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S. 1751

To promote the stabilization of the economy by encouraging financial institutions to continue to support economic development, including development in urban areas, through the provision of affordable insurance coverage against acts of terrorism, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 30, 2001

Mr. GRAMM (for himself, Mr. ENZI, Mr. BENNETT, Mr. BUNNING, and Mr. ALLARD) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To promote the stabilization of the economy by encouraging financial institutions to continue to support economic development, including development in urban areas, through the provision of affordable insurance coverage against acts of terrorism, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Terrorism Risk Insur-
5 ance Act of 2001”.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **SEC. 3. DEFINITIONS.**

14 In this Act, the following definitions shall apply:

15 (1) ACT OF TERRORISM.—

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

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

23 (I) human life;

24 (II) property; or

25 (III) infrastructure;

(ii) to have resulted in damage within the United States, or outside of the United States in the case of an air carrier described in paragraph (3)(A)(ii); and

(iii) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

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

(i) the act or event is committed in the course of a war declared by the Congress; or

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

(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act or event as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

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

(A) means coverage of losses for temporary relocation expenses and ongoing expenses, including ordinary wages, where—

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

(ii) there is physical damage to other property that totally prevents customers or employees from gaining access to the business premises; or

(iii) the Federal, State, or local government shuts down an area due to physical or environmental damage, thereby preventing customers or employees from gaining access to the business premises; and

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

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

(A) means any loss resulting from an act of terrorism that is covered by any type of commercial or personal property and casualty insurance policy or endorsement, including business interruption coverage, issued by a participating insurance company if such loss—

(i) occurs within the United States; or

(ii) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), regardless of where the loss occurs; and

(B) does not include any loss covered by any type of life or health insurance policy.

(4) PARTICIPATING INSURANCE COMPANY.—

The term “participating insurance company” means any insurance company, including any subsidiary or affiliate thereof—

(A) that—

(i) is licensed or admitted to engage in the business of providing primary insurance in any State; or

(ii) is not so licensed or admitted, if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers

1 of the National Association of Insurance
2 Commissioners, or any successor thereto;

3 (B) that offers in all of its property and
4 casualty insurance policies, coverage for insured
5 losses;

6 (C) that offers property and casualty in-
7 surance coverage for insured losses that does
8 not differ materially from the terms, amounts,
9 and other coverage limitations applicable to
10 losses arising from events other than acts of
11 terrorism; and

12 (D) that meets any other criteria that the
13 Secretary may reasonably prescribe.

14 (5) PERSON.—The term “person” means any
15 individual, business or nonprofit entity (including
16 those organized in the form of a partnership, limited
17 liability company, corporation, or association), trust
18 or estate, or a State or political subdivision of a
19 State or other governmental unit.

20 (6) PROGRAM.—The term “Program” means
21 the Terrorism Insured Loss Shared Compensation
22 Program established by this Act.

23 (7) SECRETARY.—The term “Secretary” means
24 the Secretary of the Treasury.

1 (8) STATE.—The term “State” means any
 2 State of the United States, the District of Columbia,
 3 the Commonwealth of Puerto Rico, the Common-
 4 wealth of the Northern Mariana Islands, American
 5 Samoa, Guam, and each of the United States Virgin
 6 Islands.

7 (9) UNITED STATES.—The term “United
 8 States” means all States of the United States.

9 **SEC. 4. TERRORISM INSURED LOSS SHARED COMPENSA-**
 10 **TION PROGRAM.**

11 (a) ESTABLISHMENT OF PROGRAM.—

12 (1) IN GENERAL.—There is established in the
 13 Department of the Treasury the Terrorism Insured
 14 Loss Shared Compensation Program.

15 (2) AUTHORITY OF THE SECRETARY.—Notwith-
 16 standing any other provision of State or Federal
 17 law, the Secretary shall administer the Program,
 18 and shall pay the Federal share of compensation for
 19 insured losses in accordance with subsection (c).

