
10 or otherwise as necessary to fulfill the responsibilities of
11 the Corporation under this title.

12 (f) ACCOUNTS FOR ADMINISTRATION AND ASSESS-
13 MENTS.—For purposes of administration and assess-
14 ments, the Corporation shall establish and separately
15 maintain 6 accounts as follows:

16 (1) A life insurance account.

17 (2) An annuity account.

18 (3) A health account.

19 (4) A workers' compensation account.

20 (5) An automobile insurance account.

21 (6) An account for all other lines of property/

22 casualty insurance to which this title applies.

1 **SEC. 1604. BENEFITS FOR POLICYHOLDERS OF NATIONAL**
2 **LIFE INSURERS.**

3 (a) IN GENERAL.—If a national life insurer or State
4 life insurer is doing business in a State that does not have
5 a qualified association, as defined in section 1602, for the
6 line of insurance offered by such national life insurer or
7 State life insurer in such State (and if such line of insur-
8 ance is covered by the Corporation), and such national life
9 insurer or State life insurer is placed into receivership for
10 purposes of liquidation, the Corporation shall provide ben-
11 efits as specified in subsections (b) and (c).

12 (b) COVERED PERSONS.—Benefits shall be made
13 available as follows:

14 (1) To persons who, regardless of where the
15 persons reside, are the beneficiaries, assignees, or
16 payees of the persons covered under paragraph (2).

17 (2) To persons who are owners of or certificate
18 holders under the insurance policies, and in each
19 case who are residents of the State in which the
20 nonqualified association is located.

21 (3) This title shall not provide coverage to a
22 person who is a payee (or beneficiary) of a policy
23 owner, if the payee (or beneficiary) is afforded any
24 coverage by a qualified association.

25 (4) This title is intended to provide coverage to
26 persons who are residents of States in which non-

1 qualified associations are located and, in special cir-
2 cumstances, to persons who are not residents of such
3 States. In order to avoid duplicate coverage, if a per-
4 son who would otherwise receive coverage under this
5 title is provided coverage under the laws of any
6 State other than the State in which the nonqualified
7 association is located, the person shall not be pro-
8 vided coverage under this title. In determining the
9 application of the provisions of this paragraph in sit-
10 uations where a person could be covered by the asso-
11 ciation of more than 1 State, whether as a policy
12 owner, payee, beneficiary, or assignee, this title shall
13 be construed in conjunction with the laws of such
14 States to result in coverage by only 1 association or
15 by the Corporation.

16 (c) INSURANCE POLICIES COVERED AND COVERAGE
17 LIMITS.—

18 (1) REGULATION.—The Commissioner shall es-
19 tablish, by regulation, the lines of insurance covered,
20 the scope of coverage, defenses, exclusions, and the
21 coverage limits on benefits for policyholders.

22 (2) NAIC MODEL.—The regulations described in
23 paragraph (1) shall be substantially similar to the
24 “Life and Health Insurance Guaranty Association
25 Model Act” of the NAIC in effect on May 24, 2007,

1 subject to the exclusions and benefits described in
2 paragraphs (3) and (4), respectively.

3 (3) EXCLUSIONS FROM COVERAGE.—There
4 shall be excluded from coverage under this title—

5 (A) any portion of a policy or contract not
6 guaranteed by the insurer, or under which the
7 risk is borne by the policy or contract owner;

8 (B) any policy or contract of reinsurance,
9 unless assumption certificates have been issued
10 pursuant to the reinsurance policy or contract;

11 (C) any portion of a policy or contract, to
12 the extent that the rate of interest on which it
13 is based—

14 (i) averaged over the period of 4 years
15 prior to the date on which the Corporation
16 becomes obligated with respect to the pol-
17 icy or contract, exceeds a rate of interest
18 determined by subtracting 2 percentage
19 points from the average corporate bond
20 yield, as determined by the Commissioner,
21 averaged for that same 4-year period or for
22 such lesser period, if the policy or contract
23 was issued less than 4 years before the
24 Corporation became so obligated; and

1 (ii) on and after the date on which the
2 Corporation becomes obligated with respect
3 to the policy or contract, exceeds the rate
4 of interest determined by subtracting 3
5 percentage points from the average cor-
6 porate bond yield, as most recently avail-
7 able, as determined by the Commissioner;

8 (D) any portion of a policy or contract
9 issued to a plan or program of an employer, as-
10 sociation, or other person to provide life, health,
11 or annuity benefits to its employees, members,
12 or others, to the extent that the plan or pro-
13 gram is self-funded or uninsured, including ben-
14 efits payable by an employer, association, or
15 other person under—

16 (i) a multiple employer welfare ar-
17 rangement, as defined in section 514 of the
18 Employee Retirement Income Security Act
19 of 1974;

20 (ii) a minimum premium group insur-
21 ance plan;

22 (iii) a stop-loss group insurance plan;

23 or

24 (iv) an administrative services only
25 contract;

1 (E) any portion of a policy or contract, to
2 the extent that it provides for—

3 (i) dividends or experience rating
4 credits;

5 (ii) voting rights; or

6 (iii) payment of any fees or allowances
7 to any person, including the policy or con-
8 tract owner, in connection with the service
9 to or administration of the policy or con-
10 tract;

11 (F) any portion of a policy or contract, to
12 the extent that the assessments required by sec-
13 tion 1608 with respect to the policy or contract
14 are preempted by Federal or State law;

15 (G) any obligation that does not arise
16 under the express written terms of the policy or
17 contract issued by the insurer to the contract
18 owner or policy owner, including—

19 (i) claims based on marketing mate-
20 rials;

21 (ii) claims based on side letters, rid-
22 ers, or other documents that were issued
23 by the insurer without meeting applicable
24 policy form filing or approval require-
25 ments;

1 (iii) misrepresentations of or regard-
2 ing policy benefits;

3 (iv) extra-contractual claims; or

4 (v) a claim for penalties or consequen-
5 tial or incidental damages;

6 (H) any contractual agreement that estab-
7 lishes the obligations of the member insurer to
8 provide a book value accounting guaranty for
9 defined contribution benefit plan participants
10 by reference to a portfolio of assets that is
11 owned by the benefit plan or its trustee, which
12 in each case is not an affiliate of the member
13 insurer;

14 (I) any unallocated annuity contract; and

15 (J) any funding agreement.

16 (4) COVERAGE BENEFITS.—The benefits pro-
17 vided under this title shall in no event exceed the
18 lesser of—

19 (A) the contractual obligations for which
20 the insurer is liable, or would have been liable
21 if it were not an impaired or insolvent insurer;

22 or

23 (B) with respect to—

24 (i) 1 life, regardless of the number of
25 insurance policies—

- 1 (I) \$300,000 in life insurance
2 death benefits, but not more than
3 \$100,000 in net cash surrender and
4 net cash withdrawal values for life in-
5 surance;
- 6 (II) in health insurance bene-
7 fits—
- 8 (aa) \$100,000 for long-term
9 care; or
- 10 (bb) \$300,000 for disability
11 insurance; or
- 12 (III) \$100,000 in the present
13 value of annuity benefits, including
14 net cash surrender and net cash with-
15 drawal values; and
- 16 (ii) each payee of a structured settle-
17 ment annuity (or beneficiary or bene-
18 ficiaries of the payee if deceased),
19 \$100,000 in present value annuity bene-
20 fits, in the aggregate, including net cash
21 surrender and net cash withdrawal values,
22 if any, except that, in no event shall bene-
23 fits exceed—

1 (I) an aggregate of \$300,000 in
2 benefits with respect to any 1 life
3 under clause (i) and this clause; or

4 (II) with respect to 1 policy
5 owner of multiple nongroup insurance
6 policies of life insurance, or 1 policy
7 owner of 1 or more group insurance
8 policies of life insurance insuring the
9 lives of multiple insureds, where the
10 policy owner (or any benefit plan,
11 trust, or other entity sponsored or
12 controlled by the policy owner) is also
13 the beneficiary, whether the policy
14 owner is an individual, firm, corpora-
15 tion, or other person, and whether the
16 individuals insured are officers, man-
17 agers, employees, or other individuals,
18 more than \$5,000,000 in benefits, re-
19 gardless of the number of such poli-
20 cies held by the policy owner.

21 (5) RULE OF CONSTRUCTION.—The limitations
22 set forth in this subsection are limitations on bene-
23 fits under this title before taking into account either
24 the subrogation and assignment rights or the extent
25 to which those benefits could be provided out of the

1 assets of the impaired or insolvent insurer attrib-
2 utable to covered policies.

3 (6) USE OF ASSETS.—The obligations for bene-
4 fits under this title may be met by the use of assets
5 attributable to covered policies or reimbursed to the
6 Corporation pursuant to the subrogation and assign-
7 ment rights in section 1607.

8 (d) OTHER EXCLUSIONS.—The Corporation shall not
9 be required to guarantee, assume, reinsure, or perform or
10 cause to be guaranteed, assumed, reinsured, or performed,
11 the contractual obligations of the insolvent or impaired in-
12 surer under a covered policy that do not materially affect
13 the economic values or economic benefits of the covered
14 policy.

15 **SEC. 1605. CLAIMS COVERED FOR POLICYHOLDERS OF NA-**
16 **TIONAL PROPERTY/CASUALTY INSURERS.**

17 (a) DEFINITIONS.—For purposes of this section, the
18 following definitions shall apply:

19 (1) ASSOCIATION.—The term “Association”
20 means any property/casualty insurance guaranty as-
21 sociation created under the laws of the relevant
22 State, no matter how denominated, which performs
23 the role of an association or fund paying certain
24 property/casualty claims made under policies of an

1 insolvent insurer to or on behalf of policyholders re-
2 siding in the State.

3 (2) CLAIMANT.—The term “claimant” means
4 any insured making a first party claim or any per-
5 son instituting a liability claim, except that no per-
6 son who is an affiliate of the insolvent insurer may
7 be a claimant.

8 (3) COVERED CLAIM.—The term “covered
9 claim”—

10 (A) means an unpaid claim, including one
11 for unearned premiums, submitted by a claim-
12 ant, which arises out of and is within the cov-
13 erage and is subject to the applicable limits of
14 an insurance policy to which this title applies
15 issued by a member insurer, if—

16 (i) such member insurer becomes an
17 insolvent insurer after the effective date of
18 this title; and

19 (ii) either—

20 (I) the claimant or insured is a
21 resident of a State that does not have
22 a qualified association covering the
23 type of risk insured at the time of the
24 insured event (for which purpose, in
25 the case of an entity other than an in-

1 dividual, the residence of a claimant,
2 insured, or policyholder is the State in
3 which its principal place of business is
4 located at the time of the insured
5 event); or

6 (II) the claim is a first party
7 claim for damage to property with a
8 permanent location in the State; and

9 (B) does not include—

10 (i) any amount awarded as punitive or
11 exemplary damages;

12 (ii) any amount sought as a return of
13 premium under any retrospective rating
14 plan;

15 (iii) any amount due any reinsurer,
16 insurer, insurance pool, underwriting asso-
17 ciation, health maintenance organization,
18 hospital plan corporation, professional
19 health service corporation, or self-insurer
20 as subrogation recoveries, reinsurance re-
21 coveries, contribution, indemnification, or
22 otherwise, and no such claim for any
23 amount due any reinsurer, insurer, insur-
24 ance pool, underwriting association, health
25 maintenance organization, hospital plan

1 corporation, or self-insurer may be as-
2 serted against a person insured under a
3 policy issued by an insolvent insurer, other
4 than to the extent that such claim exceeds
5 the obligation limitations of the Corpora-
6 tion set forth in this Act;

7 (iv) any first party claim by an in-
8 sured whose net worth exceeds
9 \$25,000,000 on December 31 of the year
10 prior to the year in which the member in-
11 surer becomes an insolvent insurer (for
12 which purpose, the net worth of the in-
13 sured on that date shall be deemed to in-
14 clude the aggregate net worth of the in-
15 sured and all of its affiliates and subsidi-
16 aries, as calculated on a consolidated
17 basis); or

18 (v) any first party claim by an insured
19 which is an affiliate of the insolvent in-
20 surer.

21 (4) INSOLVENT INSURER.—The term “insolvent
22 insurer” means an insurer with a line of business
23 covered by the Corporation and doing business in a
24 State without a qualified association, covering the
25 type of risk insured, and against whom a final order

1 of liquidation with a finding of insolvency has been
2 issued pursuant to title V and the regulations pro-
3 mulgated thereunder.

4 (b) IN GENERAL.—If a national property and cas-
5 ualty insurer or a State property and casualty insurer is
6 doing business in a State that does not have a qualified
7 association for the line of insurance offered by such in-
8 surer in such State (and if such line of insurance is cov-
9 ered by the Corporation), and such insurer is placed into
10 receivership for purposes of liquidation, the Corporation
11 shall provide benefits as specified in this section.

12 (c) INSURANCE LINES INCLUDED.—This title shall
13 provide coverage for covered claims on all lines of direct
14 insurance (other than those specified in subsection (d))—

15 (1) existing prior to the order of liquidation;

16 (2) arising not later than 30 days after the
17 order of liquidation;

18 (3) arising before the insurance policy expira-
19 tion date, if earlier than 30 days after the order or
20 liquidation; or

21 (4) arising before the insured replaces the in-
22 surance policy or causes its cancellation, if the in-
23 sured does so not later than 30 days after the order
24 of liquidation.

1 (d) INSURANCE LINES EXCLUDED.—This title shall
2 not provide coverage on claims for—

3 (1) life, annuity, health, or disability insurance
4 (except as provided in section 1604);

5 (2) mortgage guaranty, financial guaranty, or
6 other forms of insurance offering protection against
7 investment risks;

8 (3) fidelity or surety bonds, or any other bond-
9 ing obligations;

10 (4) credit insurance, vendors single interest in-
11 surance, or collateral protection insurance or any
12 similar insurance protecting the interests of the
13 creditor arising out of a creditor-debtor transaction;

14 (5) insurance of warranties or service contracts
15 including insurance that provides for the repair, re-
16 placement, or service of goods or property, indem-
17 nification for repair, replacement, or service for the
18 operational or structural failure of the goods or
19 property due to a defect in materials, workmanship,
20 or normal wear and tear, or provides reimbursement
21 for the liability incurred by the issuer of agreements
22 or service contracts that provide such benefits;

23 (6) title insurance;

24 (7) ocean marine insurance;

1 (8) any transaction or combination of trans-
2 actions between a person (including affiliates of such
3 person) and an insurer (including affiliates of such
4 insurer) which involves the transfer of investment or
5 credit risk unaccompanied by transfer of insurance
6 risk; or

7 (9) any insurance provided by or guaranteed by
8 any State or the Federal Government.

9 (e) COVERAGE LIMITATIONS.—

10 (1) IN GENERAL.—The obligation to a claimant
11 under this section shall be satisfied by paying to the
12 claimant—

13 (A) the full amount of a covered claim for
14 the benefits under a workers' compensation in-
15 surance coverage;

16 (B) an amount not exceeding \$10,000 per
17 policy for a covered claim for return of un-
18 earned premiums, less a deductible of \$100;
19 and

20 (C) an amount not exceeding \$300,000 per
21 claim for all other covered claims, except that
22 for purposes of such limitation, all claims of
23 any kind whatsoever arising out of, or related
24 to, bodily injury or death to any 1 person shall
25 constitute a single claim, regardless of the num-

1 ber of insurance policies issued by the insolvent
2 insurer, the number of claims made, or the
3 number of claimants.

4 (2) LIMITATION.—In no event shall a claimant
5 be entitled to an amount in excess of the obligation
6 of the insolvent insurer under the policy or coverage
7 from which the claim arises.

8 (3) EXCLUSIONS.—Notwithstanding any other
9 provisions of this title, for purposes of this sub-
10 section, a covered claim shall not include—

11 (A) a claim filed more than 18 months
12 after the entry of the order of liquidation or the
13 final date set for the filing of claims against the
14 liquidator or receiver of the insolvent insurer
15 pursuant to title V and the regulations promul-
16 gated thereunder, whichever date occurs first;
17 or

18 (B) any claim filed with the Corporation or
19 the receiver for losses incurred but not reported
20 under the policy of the insured.

21 (f) EXHAUSTION OF OTHER COVERAGE.—

22 (1) IN GENERAL.—Any person having a claim
23 under an insurance policy, whether or not it is a pol-
24 icy issued by a member insurer, and the claim under
25 such other policy arises from the same facts, injury,

1 or loss that gave rise to a covered claim against the
2 Corporation, shall be required first to exhaust all
3 coverage provided by any such policy.

4 (2) REDUCTIONS.—Any amount payable on a
5 covered claim under this title shall be reduced by the
6 full applicable limits stated in such other insurance
7 policy, and the Corporation shall receive a full credit
8 for such stated limits, or, where there are no appli-
9 cable stated limits, the claim shall be reduced by the
10 total recovery.

11 (3) LIMITATION.—Notwithstanding paragraphs
12 (1) and (2)—

13 (A) no person shall be required to exhaust
14 any right under the policy of an insolvent in-
15 surer;

16 (B) a claim under a policy providing liabil-
17 ity coverage to a person who may be jointly and
18 severally liable with or a joint tortfeasor with
19 the person covered under the policy of the insol-
20 vent insurer that gives rise to the covered claim
21 shall be considered to be a claim arising from
22 the same facts, injury, or loss that gave rise to
23 the covered claim against the Corporation;

24 (C) a claim under an insurance policy shall
25 also include, for purposes of this section—

1 (i) a claim against a health mainte-
2 nance organization, a hospital plan cor-
3 poration, or a professional health service
4 corporation; and

5 (ii) any amount payable by or on be-
6 half of a self-insurer; and

7 (D) to the extent that the obligation of the
8 Corporation is reduced by the application of
9 this section, the liability of the person insured
10 by the policy of the insolvent insurer for the
11 claim shall be reduced in the same amount.

12 (4) ORDER OF RECOVERY.—Any person having
13 a claim which may be recovered under more than 1
14 qualified association shall seek recovery first, from
15 the qualified association of the place of residence of
16 the insured (or the Corporation, if the place of resi-
17 dence is a State that does not have a qualified asso-
18 ciation), except that if it is a first party claim for
19 damage to property with a permanent location, the
20 person shall seek recovery first from the qualified
21 association (or the Corporation, if applicable) of the
22 location of the property, and if it is a workers' com-
23 pensation claim, the person shall seek recovery first
24 from the qualified association (or the Corporation, if
25 applicable) of the residence of the claimant. Any re-

1 covery under this Act shall be reduced by the
2 amount of recovery from any other insurance guar-
3 anty association or its equivalent.