20 (b) CONDITIONS FOR FEDERAL PAYMENTS.—No
 21 payment may be made by the Secretary under subsection
 22 (c), unless—

23 (1) a policyholder that suffers an insured loss,
 24 or a person acting on behalf of that policyholder,
 25 files a claim with a participating insurance company;

1 (2) at the time of offer, purchase, and renewal
2 of each policy covering an insured loss, the partici-
3 pating insurance company provides, as soon as prac-
4 ticable following the date of enactment of this Act,
5 clear and conspicuous disclosure in the policy to the
6 policyholder of the premium charged for insured
7 losses covered by the Program and the Federal share
8 of compensation for insured losses under the Pro-
9 gram;

10 (3) the participating insurance company proc-
11 esses the claim for the insured loss in accordance
12 with its standard business practices, and any reason-
13 able procedures that the Secretary may prescribe;
14 and

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

18 (A) a claim for payment of the Federal
19 share of compensation for insured losses under
20 the Program;

21 (B) written verification and certification—

22 (i) of the underlying claim; and

23 (ii) of all payments made to policy-
24 holders for insured losses; and

1 (C) certification of its compliance with the
2 provisions of this subsection.

3 (c) SHARED INSURANCE LOSS COVERAGE.—

4 (1) FEDERAL SHARE.—Subject to the limita-
5 tions in paragraph (2), the Federal share of com-
6 pensation under the Program, to be paid by the Sec-
7 retary, shall be—

8 (A) for insured losses resulting from an act
9 of terrorism occurring during the period begin-
10 ning on the date of enactment of this Act and
11 ending on December 31, 2002, 90 percent of
12 the aggregate amount of all such losses in ex-
13 cess of \$10,000,000,000;

14 (B) for insured losses resulting from an
15 act of terrorism occurring during the period be-
16 ginning on January 1, 2003, and ending on De-
17 cember 31, 2003, 90 percent of the aggregate
18 amount of all such losses in excess of
19 \$10,000,000,000; and

20 (C) if the Program is extended in accord-
21 ance with section 6, for insured losses resulting
22 from an act of terrorism occurring during the
23 period beginning on January 1, 2004, and end-
24 ing on December 31, 2004, 90 percent of the

1 aggregate amount of all such losses in excess of
2 \$20,000,000,000.

3 (2) CAP ON ANNUAL LIABILITY.—Notwith-
4 standing paragraph (1), or any other provision of
5 Federal or State law, if the aggregate insured losses
6 exceed \$100,000,000,000 during any period referred
7 to in subparagraphs (A) and (B) of paragraph (1)
8 (or the period referred to in subparagraph (C) of
9 paragraph (1) if the Program is extended in accord-
10 ance with section 6)—

11 (A) the Secretary shall not make any pay-
12 ment under this Act for any portion of the
13 amount of such losses that exceeds
14 \$100,000,000,000; and

15 (B) participating insurance companies
16 shall not be liable for the payment of any por-
17 tion of the amount that exceeds
18 \$100,000,000,000.

19 (3) NOTICE TO CONGRESS.—The Secretary
20 shall notify the Congress if estimated or actual ag-
21 gregate insured losses exceed \$100,000,000,000 in
22 any period described in paragraph (1), and the Con-
23 gress shall determine the procedures for and the
24 source of any such excess payments.

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

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

8 (d) FUNDING.—

9 (1) PAYMENT AUTHORITY.—This Act con-
 10 stitutes payment authority in advance of appropria-
 11 tion Acts and represents the obligation of the Fed-
 12 eral Government to provide for the Federal share of
 13 compensation for insured losses under the Program.

14 (2) AUTHORIZATION OF APPROPRIATIONS.—
 15 There are authorized to be appropriated to the Sec-
 16 retary such sums as may be necessary to pay the ad-
 17 ministrative expenses of the Program.

18 **SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF**
 19 **CLAIMS.**

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

23 (1) to investigate and audit all claims under the
 24 Program; and

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

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

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

8 (2) the Secretary shall publish or otherwise
9 publicly announce the applicable percentage of in-
10 sured losses to be paid by participating insurance
11 companies and the Federal share of compensation
12 for insured losses under the Program;

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

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

22 (5) participating insurance companies that
23 incur insured losses shall pay their pro rata share of
24 insured losses in accordance with the schedule and
25 limitations contained in section 4; and

1 (6) the Secretary will determine any final net-
2 ting of payments for actual insured losses under the
3 Program, including payments owed to the Federal
4 Government from any participating insurance com-
5 pany and any Federal share of compensation for in-
6 sured losses owed to any participating insurance
7 company, to effectuate the insured loss sharing
8 schedule and limitations contained in section 4.

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

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

15 (e) CIVIL PENALTIES.—The Secretary may assess
16 civil money penalties for violations of this Act or any rule,
17 regulation, or order issued by the Secretary under this Act
18 relating to the submission of false or misleading informa-
19 tion for purposes of the Program, or any failure to repay
20 any amount required to be reimbursed under regulations
21 or procedures described in section 5(b). The authority
22 granted under this subsection shall continue during any
23 period in which the Secretary's authority under section
24 6(d) is in effect.