4 (g) RIGHT TO RECOVER.—The Corporation shall
5 have the right to recover all amounts paid the Corporation
6 on behalf of a person, whether for indemnity, defense, or
7 otherwise, in the case of—

8 (1) any insured whose net worth on December
9 31 of the year immediately preceding the date on
10 which the insurer becomes an insolvent insurer ex-
11 ceeds \$25,000,000 (and for such purpose, the net
12 worth of an insured on such date shall be deemed
13 to include the aggregate net worth of the insured
14 and all of its subsidiaries and affiliates, as calculated
15 on a consolidated basis); and

16 (2) any person who is an affiliate of the insol-
17 vent insurer.

18 (h) PAYMENT OF CLAIMS.—Payment of claims under
19 this title by the Corporation shall be made from the appro-
20 priate property and casualty account established pursuant
21 to section 1603.

22 **SEC. 1606. POWERS AND DUTIES OF THE CORPORATION.**

23 (a) POWERS AND DUTIES RELATED TO CERTAIN NA-
24 TIONAL LIFE INSURERS AND STATE LIFE INSURERS.—

1 (1) NATIONAL LIFE INSURERS AND STATE LIFE
2 INSURERS WHO ARE MEMBER INSURERS SUBJECT TO
3 REHABILITATION.—Subject to the provisions of this
4 title, if a national life insurer or a State life insurer
5 is a member insurer placed into receivership for pur-
6 poses of rehabilitation, the Corporation may, in its
7 discretion, and subject to any conditions imposed by
8 the Corporation that do not impair the contractual
9 obligations of the national life insurer or State life
10 insurer, and that are approved by the Commis-
11 sioner—

12 (A) guarantee, assume, or reinsure, or
13 cause to be guaranteed, assumed, or reinsured,
14 any or all of the insurance policies of the na-
15 tional life insurer or State life insurer; or

16 (B) provide such monies, pledges, loans,
17 notes, guarantees, or other means as are proper
18 to effectuate subparagraph (A) and assure pay-
19 ment of the contractual obligations of the na-
20 tional life insurer or State life insurer, pending
21 action under subparagraph (A).

22 (2) NATIONAL LIFE INSURERS AND STATE LIFE
23 INSURERS WHO ARE MEMBER INSURERS SUBJECT TO
24 LIQUIDATION.—

1 (A) IN GENERAL.—Subject to the provi-
2 sions of this title, if a national life insurer or
3 a State life insurer is a member insurer placed
4 into receivership for purposes of liquidation, the
5 Corporation shall, in its discretion, take either
6 the actions specified in subparagraph (B) or the
7 actions specified in subparagraph (C).

8 (B) ASSUMPTION OF OBLIGATIONS OF NA-
9 TIONAL LIFE INSURER OR STATE LIFE INSURER
10 WHO IS A MEMBER INSURER.—The Corpora-
11 tion—

12 (i) shall—

13 (I) guarantee, assume, or rein-
14 sure, or cause to be guaranteed, as-
15 sumed, or reinsured, the insurance
16 policies of the national life insurer or
17 State life insurer; or

18 (II) assure payment of the con-
19 tractual obligations of the national life
20 insurer or State life insurer; and

21 (ii) shall provide monies, pledges,
22 loans, notes, guarantees, or other means
23 reasonably necessary to discharge the du-
24 ties imposed by this section.

1 (C) PROVISION OF BENEFITS TO POLICY-
2 HOLDERS.—The Corporation—

3 (i) with respect to life insurance poli-
4 cies and annuities, shall assure payment of
5 benefits for premiums identical to the pre-
6 miums and benefits (except for terms of
7 conversion and renewability) that would
8 have been payable under the insurance
9 policies of the national life insurer or State
10 life insurer who is a member insurer, for
11 claims incurred—

12 (I) with respect to group insur-
13 ance policies, not later than the ear-
14 lier of the next renewal date under
15 those insurance policies or 45 days,
16 but not less than 30 days, after the
17 date on which the Corporation be-
18 comes obligated under this section
19 with respect to such policies; and

20 (II) with respect to nongroup in-
21 surance policies, not later than the
22 earlier of the next renewal date (if
23 any) under the insurance policies or 1
24 year, but not less than 30 days, from
25 the date on which the Corporation be-

1 comes obligated under this section
2 with respect to such policies;

3 (ii) shall make diligent efforts to pro-
4 vide all known insureds or annuitants (for
5 nongroup insurance policies), or group pol-
6 icyholders with respect to group insurance
7 policies, 30 days advance notice of the ter-
8 mination (pursuant to clause (i)) of the
9 benefits provided;

10 (iii) with respect to nongroup insur-
11 ance policies covered by this title, shall
12 make available to each known insured or
13 annuitant and to each individual formerly
14 insured or formerly an annuitant under a
15 group policy who is not eligible for replace-
16 ment group coverage, substitute coverage
17 on an individual basis in accordance with
18 the provisions of clause (iv), if the insured
19 or annuitants had a right under law or the
20 terminated policy or annuity to convert
21 coverage to individual coverage or to con-
22 tinue an individual policy or annuity in
23 force until a specified age or for a specified
24 time, during which the national life insurer
25 or State life insurer had no right unilater-

1 ally to make changes in any provision of
2 the policy or had a right only to make
3 changes in premium by class;

4 (iv) in providing the substitute cov-
5 erage required under clause (iii), may offer
6 either to reissue the terminated coverage
7 or to issue an alternative policy, which al-
8 ternative or reissued insurance policies—

9 (I) shall be offered without re-
10 quiring evidence of insurability;

11 (II) may not provide for any
12 waiting period or exclusion that would
13 not have applied under the terminated
14 policy; and

15 (III) may be reinsured by the
16 Corporation; and

17 (v) shall obtain the approval of the
18 Commissioner of all alternative policies
19 adopted or issued by the Corporation
20 under this paragraph.

21 (D) TERMINATION OF BENEFITS.—Bene-
22 fits under this title with respect to coverage
23 under any policy of an insolvent national life in-
24 surer or under any reissued or alternative policy
25 shall cease on the date on which the coverage

1 or policy is replaced by another similar policy
2 by the policyholder, the insured, or the Cor-
3 poration.

4 (3) TREATMENT OF PREMIUMS.—

5 (A) NONPAYMENT OF PREMIUMS.—The
6 nonpayment of premiums within 31 days after
7 the date required under the terms of any guar-
8 anteed, assumed, alternative, or reissued policy
9 or substitute coverage provided pursuant to
10 paragraphs (1) or (2) shall terminate benefits
11 under this title with respect to the policy, ex-
12 cept with respect to any claims incurred or any
13 net cash surrender value that may be due in ac-
14 cordance with the provisions of this title.

15 (B) PREMIUMS DUE AFTER LIQUIDATION
16 INITIATED.—Premiums due for coverage under
17 covered policies after the Commissioner has ini-
18 tiated the liquidation of a national life insurer
19 or a State life insurer who is a member insurer
20 shall belong to and be payable at the direction
21 of the Corporation, and the Corporation shall
22 be liable for unearned premiums due to the pol-
23 icyholders under the covered policies.

24 (4) PERMANENT AND TEMPORARY LIENS.—In
25 carrying out the duties under paragraph (2), the

1 Corporation may, subject to the approval of the
2 Commissioner—

3 (A) impose permanent policy liens in con-
4 nection with a guarantee, assumption, or rein-
5 surance contract, if the Corporation finds that
6 the amounts which can be assessed under this
7 title are less than the amounts needed to assure
8 full and prompt performance of the protections
9 provided under this title, or that the economic
10 or financial conditions as they affect the insur-
11 ance industry are sufficiently adverse to render
12 the imposition of such permanent policy liens to
13 be in the public interest; or

14 (B) impose temporary moratoriums or
15 liens on payments of cash values and policy
16 loans, or any other right to withdraw funds on
17 payments of cash values and policy loans, or
18 any other right to withdraw funds held in con-
19 junction with insurance policies, in addition to
20 any contractual provisions for deferral of cash
21 or policy loan value.

22 (5) INDEXED INSURANCE POLICIES.—

23 (A) IN GENERAL.—In carrying out its du-
24 ties in connection with paragraphs (1) or (2),
25 the Corporation may, subject to the approval of

1 the Commissioner, issue substitute coverage for
2 an insurance policy that provides an interest
3 rate, crediting rate, or similar factor deter-
4 mined by use of an index or other external ref-
5 erence stated in the insurance policy employed
6 in calculating returns or changes in value by
7 issuing an alternative insurance policy in ac-
8 cordance with subparagraph (B).

9 (B) APPLICABILITY.—Subparagraph (A)
10 shall apply in any case in which—

11 (i) in lieu of the index or other exter-
12 nal reference provided for in the original
13 insurance policy, the alternative insurance
14 policy provides for—

15 (I) a fixed interest rate;

16 (II) payment of dividends with
17 minimum guarantees; or

18 (III) a different method for cal-
19 culating interest or changes in value;

20 (ii) there is no requirement for evi-
21 dence of insurability, waiting period, or
22 other exclusion that would not have applied
23 under the replaced insurance policy; and

1 (iii) the alternative insurance policy is
2 substantially similar to the replaced insur-
3 ance policy in all other material terms.

4 (b) POWERS AND DUTIES RELATED TO NATIONAL
5 PROPERTY/CASUALTY INSURERS AND STATE PROPERTY/
6 CASUALTY INSURERS WHO ARE MEMBER INSURERS
7 WITH RESPECT TO COVERED CLAIMS.—

8 (1) IN GENERAL.—Subject to the terms of this
9 title, when a national property/casualty insurer or a
10 State property/casualty insurer is a member insurer
11 placed into receivership for purposes of liquidation,
12 the Corporation shall exercise the powers and duties
13 specified in this subsection.

14 (2) ASSUMPTION OF OBLIGATIONS.—The Cor-
15 poration shall be deemed the insurer to the extent
16 of its obligation on covered claims and to that ex-
17 tent, shall have all rights, duties, and obligations of
18 the insolvent national property/casualty insurer or
19 State property/casualty insurer, as if such insurer
20 had not become insolvent, including the right to pur-
21 sue and retain salvage and subrogation recoverable
22 on covered claims obligations to the extent paid by
23 the Corporation.

24 (3) INVESTIGATION AND PAYMENT OF
25 CLAIMS.—The Corporation shall investigate claims

1 brought against the Corporation and adjust, com-
2 promise, settle, and pay covered claims, to the extent
3 of the obligations of the Corporation. The Corpora-
4 tion shall pay claims in any order that it determines
5 reasonable, including the payment of claims as they
6 are received from the claimants or in groups or cat-
7 egories of claims. The Corporation may review set-
8 tlements, releases, and adjustments to which the in-
9 solvent national property/casualty insurer or State
10 property/casualty insurer or its insured were parties
11 to determine the extent to which the settlements, re-
12 leases, and judgments may be properly contested.
13 The Corporation shall have the right to appoint or
14 substitute and to direct legal counsel retained under
15 liability insurance policies for the defense of covered
16 claims.

17 (c) OTHER CORPORATION POWERS.—In addition to
18 the rights and powers provided elsewhere in this title, the
19 Corporation may—

20 (1) enter into such contracts as are necessary
21 or proper to carry out the provisions and purposes
22 of this title;

23 (2) sue or be sued, including taking any legal
24 actions necessary or proper to recover any unpaid

1 assessments under section 1608 and to settle claims
2 or potential claims against the Corporation;

3 (3) borrow money to effect the purposes of this
4 title (and any notes or other evidence of indebted-
5 ness of the Corporation not in default shall be legal
6 investments for national insurers and may be carried
7 as assets);

8 (4) employ or retain such persons as are nec-
9 essary or appropriate to handle the financial trans-
10 actions of the Corporation and to perform such
11 other functions as become necessary or proper under
12 this title;

13 (5) take such legal action as may be necessary
14 or appropriate to avoid or recover payment of im-
15 proper claims;

16 (6) exercise, for the purposes of this title and
17 to the extent approved by the Commissioner, the
18 powers of a national insurer, except that the Cor-
19 poration may not issue insurance policies or annuity
20 contracts other than those issued to provide the pro-
21 tections under this title;

22 (7) request information from a person seeking
23 protection under this title in order to aid the Cor-
24 poration in determining its obligations under this

1 title with respect to the person, which person shall
2 promptly comply with the request; and

3 (8) take other necessary or appropriate action
4 to discharge the duties and obligations of the Cor-
5 poration under this title or to exercise the powers of
6 the Corporation under this title.

7 **SEC. 1607. SUBROGATION.**

8 (a) IN GENERAL.—Persons receiving benefits or pay-
9 ments for claims under this title shall be deemed to have
10 assigned their rights under, and any causes of action
11 against any person for losses arising under, resulting
12 from, or otherwise relating to, their covered policies to the
13 Corporation, and the Corporation shall have a claim by
14 way of subrogation to the rights of such persons against
15 the assets of the insolvent insurer, to the extent of the
16 benefits received or claims paid because of this title. The
17 Corporation shall also have the right to require an assign-
18 ment to the Corporation of such rights and cause of action
19 by any payee, policyowner, beneficiary, insured, or annu-
20 itant as a condition precedent to the receipt of any right
21 or benefits conferred by this title upon the person.

22 (b) COMMON LAW RIGHTS.—In addition to sub-
23 section (a), the Corporation shall have all common law
24 rights of subrogation and any other equitable or legal rem-
25 edy that would have been available to the national insurer

1 or policyowner, beneficiary, or payee of an insurance policy
2 with respect to the policy.

3 (c) PRIORITY.—The priority of the subrogation rights
4 of the Corporation against the assets of a national insurer
5 shall be governed by the regulations issued by the Com-
6 missioner pursuant to section 1504.

7 (d) RESULT IF FOUND INVALID OR INEFFECTIVE.—
8 If any other provision of this section is held to be invalid
9 or ineffective with respect to any person or claim for any
10 reason, the amount payable under this title with respect
11 to the related benefits or payments under this title shall
12 be reduced by the amount realized by any other person
13 with respect to the person or claim that is attributable
14 to the insurance policies (or portion of the insurance poli-
15 cies) covered by this title.

16 (e) PAYMENT OF PORTION.—If benefits or payments
17 have been provided under this title with respect to a cov-
18 ered obligation and a person recovers amounts as to which
19 the Corporation has rights, as described in this section,
20 the person shall pay to the Corporation the portion of the
21 recovery attributable to the insurance policies (or portion
22 of the insurance policies) covered by this title.

23 **SEC. 1608. ASSESSMENTS.**

24 (a) ASSESSMENTS BY CORPORATION AUTHORIZED.—
25 For the purpose of providing the funds necessary to pro-

1 vide the benefits or payments under this title, the Corpora-
2 tion shall be authorized to assess member insurers sepa-
3 rately for each account, at such time and for such amounts
4 as the board of directors of the Corporation finds nec-
5 essary, in accordance with this section.

6 (b) CLASSES OF ASSESSMENTS.—

7 (1) IN GENERAL.—The Corporation shall im-
8 pose 3 classes of assessments in accordance with
9 paragraphs (2) through (4).

10 (2) GENERAL ADMINISTRATIVE ASSESS-
11 MENTS.—

12 (A) IN GENERAL.—Each member insurer
13 shall be assessed an amount necessary to cover
14 the general administrative and legal costs of the
15 Corporation, other than the costs specified in
16 paragraphs (3) and (4).

17 (B) AMOUNT.—In setting the amount of
18 the assessment under subparagraph (A), the
19 Corporation shall divide such administrative
20 and legal expenses equally among all member
21 insurers.

22 (C) DEPOSIT.—The amount collected pur-
23 suant to this paragraph shall be deposited, in
24 equal amounts, in the accounts established pur-
25 suant to section 1603(f).

1 (3) PROPERTY/CASUALTY ASSESSMENTS.—

2 (A) IN GENERAL.—The Corporation
3 shall—

4 (i) allocate claims paid and expenses
5 incurred among the workers' compensation
6 account, the automobile insurance account,
7 or the other property/casualty account; and

8 (ii) assess member insurers doing
9 business in States without qualified asso-
10 ciations covering the types of risks insured
11 that are licensed to sell property/casualty
12 insurance separately for each account de-
13 scribed in clause (i) the amounts necessary
14 to pay the obligations of the Corporation
15 under section 1605 and the expenses of
16 handling such claims.

17 (B) AMOUNT.—The assessment established
18 under subparagraph (A)(ii) shall equal an
19 amount that bears the same ratio to the total
20 amount of claims and expenses allocated to an
21 account pursuant to subparagraph (A)(i) as the
22 premiums received by such member insurer in
23 States without qualified associations on the
24 kind of insurance in the account during the cal-
25 endar year preceding the assessment bears to

1 the premiums received by all assessed member
2 insurers in States without qualified associations
3 on the kind of insurance in the account during
4 the year preceding the assessment.

5 (C) DEPOSIT.—The assessments received
6 pursuant to this paragraph shall be deposited in
7 the workers' compensation account, the auto-
8 mobile insurance account, or the other property/
9 casualty account, as appropriate.

10 (4) LIFE AND ANNUITY ASSESSMENTS.—

11 (A) IN GENERAL.—The Corporation
12 shall—

13 (i) allocate benefits paid and expenses
14 incurred among the life insurance account,
15 the annuity account, and the health ac-
16 count; and

17 (ii) assess member insurers doing
18 business in States without qualified asso-
19 ciations that are licensed to sell life insur-
20 ance separately for each account described
21 in clause (i) the amounts necessary to pay
22 the obligations of the Corporation under
23 section 1604 and the expenses of providing
24 such benefits.

1 (B) AMOUNT.—The assessment established
2 under subparagraph (A)(ii) shall equal an
3 amount that bears the same ratio to the total
4 of benefits and expenses allocated to an account
5 pursuant to subparagraph (A)(i) as the pre-
6 miums received by such member insurer in
7 States without qualified associations on the
8 kind of insurance in the account during the cal-
9 endar year preceding the assessment bears to
10 the premiums received by all assessed member
11 insurers in States without qualified associations
12 on the kind of insurance in the account during
13 the year preceding the assessment.

14 (C) DEPOSIT.—The assessments received
15 pursuant to this paragraph shall be deposited in
16 the life insurance account, the annuity account,
17 or the health account, as appropriate.

18 (c) NOTICE AND IMPOSITION OF ASSESSMENTS.—

19 (1) WRITTEN NOTICE REQUIRED.—The Cor-
20 poration shall provide each member insurer a writ-
21 ten notice of an assessment, and assessments shall
22 be payable not earlier than 30 days after the date
23 of receipt of such notice.

24 (2) LATE PAYMENT.—Member insurers that fail
25 to pay an assessment when due shall be subject to

1 an interest charge on the assessment, as set by the
2 Corporation.

3 (3) ASSESSMENTS NOT IMPOSED UNTIL NEED-
4 ED.—The Corporation shall not impose an assess-
5 ment described in paragraph (3) or (4) of subsection
6 (b) until such funds are needed.