1 **SEC. 6. TERMINATION OF PROGRAM; DISCRETIONARY EX-**
 2 **TENSION.**

3 (a) **TERMINATION OF PROGRAM.**—

4 (1) **IN GENERAL.**—The Program shall termi-
 5 nate, on December 31, 2003, unless the Secretary—

6 (A) determines, after considering the re-
 7 port and finding required by this section, that
 8 the Program should be extended for one addi-
 9 tional year, until December 31, 2004; and

10 (B) promptly notifies the Congress of such
 11 determination and the reasons therefore.

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

15 (3) **TERMINATION AFTER EXTENSION.**—If the
 16 Program is extended under paragraph (1), this Act
 17 is repealed, and the Program shall terminate, on De-
 18 cember 31, 2004.

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

22 (1) regarding—

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

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

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

8 (2) that considers—

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

11 (B) the probable impact on such factors
12 and on the United States economy if the Pro-
13 gram terminates on December 31, 2003.

14 (c) FINDING REQUIRED.—A determination undersub-
15 section (a) to extend the Program shall be based on a find-
16 ing by the Secretary that—

17 (1) widespread market uncertainties continue to
18 disrupt the ability of insurance companies to price
19 insurance coverage for losses resulting from acts of
20 terrorism, thereby resulting in the continuing un-
21 availability of affordable insurance for consumers;
22 and

23 (2) extending the Program for an additional
24 year would likely encourage economic stabilization

1 and facilitate a transition to a viable market for pri-
2 vate terrorism risk insurance.

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

13 (e) STUDY AND REPORT ON SCOPE OF THE PRO-
14 GRAM.—

15 (1) STUDY.—The Secretary, after consultation
16 with the National Association of Insurance Commis-
17 sioners, representatives of the insurance industry,
18 and other experts in the insurance field, shall con-
19 duct a study of the potential effects of acts of ter-
20 rorism on the availability of life insurance and other
21 lines of insurance coverage.

22 (2) REPORT.—Not later than 1 year after the
23 date of enactment of this Act, the Secretary shall
24 submit a report to the Congress on the results of the
25 study conducted under paragraph (1).

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

2 Nothing in this Act shall affect the jurisdiction or
3 regulatory authority of the insurance commissioner (or
4 any agency or office performing like functions) of any
5 State over any participating insurance company or other
6 person—

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

8 and

9 (2) except that—

10 (A) the definition of the term “act of ter-
11 rorism” in section 3 shall be the exclusive defi-
12 nition for purposes of compensation for insured
13 losses under this Act, and shall preempt any
14 provision of State law that is inconsistent with
15 that definition, to the extent that such provision
16 of law would otherwise apply to any insurance
17 policy relating to terrorism risk in the United
18 States;

19 (B) during the period beginning on the
20 date of enactment of this Act and ending on
21 December 31, 2002, rates for terrorism risk in-
22 surance covered by this Act and filed with any
23 State shall not be subject to prior approval or
24 a waiting period, under any law of a State that
25 would otherwise be applicable, except that noth-
26 ing in this Act affects the ability of any State

1 to invalidate a rate as excessive, inadequate, or
 2 unfairly discriminatory; and

3 (C) during the period beginning on the
 4 date of enactment of this Act and for so long
 5 as the Program is in effect as provided in sec-
 6 tion 6 (including any period during which the
 7 Secretary's authority under section 6(d) is in
 8 effect), books and records of any participating
 9 insurance company shall be provided, or caused
 10 to be provided, to the Secretary or his designee
 11 upon request by the Secretary or his designee
 12 notwithstanding any provision of the laws of
 13 any State prohibiting or limiting such access.

14 **SEC. 8. SENSE OF THE CONGRESS.**

15 It is the sense of the Congress that the insurance in-
 16 dustry should build capacity and aggregate risk to provide
 17 affordable property and casualty coverage for terrorism
 18 risk.

19 **SEC. 9. PROCEDURES FOR CIVIL ACTIONS.**

20 (a) **FEDERAL CAUSE OF ACTION.**—There shall exist
 21 a Federal cause of action for property damage, personal
 22 injury, or death arising out of or resulting from an act
 23 of terrorism, which shall be the exclusive cause of action
 24 and remedy for claims for property damage, personal in-
 25 jury, or death arising out of or resulting from an act of

1 terrorism. All State causes of action of any kind for prop-
 2 erty damage, personal injury, or death otherwise available
 3 arising out of or resulting from an act of terrorism, are
 4 hereby preempted, except as provided in subsection (f).