7 (4) MAXIMUM ASSESSMENT.—

8 (A) IN GENERAL.—The Corporation may
9 not assess a member insurer doing business in
10 States without qualified associations in any
11 year on any account in an amount greater than
12 2 percent of the net direct written premiums of
13 the insurer for the calendar year preceding the
14 assessment on the kind of insurance in the ac-
15 count.

16 (B) INSUFFICIENT AMOUNT IN LIFE IN-
17 SURANCE ACCOUNT, ANNUITY ACCOUNT, OR
18 HEALTH ACCOUNT.—

19 (i) INSUFFICIENT AMOUNT IN LIFE
20 INSURANCE ACCOUNT.—If the maximum
21 assessment in any year does not provide an
22 amount sufficient to make all necessary
23 payments from the life insurance account,
24 the Corporation may assess the annuity ac-
25 count, the health account, or both, for the

1 necessary additional amount, except that
2 in each subsequent year, for so long as
3 necessary, the Corporation shall assess up
4 to the maximum on the life insurance ac-
5 count, in order to—

6 (I) make all necessary payments
7 from the life insurance account; and

8 (II) reimburse the annuity ac-
9 count or the health account, or both,
10 for the amounts assessed on behalf of
11 the life insurance account.

12 (ii) INSUFFICIENT AMOUNT IN ANNU-
13 ITY ACCOUNT.—If the maximum assess-
14 ment in any year does not provide an
15 amount sufficient to make all necessary
16 payments from the annuity account, the
17 Corporation may assess the life insurance
18 account, the health account, or both, for
19 the necessary additional amount, except
20 that, in each subsequent year, for so long
21 as necessary, the Corporation shall assess
22 up to the maximum on the annuity ac-
23 count, in order to—

24 (I) make all necessary payments
25 from the annuity account; and

1 (II) reimburse the life insurance
2 account, the health account, or both,
3 for the amounts assessed on behalf of
4 the annuity account.

5 (iii) INSUFFICIENT AMOUNT IN
6 HEALTH ACCOUNT.—If the maximum as-
7 sessment in any year does not provide an
8 amount sufficient to make all necessary
9 payments from the health account, the
10 Corporation may assess the life insurance
11 account, the annuity account, or both, for
12 the necessary additional amount, except
13 that, in each subsequent year, for so long
14 as necessary, the Corporation shall assess
15 up to the maximum on the health account,
16 in order to—

17 (I) make all necessary payments
18 from the health account; and

19 (II) reimburse the life insurance
20 account, the annuity account, or both,
21 for the amounts assessed on behalf of
22 the health account.

23 (C) INSUFFICIENT AMOUNT IN WORKERS'
24 COMPENSATION ACCOUNT, AUTOMOBILE INSUR-

1 ANCE ACCOUNT, OR OTHER PROPERTY/CAS-
2 UALTY INSURANCE ACCOUNT.—

3 (i) INSUFFICIENT AMOUNT IN WORK-
4 ERS' COMPENSATION ACCOUNT.—If the
5 maximum assessment in any year does not
6 provide an amount sufficient to make all
7 necessary payments from the workers'
8 compensation account, the Corporation
9 may assess the automobile insurance ac-
10 count, other property/casualty insurance
11 account, or both, for the necessary addi-
12 tional amount, except that, in each subse-
13 quent year, for as long as necessary, the
14 Corporation shall assess up to the max-
15 imum on the workers compensation ac-
16 count, in order to—

17 (I) make all necessary payments
18 from the workers' compensation ac-
19 count; and

20 (II) reimburse the automobile in-
21 surance account, the other property/
22 casualty insurance account, or both,
23 for the amounts assessed on behalf of
24 the workers' compensation account.

1 (ii) INSUFFICIENT AMOUNT IN AUTO-
2 MOBILE INSURANCE ACCOUNT.—If the
3 maximum assessment in any year does not
4 provide an amount sufficient to make all
5 necessary payments from the automobile
6 insurance account, the Corporation may
7 assess the workers' compensation account,
8 the other property/casualty insurance ac-
9 count, or both, for the necessary additional
10 amount, except that, in each subsequent
11 year, for so long as necessary, the Cor-
12 poration shall assess up to the maximum
13 on the automobile insurance account, in
14 order to—

15 (I) make all necessary payments
16 from the automobile insurance ac-
17 count; and

18 (II) reimburse the workers' com-
19 pensation account, the other property/
20 casualty insurance account, or both,
21 for the amounts assessed on behalf of
22 the automobile insurance account.

23 (iii) INSUFFICIENT AMOUNT IN OTHER
24 PROPERTY/CASUALTY INSURANCE AC-
25 COUNT.—If the maximum assessment in

1 any year does not provide an amount suffi-
2 cient to make all necessary payments from
3 the other property/casualty insurance ac-
4 count, the Corporation may assess the
5 workers' compensation account, the auto-
6 mobile insurance account, or both, for the
7 necessary additional amount, except that,
8 in each subsequent year for so long as nec-
9 essary, the Corporation shall assess up to
10 the maximum on the other property/cas-
11 ualty insurance account, in order to—

12 (I) make all necessary payments
13 from the other property/casualty in-
14 surance account; and

15 (II) reimburse the automobile in-
16 surance account, the workers' com-
17 pensation account, or both, for the
18 amounts assessed on behalf of the
19 other property casualty insurance ac-
20 count.

21 (d) ABATED OR DEFERRED ASSESSMENTS.—

22 (1) AUTHORITY OF CORPORATION.—The board
23 of directors of the Corporation may abate or defer,
24 in whole or in part, an assessment imposed on a
25 member insurer under this title if, in the opinion of

1 the board, payment of the assessment would endan-
2 ger the ability of the member insurer to fulfill its
3 contractual obligations.

4 (2) SHARED BURDEN.—In the event an assess-
5 ment against a member insurer is abated or de-
6 ferred, in whole or in part, the amount by which the
7 assessment is abated or deferred may be assessed
8 against the other member insurers doing business in
9 States without qualified associations, in a manner
10 consistent with the basis for assessments set forth in
11 this section. Once the conditions that caused action
12 under this subsection have been removed or rectified,
13 the member insurer shall pay all assessments that
14 were deferred pursuant to a repayment plan ap-
15 proved by the board of directors of the Corporation.

16 (e) REFUNDS.—The board of directors of the Cor-
17 poration may, by an equitable method, as established by
18 its operating rules, refund to member insurers, in propor-
19 tion to the contribution of each insurer to that account,
20 the amount by which the assets of the account exceed the
21 amount that the board finds is necessary to carry out dur-
22 ing the coming year the obligations of this title with re-
23 gard to that account, including assets accruing from as-
24 signment, subrogation, net realized gains, and income
25 from investments. A reasonable amount may be retained

1 in any account to provide funds for the continuing ex-
2 penses of the Corporation, and for future claims.

3 (f) ASSESSMENT PROTESTS.—

4 (1) IN GENERAL.—A member insurer that wish-
5 es to protest all or part of an assessment under this
6 title shall pay when due the full amount of the as-
7 sessment, as set forth in the notice provided by the
8 Corporation. The payment shall be available to meet
9 obligations under this title during the pendency of
10 the protest or any subsequent appeal. Payment shall
11 be accompanied by a statement in writing that the
12 payment is made under protest and setting forth a
13 brief statement of the grounds for the protest.

14 (2) NOTIFICATION OF DETERMINATION.—Not
15 later than 60 days after the date of payment of an
16 assessment under protest by a member insurer, the
17 Corporation shall notify the member insurer in writ-
18 ing of the determination of the Corporation with re-
19 spect to the protest, unless the Corporation notifies
20 the insurer that additional time is required to re-
21 solve the issues raised by the protest.

22 (3) FINAL DECISION.—Not later than 30 days
23 after a final decision has been made, the Corpora-
24 tion shall notify the protesting member insurer in
25 writing of the final decision. Not later than 60 days

1 after the date of receipt of notice of the final deci-
2 sion, the protesting member insurer may appeal that
3 final action to the Commissioner.

4 (4) REFERRAL.—In the alternative to rendering
5 a final decision with respect to a protest based on
6 a question regarding the assessment base, the Cor-
7 poration may refer protests to the Commissioner for
8 a final decision, with or without a recommendation
9 from the Corporation.

10 (5) PROTEST OR APPEAL UPHELD.—If the pro-
11 test or appeal on the assessment is upheld, the
12 amount paid in error or excess shall be returned to
13 the member insurer. Interest on a refund due a pro-
14 testing member insurer shall be paid at the rate ac-
15 tually earned by the Corporation.

16 (g) TRANSITIONAL RESPONSIBILITIES.—In the event
17 that the conservation, rehabilitation, or liquidation of a
18 national insurer or State insurer commences at a time
19 when a State insurance guaranty association or State in-
20 surance guaranty fund is a nonqualified association, but
21 such association or fund subsequently becomes a qualified
22 association, the Corporation shall continue to be respon-
23 sible for such conservation, rehabilitation, or liquidation,
24 unless and until the Corporation shall contract with such
25 association or fund pursuant to section 1602(e)(3). The

1 Corporation shall continue to be entitled to levy assess-
2 ments in respect of such pending conservation, rehabilita-
3 tion, or liquidation on all companies doing business in the
4 State where the association or fund resides, as if the asso-
5 ciation or fund remained a nonqualified association.

6 (h) INFORMATION REQUESTS.—The Corporation
7 may request information of member insurers doing busi-
8 ness in States without qualified associations in order to
9 aid in carrying out its duties under this section, and such
10 member insurers shall promptly comply with such a re-
11 quest.

12 **SEC. 1609. REGULATIONS.**

13 In addition to the duties and powers enumerated else-
14 where in this title, the Commissioner shall issue such regu-
15 lations as the Commissioner determines necessary to fa-
16 cilitate the operations of the Corporation and implement
17 the terms of this title.

18 **SEC. 1610. STATE TAXATION.**

19 No State shall have the power to impose its premium
20 tax, franchise tax, income tax, retaliatory tax, or other pri-
21 mary tax applicable to insurance companies, on any na-
22 tional insurer, unless such State allows the national in-
23 surer to recoup Corporation assessments allocable to such
24 State—

1 (1) in the same manner and to the same extent
2 that a State insurer is allowed to recoup State insur-
3 ance guaranty association or State insurance guar-
4 anty fund assessments in such State; or

5 (2) through the rates or a policyholder sur-
6 charge, at the election of the national insurer, in any
7 State that allows State insurers to recoup State in-
8 surance guaranty association or State insurance
9 guaranty fund assessments only through the rates.

10 **SEC. 1611. EXAMINATION OF THE CORPORATION; ANNUAL**
11 **REPORT.**

12 The Corporation shall be subject to examination and
13 regulation by the Commissioner. The Corporation shall
14 submit to the Commissioner, and each State insurance
15 commissioner in any State without a qualified association,
16 a financial report in a form approved by the Commissioner
17 and a report of the activities of the Corporation during
18 the preceding fiscal year, as the activities relate to its du-
19 ties and functions carried out under this title.

20 **SEC. 1612. IMMUNITY.**

21 There shall be no liability on the part of, and no
22 cause of action of any nature shall arise against, any of
23 the following persons for any action or omission by them
24 in the performance of their powers and duties under the
25 State insurance guaranty association or fund or provisions

1 of State insurance guaranty association or fund law or
2 under this title:

3 (1) A member insurer and its directors, officers,
4 employees, and agents.

5 (2) Any State insurance guaranty association or
6 State insurance guaranty fund and its respective di-
7 rectors, officers, employees, or agents.

8 (3) The Corporation and its directors, officers,
9 employees, and agents.

10 (4) The Commissioner and the representatives
11 thereof.

12 (5) Any State insurance commissioner and rep-
13 resentatives thereof.

14 **TITLE VII—CONFORMING**
15 **AMENDMENTS AND MIS-**
16 **CELLANEOUS PROVISIONS**

17 **SEC. 1701. NONDISCRIMINATION.**

18 No State may, by statute, regulation, order, interpre-
19 tation, or otherwise, discriminate, in any manner,
20 against—

21 (1) any State insurer because such insurer or
22 any affiliate has applied to become, or has declared
23 its intention to become, a national insurer chartered
24 under this Act;

1 (2) any State-licensed insurance producer be-
2 cause such insurance producer or an affiliate has ap-
3 plied to become, or has declared its intention to be-
4 come, a national agency chartered under this Act or
5 a federally licensed insurance producer licensed
6 under this Act;

7 (3) any affiliate of a national insurer, national
8 agency, or a federally licensed insurance producer
9 because the affiliate is so affiliated;

10 (4) any policyholder, insured, claimant, State-li-
11 censed insurance producer, or any person engaged in
12 the acts described in section 1304(b) because of any
13 dealing with a national insurer, national agency, a
14 federally licensed insurance producer, or an affiliate
15 of a national insurer, national agency, or a federally
16 licensed insurance producer; or

17 (5) any State-licensed insurance producer (in-
18 cluding with respect to such producer's sales, solici-
19 tation, or negotiation of any insurance policy written
20 or sold by a State insurer) because it sells, solicits,
21 or negotiates an insurance policy written or sold by
22 a national insurer.

1 **SEC. 1702. APPLICATION OF THE FEDERAL ANTITRUST**
2 **LAWS TO NATIONAL INSURERS, NATIONAL**
3 **AGENCIES, AND FEDERALLY LICENSED IN-**
4 **SURANCE PRODUCERS.**

5 (a) APPLICATION.—Except as provided in subsection
6 (b), the Sherman Act (15 U.S.C. 1 et seq.), the Clayton
7 Act (15 U.S.C. 12 et seq.), the Federal Trade Commission
8 Act (15 U.S.C. 41 et seq.), and the Act of June 19, 1936
9 (49 Stat. 1526) (commonly known as the Robinson-Pat-
10 man Antidiscrimination Act), shall be applicable to na-
11 tional insurers, national agencies, and federally licensed
12 insurance producers to the same extent as other busi-
13 nesses are subject to such laws, except as follows:

14 (1) Such laws shall not apply to the develop-
15 ment, dissemination, or use of standard insurance
16 policy forms (including standard endorsements,
17 addendums, and policy language), or to activities in-
18 cidental thereto, by national insurers, national agen-
19 cies, and federally licensed insurance producers.

20 (2) Section 3 of the Act of March 9, 1945 (59
21 Stat. 33; 15 U.S.C. 1013), shall apply to national
22 insurers, national agencies, and federally licensed in-
23 surance producers to the extent that such insurers
24 and producers are subject to State law.

25 (b) EXCEPTION.—Section 5 of the Federal Trade
26 Commission Act (15 U.S.C. 45) shall not apply to national

1 insurers, national agencies, and federally licensed insur-
2 ance producers.

3 **SEC. 1703. APPLICATION OF STATE LAW AND REGULATION**
4 **TO NATIONAL INSURERS, NATIONAL AGEN-**
5 **CIES, AND FEDERALLY LICENSED INSURANCE**
6 **PRODUCERS.**

7 Except to the extent expressly provided in this Act,
8 national insurers, national agencies, and federally licensed
9 insurance producers shall not be subject under State law
10 to any form of licensing, examination, reporting, regula-
11 tion, or other supervision relating to the sale, solicitation,
12 or negotiation of insurance, to the underwriting of insur-
13 ance, or to any other insurance operations.

14 **SEC. 1704. FEDERAL COURT JURISDICTION.**

15 Chapter 85 of part IV of title 28, United States Code,
16 is amended by adding at the end the following:

17 **“§ 1370. National insurer as party**

18 “The district courts shall have original jurisdiction
19 of any civil action—

20 “(1) commenced by the United States, or by di-
21 rection of any officers thereof, against any national
22 insurer, national agency, or any federally licensed in-
23 surance producer;

24 “(2) to enjoin the Commissioner of National In-
25 surance in the Commissioner’s capacity as head of

1 the Office of National Insurance or as the receiver
2 of a national insurer.”.

3 **SEC. 1705. FEDERAL COURT VENUE.**

4 Chapter 87 of part IV of title 28, United States Code,
5 is amended by adding at the end the following:

6 **“SEC. 1414. NATIONAL INSURER OR NATIONAL AGENCY AC-**
7 **TION AGAINST COMMISSIONER OF NATIONAL**
8 **INSURANCE.**

9 “Any civil action by a national insurer or a national
10 agency to enjoin the Commissioner of National Insurance,
11 under the provisions of any Act of Congress relating to
12 such insurers or agencies, may be prosecuted in the judi-
13 cial district where such insurer or agency is located.”.

14 **SEC. 1706. JUDICIAL REVIEW.**

15 Except as otherwise expressly provided in this Act,
16 any party aggrieved by an order of the Commissioner
17 under this Act may obtain a review of such order in the
18 United States Court of Appeals within any circuit wherein
19 such party has its main office, or in the Court of Appeals
20 for the District of Columbia, by filing in the court, within
21 30 days after the entry of the Commissioner’s order, a
22 petition praying that the order of the Commissioner be
23 set aside, modified, or terminated. A copy of such petition
24 shall be forthwith transmitted to the Commissioner by the
25 clerk of the court, and thereupon the Commissioner shall

1 file in the court the record made before the Commissioner,
2 as provided in section 2112 of title 28, United States
3 Code. Upon the filing of such petition, the court shall have
4 jurisdiction to affirm, set aside, modify, or terminate the
5 order of the Commissioner and to require the Commis-
6 sioner to take such action with regard to the matter under
7 review as the court determines proper. Review of an order
8 under this section shall be had as provided in chapter 7
9 of part I of title 5, United States Code. The judgment
10 and decree of the court shall be final, except that the same
11 shall be subject to review by the Supreme Court upon cer-
12 tiorari, as provided in section 1254 of title 28, United
13 States Code.

14 **SEC. 1707. AMENDMENT TO THE FREEDOM OF INFORMA-**
15 **TION ACT.**

16 Section 552(b)(8) of title 5, United States Code, is
17 amended by inserting “(including national insurers, na-
18 tional agencies, and federally licensed insurance pro-
19 ducers)” after “financial institutions”.

20 **SEC. 1708. AMENDMENTS TO THE FEDERAL SECURITIES**
21 **LAWS.**

22 (a) SECURITIES ACT OF 1933.—The Securities Act
23 of 1933 (15 U.S.C. 77a et seq.) is amended—

1 (1) in section 2(a)(13), by inserting “the Com-
2 missioner of National Insurance or” after “subject
3 to supervision by”;

4 (2) in section 2(a)(14), by inserting “the
5 United States or” after “the laws of”;

6 (3) in section 3(a)(8), by inserting “the Com-
7 missioner of National Insurance or” after “subject
8 to the supervision of”;

9 (4) in section 4(5)(A)(ii), by inserting “the
10 Commissioner of National Insurance or” after “sub-
11 ject to the supervision of”.