5 (b) GOVERNING LAW.—The substantive law for deci-
 6 sion in an action for property damage, personal injury,
 7 or death arising out of or resulting from an act of ter-
 8 rorism under this section shall be derived from the law,
 9 including applicable choice of law principles, of the State,
 10 or States determined to be required by the district court
 11 assigned under subsection (c), unless such law is incon-
 12 sistent with or otherwise preempted by Federal law.

13 (c) FEDERAL JURISDICTION.—

14 (1) IN GENERAL.—Notwithstanding any other
 15 provision of law, not later than 90 days after the oc-
 16 currence of an act of terrorism, the Judicial Panel
 17 on Multidistrict Litigation shall assign a single Fed-
 18 eral district court to conduct pretrial and trial pro-
 19 ceedings in all pending and future civil actions for
 20 property damage, personal injury, or death arising
 21 out of or resulting from that act of terrorism.

22 (2) SELECTION CRITERIA.—The Judicial Panel
 23 on Multidistrict Litigation shall select and assign the
 24 district court under paragraph (1) based on the con-

1 venience of the parties and the just and efficient
2 conduct of the proceedings.

3 (3) JURISDICTION.—The district court assigned
4 by the Judicial Panel on Multidistrict Litigation
5 shall have original and exclusive jurisdiction over all
6 actions under paragraph (1). For purposes of per-
7 sonal jurisdiction, the district court assigned by the
8 Judicial Panel on Multidistrict Litigation shall be
9 deemed to sit in all judicial districts in the United
10 States.

11 (4) TRANSFER OF CASES FILED IN OTHER FED-
12 ERAL COURTS.—Any civil action for property dam-
13 age, personal injury, or death arising out of or re-
14 sulting from an act of terrorism that is filed in a
15 Federal district court other than the Federal district
16 court assigned by the Judicial Panel on Multidistrict
17 Litigation under paragraph (1) shall be transferred
18 to the Federal district court so assigned.

19 (5) REMOVAL OF CASES FILED IN STATE
20 COURTS.—Any civil action for property damage, per-
21 sonal injury, or death arising out of or resulting
22 from an act of terrorism that is filed in a State
23 court shall be removable to the Federal district court
24 assigned by the Judicial Panel on Multidistrict Liti-
25 gation under paragraph (1).

1 (d) APPROVAL OF SETTLEMENTS.—Any settlement
2 between the parties of a civil action described in this sec-
3 tion for property damage, personal injury, or death arising
4 out of or resulting from an act of terrorism shall be sub-
5 ject to prior approval by the Secretary after consultation
6 with the Attorney General.

7 (e) LIMITATION ON DAMAGES.—Punitive or exem-
8 plary damages shall not be available in any civil action
9 subject to this section.

10 (f) CLAIMS AGAINST TERRORISTS.—Nothing in this
11 section shall in any way limit the ability of any plaintiff
12 to seek any form of recovery from any person, government
13 or other entity that was a participant in, or aider and
14 abettor of, any act of terrorism.

15 (g) OFFSET.—In determining the amount of money
16 damages available under this section, the court shall offset
17 any compensation or benefits received or entitled to be re-
18 ceived by the plaintiff or plaintiffs from any collateral
19 source, including the United States or any Federal agency
20 thereof, in response to or as a result of the act of ter-
21 rorism.

22 (h) EFFECTIVE PERIOD.—This section shall apply
23 only to actions for property damage, personal injury, or
24 death arising out of or resulting from acts of terrorism
25 that occur during the effective period of the Program, in-

1 cluding, if applicable, any extension period under section
2 6.

3 **SEC. 10. REPEAL OF THE ACT.**

4 This Act shall be repealed at the close of business
5 on the termination date of the Program under section
6 6(a), but the provisions of this section shall not be con-
7 strued as preventing the Secretary from taking, or causing
8 to be taken, such actions under sections 4(c)(4), (5), sec-
9 tions 5(a)(1), (c), (e), section 6(d), and section 9(d) of
10 this Act and applicable regulations promulgated there-
11 under. Further, the provisions of this section shall not be
12 construed as preventing the availability of funding under
13 section 4(d) during any period in which the Secretary's
14 authority under section 6(d) is in effect.

○