12 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
13 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
14 is amended—

15 (1) in section 10A(i)(1)(A) (15 U.S.C. 78j-
16 l(i)(1)(A)), by inserting “or Federal” after “pur-
17 poses of State”;

18 (2) in section 15(b)(4)(H) (15 U.S.C.
19 78o(b)(4)(H))—

20 (A) by striking “or the National” and in-
21 serting “the National”; and

22 (B) by inserting, “or the Commissioner of
23 National Insurance” after “Union Administra-
24 tion”.

1 (3) in section 17(i)(3)(C)(iii), by inserting “or
2 by the Commissioner of National Insurance” after
3 “appropriate State insurance regulator”; and

4 (4) in section 17(i)(4)—

5 (A) in subparagraph (A), by striking
6 “and” after the semicolon;

7 (B) in subparagraph (B), by striking the
8 period at the end and inserting “; and”; and

9 (C) by adding at the end the following:

10 “(D) the Commissioner of National Insur-
11 ance with regard to all interpretations of, and
12 the enforcement of, the National Insurance Act
13 of 2007 relating to the activities, conduct, and
14 operations of national insurers, national agen-
15 cies, and federally licensed insurance pro-
16 ducers.”.

17 (c) AMENDMENTS TO INVESTMENT COMPANY ACT OF
18 1940.—The Investment Company Act of 1940 (15 U.S.C.
19 80a–1 et seq.) is amended—

20 (1) in section 2(a)(17), by inserting “the Com-
21 missioner of National Insurance or” after “subject
22 to supervision by”;

23 (2) in section 2(a)(37), by inserting “the
24 United States or” after “the laws of”;

25 (3) in section 12(g)—

1 (A) by inserting “the Commissioner of Na-
2 tional Insurance or” after “affect or derogate
3 from the powers of”; and

4 (B) by inserting “Federal or” after “affect
5 the right under”;

6 (4) in section 26(f)(2)(B)(ii), by inserting “or,
7 in the case of a national insurer chartered under the
8 National Insurance Act of 2007, files with the Com-
9 missioner of National Insurance,” after “files with
10 the insurance regulatory authority of the State
11 which is the domiciliary State of the insurance com-
12 pany,”; and

13 (5) in section 26(f)(2)(B)(iii), by inserting “or,
14 in the case of a national insurer chartered under the
15 National Insurance Act of 2007, the Commissioner
16 of National Insurance” after “insurance authority of
17 such State”.

18 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
19 203(e)(9) of the Investment Advisers Act of 1940 (15
20 U.S.C. 80b–3(e)(9)) is amended—

21 (1) by striking “or the National” and inserting
22 “the National”; and

23 (2) by inserting “, or the Commissioner of Na-
24 tional Insurance” after “Union Administration”.

1 **SEC. 1709. AMENDMENTS TO THE EMPLOYEE RETIREMENT**
2 **INCOME SECURITY ACT OF 1974.**

3 The Employee Retirement Income Security Act of
4 1974 (29 U.S.C. 1001 et seq.) is amended—

5 (1) in section 401(b)(2)(A), by inserting “or li-
6 censed as a national insurer” after “qualified to do
7 business in a State”; and

8 (2) in section 733(b)(2), by inserting “or which
9 is licensed as a national insurer and which is subject
10 to the authority of the Commissioner of National In-
11 surance” after “(within the meaning of section
12 514(b)(2))”.

13 **SEC. 1710. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
14 **ACT.**

15 (a) INTERAGENCY CONSULTATION.—

16 (1) AMENDMENTS.—Section 307 of the
17 Gramm-Leach-Bliley Act (15 U.S.C. 6716) is
18 amended by adding at the end the following:

19 “(g) OFFICE OF NATIONAL INSURANCE.—In this sec-
20 tion, the terms ‘State insurance regulator’, ‘State insur-
21 ance regulators’, and ‘insurance regulator of any State’
22 shall include the Office of National Insurance.”.

23 (2) NO WAIVER.—The provision of information
24 or material by the Office of National Insurance to
25 a Federal banking agency (as defined in section 3 of
26 the Federal Deposit Insurance Act (12 U.S.C.

1 1813)) shall not constitute a waiver of, or otherwise
2 affect, any privilege or other form of legal protection
3 or exemption from public disclosure to which such
4 information or material is otherwise subject.

5 (b) PRIVACY.—The Gramm-Leach-Bliley Act (Public
6 Law 106–102; 113 Stat. 1338) is amended—

7 (1) in section 504(a)(1), by inserting “the Com-
8 missioner of National Insurance,” after “Federal
9 banking agencies,”;

10 (2) in section 504(a)(3), by inserting “, except
11 that, in the case of the Commissioner of National
12 Insurance, such regulations shall be issued in final
13 form not later than 12 months after the date of en-
14 actment of the National Insurance Act of 2007”
15 after “enactment of this Act”;

16 (3) in section 505(a)(6), by inserting “(other
17 than a person subject to the jurisdiction of the Of-
18 fice of National Insurance under paragraph (8))”
19 after “providing insurance”;

20 (4) in section 505(a)—

21 (A) by redesignating paragraph (7) as
22 paragraph (8); and

23 (B) by inserting after paragraph (6) the
24 following:

1 “(7) Under subtitle C of title I of the National
2 Insurance Act of 2007, by the Commissioner of Na-
3 tional Insurance with respect to any national insurer
4 or national agency, any subsidiaries of such an enti-
5 ty (except any financial institution or other person
6 subject to the jurisdiction of any agency or authority
7 under paragraphs (1) through (6)), and any feder-
8 ally licensed insurance producer.”;

9 (5) in section 505(a)(8), as redesignated by
10 paragraph (4) of this section, by striking “through
11 (6)” and inserting “through (7)”;

12 (6) in section 505(b)(2), by striking “and (7)”
13 and inserting “(7), and (8)”;

14 (7) in section 509(2)—

15 (A) by redesignating subparagraphs (E)
16 and (F) as subparagraphs (F) and (G), respec-
17 tively; and

18 (B) by inserting after subparagraph (D)
19 the following:

20 “(E) the Commissioner of National Insur-
21 ance;”;

22 (8) in section 521(e), by inserting “or Federal”
23 after “such institution under State”;

24 (9) in section 522(b)(1)—

1 (A) in subparagraph (A)(iv), by striking
2 “and” after the semicolon;

3 (B) in subparagraph (B), by striking the
4 period at the end and inserting “; and”; and

5 (C) by inserting after subparagraph (B)
6 the following:

7 “(C) subtitle C of title I of the National
8 Insurance Act of 2007, by the Commissioner of
9 National Insurance with respect to any national
10 insurer or national agency and any federally li-
11 censed insurance producer.”; and

12 (10) in section 525, by inserting “the Commis-
13 sioner of National Insurance,” after “National Cred-
14 it Union Administration,”.

15 (c) OTHER CONFORMING AMENDMENTS.—The
16 Gramm-Leach-Bliley Act (Public Law 106–102; 113 Stat.
17 1338) is amended—

18 (1) in section 104(b), by inserting “, or as re-
19 quired by the Commissioner of National Insurance
20 in accordance with the National Insurance Act of
21 2007” after “subject to subsections (c), (d), and
22 (e)”;

23 (2) in section 104(f)—

24 (A) by striking “Subsections (c) and (d)”
25 and inserting the following:

1 “(1) IN GENERAL.—Subsections (c) and (d)”;

2 (B) by striking “(1) the jurisdiction” and
3 inserting the following: “(A) the jurisdiction”;

4 (C) by striking “(A) to investigate” and in-
5 serting the following: “(i) to investigate”;

6 (D) by striking “(B) to require” and in-
7 serting the following: “(ii) to require”;

8 (E) by striking “(2) State laws” and in-
9 serting the following: “(B) State laws”; and

10 (F) by adding at the end the following:

11 “(2) OTHER.—Notwithstanding any provision
12 of subsection (d), paragraphs (2) and (3) of sub-
13 section (d) and subsection (e) shall not apply to any
14 person to the extent that such person is engaged in
15 the business of insurance or other insurance oper-
16 ations pursuant to authority provided under the Na-
17 tional Insurance Act of 2007.”;

18 (3) in section 104(g)(4), by striking “business
19 of insurance.” and inserting “business of insurance,
20 but only to the extent that such person is doing so
21 pursuant to a license issued under the authority of
22 State law.”;

23 (4) in section 112, by inserting in the heading
24 **“COMMISSIONER OF NATIONAL INSURANCE”**

1 after “**AUTHORITY OF STATE INSURANCE REGU-**
2 **LATOR**”;

3 (5) in section 301, by inserting “, except that
4 the insurance activities of a national insurer, na-
5 tional agency, and a federally licensed insurance pro-
6 ducer shall be functionally regulated by the Office of
7 National Insurance” after “subject to section 104”;
8 and

9 (6) in section 311, by inserting at the end the
10 following: “This subtitle shall not apply to a national
11 insurer in mutual form that is reorganizing into a
12 mutual holding company.”.

13 **SEC. 1711. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**
14 **SURANCE ACT.**

15 The Federal Deposit Insurance Act (12 U.S.C. 1811
16 et seq.) is amended—

17 (1) in section 45, by inserting in the section
18 heading “, **COMMISSIONER OF OFFICE OF NA-**
19 **TIONAL INSURANCE,**” after “**STATE INSURANCE**
20 **REGULATOR**”; and

21 (2) in section 47(g)(1)—

22 (A) in subparagraph (A), by striking “or”
23 after the semicolon;

24 (B) in subparagraph (B), by striking the
25 period at the end and inserting “; or”; and

1 (C) by adding at the end the following:

2 “(C) any authority of the Commissioner of
3 National Insurance under the National Insur-
4 ance Act of 2007.”.

5 **SEC. 1712. AMENDMENTS TO THE BANK HOLDING COM-
6 PANY ACT OF 1956.**

7 The Bank Holding Company Act of 1956 (12 U.S.C.
8 1841 et seq.) is amended—

9 (1) in section 4(k)(4)(I)(iii), by inserting “or
10 Federal” after “relevant State”;

11 (2) in section 5(c)(2)(E)(iii), by inserting “or
12 by or on behalf of the Commissioner of National In-
13 surance” after “for the supervision of insurance
14 companies”;

15 (3) in section 5(c)(3)(A)(ii)(I), by inserting “or
16 the Office of National Insurance” after “Securities
17 and Exchange Commission”;

18 (4) in section 5(c)(4)(B), by inserting “or the
19 Commissioner of National Insurance” after “a State
20 insurance authority”;

21 (5) in section 5(c)(5)(B)(iv), by inserting “or by
22 the Commissioner of National Insurance” after
23 “State insurance regulator”;

1 (6) in section 5(g), by inserting in the heading
2 “, COMMISSIONER OF NATIONAL INSURANCE” after
3 “STATE INSURANCE REGULATOR”;

4 (7) in section 5(g)(1)(B), by inserting “or the
5 Commissioner of National Insurance” after “State
6 insurance authority”;

7 (8) in section 5(g)(2)—

8 (A) in the heading, by inserting “, COM-
9 MISSIONER OF NATIONAL INSURANCE,” after
10 “STATE INSURANCE AUTHORITY”; and

11 (B) by inserting “or the Commissioner of
12 National Insurance” after “the Board shall
13 promptly notify the State insurance authority”;
14 and

15 (9) in section 5(g)(3), by inserting “, the Com-
16 missioner of National Insurance,” after “If the
17 Board receives a notice described in paragraph
18 (1)(B) from a State insurance authority”.

19 **SEC. 1713. AMENDMENTS TO TITLE 18 (CRIMES AND CRIMI-**
20 **NAL PROCEDURE).**

21 (a) AMENDMENTS TO TITLE 18.—Section 1033(b) of
22 title 18, United States Code, is amended—

23 (1) in paragraph (1)—

1 (A) by inserting “removes, conceals, alters,
2 destroys,” after “willfully embezzles, abstracts,
3 purloins,”; and

4 (B) by inserting “assets,” after “moneys,
5 funds, premiums, credits,”; and

6 (2) in paragraph (2)—

7 (A) in the first sentence, by inserting “re-
8 moval, concealment, alteration, destruction,”
9 after “embezzlement, abstraction, purloining,”;
10 and

11 (B) in the second sentence, by inserting
12 “removed, concealed, altered, destroyed,” after
13 “embezzled, abstracted, purloined.”

14 (b) INSURANCE FRAUD.—Title 18, United States
15 Code, is amended by inserting after section 1037 the fol-
16 lowing:

17 **“§ 1037A. Insurance fraud**

18 “(a) Whoever commits a fraudulent insurance act or
19 whoever knowingly and intentionally interferes with the
20 enforcement of the provisions of subtitle D of title I of
21 the National Insurance Act of 2007 or investigations of
22 suspected or actual violations of this section shall be pun-
23 ished as provided in subsection (b).

24 “(b)(1) Except as provided in paragraph (2), the
25 punishment for an offense under subsection (a) is a fine

1 as provided under this title or imprisonment for not more
2 than 10 years, or both.

3 “(2) Where the person committing an offense under
4 subsection (a) is a national insurer, national agency, in-
5 surer-affiliated party, or a federally licensed insurance
6 producer, punishment for an offense under subsection (a)
7 shall be a fine, the maximum of which is the greater of—

8 “(A) \$1,000,000 per violation; or

9 “(B) a fine as provided under this title, or im-
10 prisonment for not more than 10 years, or both.

11 “(3) If the fraudulent insurance act involved an
12 amount or value not exceeding \$5,000, whoever violates
13 subsection (a) shall be fined as provided in this title or
14 imprisoned not more than 1 year, or both.

15 “(4) The punishment in this subsection shall be in
16 addition to any other penalties under the National Insur-
17 ance Act of 2007.

18 “(5) Any person convicted of an offense under sub-
19 section (a) shall be ordered to make monetary restitution
20 for any financial loss or damage sustained by any other
21 person as a result of such offense. Such restitution shall
22 be the exclusive monetary remedy available to the victim
23 at law or in equity after entry of judgment. However,
24 nothing in this paragraph shall preclude the maintenance
25 of an action pursuant to section 1163 of the National In-

1 surance Act of 2007, absent a conviction. If the person
2 convicted of an offense under subsection (a) holds an occu-
3 pational license under any provision of State or Federal
4 law, the court shall notify the appropriate licensing au-
5 thority of the conviction.

6 “(c)(1) Any individual who has been convicted of any
7 criminal felony involving dishonesty or breach of trust,
8 and who participates in the business of insurance, shall
9 be fined as provided in this title or imprisoned not more
10 than 5 years, or both.

11 “(2) Any insurance person who is engaged in the
12 business of insurance who knowingly and intentionally
13 permits the participation described in paragraph (1) shall
14 be fined as provided in this title or imprisoned not more
15 than 5 years, or both.

16 “(3) A person described in paragraph (1) or (2) may
17 participate in the business of insurance or permit such
18 participation, as the case may be, if such person has the
19 written consent of the Commissioner of National Insur-
20 ance.

21 “(d) In this section—

22 “(1) the terms ‘Commissioner’, ‘insurance pol-
23 icy’, ‘insurance producer’, ‘insurer-affiliated party’,
24 ‘national agency’, ‘national insurer’, ‘person’ and
25 ‘policy of insurance’ have the meanings given to the

1 terms in section 3 of the National Insurance Act of
2 2007;

3 “(2) the term ‘business of insurance’ has the
4 meaning given to the term in section 1033(f)(1);

5 “(3) the term ‘fraudulent insurance act’ means
6 an insurance-related crime or an act or omission
7 committed by a person who, knowingly and with in-
8 tent to defraud, and for the purpose of depriving an-
9 other of property or for pecuniary gain, commits,
10 participates in, or aids, abets, or conspires to com-
11 mit or solicits another person to commit, or permits
12 its employees or its agents to commit, 1 or more of
13 the following—

14 “(A) presenting, causing to be presented or
15 preparing with knowledge or belief that it will
16 be presented to or by a national insurer, na-
17 tional agency, State insurer, State insurance
18 agency, or an insurance producer acting with
19 respect to a policy of insurance written by a na-
20 tional insurer or State insurer, false informa-
21 tion as part of, in support of or concerning a
22 fact material to 1 or more of the following—

23 “(i) an application for a new or re-
24 newal of an insurance policy or reinsurance
25 contract;

1 “(ii) the rating of a national insurer
2 or State insurer that writes an insurance
3 policy or enters into a reinsurance con-
4 tract;

5 “(iii) a claim for payment or benefit
6 pursuant to an insurance policy or reinsur-
7 ance contract;

8 “(iv) premiums paid on an insurance
9 policy or reinsurance contract;

10 “(v) payments made in accordance
11 with the terms of an insurance policy or
12 reinsurance contract;

13 “(vi) a document filed with the Com-
14 missioner;

15 “(vii) the financial condition of a na-
16 tional insurer or State insurer;

17 “(viii) the formation, acquisition,
18 merger, consolidation, dissolution, or with-
19 drawal from 1 or more lines of insurance
20 or reinsurance by a national insurer;

21 “(ix) the issuance of evidence of in-
22 surance, whether in writing, electronic
23 form, or otherwise; or

24 “(x) the reinstatement of an insurance
25 policy;

1 “(B) solicitation or acceptance of new or
2 renewal insurance risks on behalf of a national
3 insurer, national agency, State insurer, or State
4 agency or other persons engaged in the business
5 of insurance by a person who knows or should
6 know that the national insurer, State insurer or
7 other person responsible for the risk is insolvent
8 at the time of the transaction;

9 “(C) removal, concealment, alteration, or
10 destruction of the records of a national insurer,
11 national agency, State insurer, or State agency
12 or other person engaged in the business of in-
13 surance;

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, State insurers or State agen-
25 cies, or other persons authorized to act on behalf of

1 national insurers or national agencies or State insur-
2 ers or State agencies.”.

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).”.

1 **SEC. 1717. GAO STUDY OF INSURANCE SECTOR COMPETI-**
2 **TIVENESS.**

3 The Comptroller General of the United States shall
4 conduct a study to analyze the overall competitiveness of
5 the insurance sector in the United States, which shall in-
6 clude—

7 (1) an evaluation of the efficiency of the dual
8 charter system for insurers established by this Act;
9 and

10 (2) an analysis of any efficiencies that may
11 have been created for national insurers as a result
12 of such system, including specifically any such effi-
13 ciencies in bringing products to market, licensing
14 processes, and the ability to compete more effectively
15 on a global basis.

16 The Comptroller General shall submit a report regarding
17 the study under this section to the Committee on Finan-
18 cial Services of the House of Representatives and the
19 Committee on Banking, Housing, and Urban Affairs of
20 the Senate not later than three years after the date of
21 the enactment of this Act. Such report shall contain rec-
22 ommendations to improve the regulatory efficiencies for
23 national insurers and to enhance competitiveness among
24 the insurance sector.

○