

113TH CONGRESS
1ST SESSION

S. 534

To reform the National Association of Registered Agents and Brokers, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2013

Mr. TESTER (for himself, Mr. JOHANNES, Mr. BENNET, Mr. CRAPO, Mr. MURPHY, Mr. CHAMBLISS, Mr. WARNER, Ms. HEITKAMP, Mr. WICKER, Mr. CARPER, Mr. MORAN, Mr. MENENDEZ, Mr. NELSON, and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To reform the National Association of Registered Agents
and Brokers, 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 “National Association
5 of Registered Agents and Brokers Reform Act of 2013”.

1 **SEC. 2. REESTABLISHMENT OF THE NATIONAL ASSOCIA-**
 2 **TION OF REGISTERED AGENTS AND BRO-**
 3 **KERS.**

4 (a) IN GENERAL.—Subtitle C of title III of the
 5 Gramm-Leach-Bliley Act (15 U.S.C. 6751 et seq.) is
 6 amended to read as follows:

7 **“Subtitle C—National Association**
 8 **of Registered Agents and Brokers**

9 **“SEC. 321. NATIONAL ASSOCIATION OF REGISTERED**
 10 **AGENTS AND BROKERS.**

11 “(a) ESTABLISHMENT.—There is established the Na-
 12 tional Association of Registered Agents and Brokers
 13 (hereafter in this subtitle referred to as the ‘Association’).

14 “(b) STATUS.—The Association shall—

15 “(1) be a nonprofit corporation;

16 “(2) have succession until dissolved by an Act
 17 of Congress;

18 “(3) not be an agent or instrumentality of the
 19 United States Government; and

20 “(4) except as otherwise provided in this sub-
 21 title, be subject to, and have all the powers conferred
 22 upon, a nonprofit corporation by the District of Co-
 23 lumbia Nonprofit Corporation Act (D.C. Code, sec.
 24 29–301.01 et seq.).

25 “(c) EFFECTIVE DATE.—The provisions of this sub-
 26 title shall take effect upon the expiration of the 24-month

1 period beginning on the date of enactment of the National
2 Association of Registered Agents and Brokers Reform Act
3 of 2013. Notwithstanding the effective date, such persons
4 as are required to establish the Association shall take such
5 actions as are necessary to establish the operations of the
6 Association by the effective date.

7 **“SEC. 322. PURPOSE.**

8 “The purpose of the Association shall be to provide
9 a mechanism through which licensing, continuing edu-
10 cation, and other nonresident insurance producer quali-
11 fication requirements and conditions may be adopted and
12 applied on a multi-state basis without affecting the laws,
13 rules, and regulations, and preserving the rights of a
14 State, pertaining to—

15 “(1) licensing, continuing education, and other
16 qualification requirements of insurance producers
17 who are not members of the Association;

18 “(2) resident or nonresident insurance producer
19 appointment requirements;

20 “(3) supervising and disciplining resident and
21 nonresident insurance producers;

22 “(4) establishing licensing fees for resident and
23 nonresident insurance producers so that there is no
24 loss of insurance producer licensing revenue to the
25 State; and

1 “(5) prescribing and enforcing laws and regula-
2 tions regulating the conduct of resident and non-
3 resident insurance producers.

4 **“SEC. 323. MEMBERSHIP.**

5 “(a) ELIGIBILITY.—

6 “(1) IN GENERAL.—Any insurance producer li-
7 censed in its home State shall, subject to paragraphs
8 (2) and (4), be eligible to become a member of the
9 Association.

10 “(2) INELIGIBILITY FOR SUSPENSION OR REV-
11 OCATION OF LICENSE.—Subject to paragraph (3),
12 an insurance producer is not eligible to become a
13 member of the Association if a State insurance regu-
14 lator has suspended or revoked the insurance license
15 of the insurance producer in that State.

16 “(3) RESUMPTION OF ELIGIBILITY.—Paragraph
17 (2) shall cease to apply to any insurance producer
18 if—

19 “(A) the State insurance regulator reissues
20 or renews the license of the insurance producer
21 in the State in which the license was suspended
22 or revoked, or otherwise terminates or vacates
23 the suspension or revocation; or

1 “(B) the suspension or revocation expires
2 or is subsequently overturned by a court of
3 competent jurisdiction.

4 “(4) CRIMINAL BACKGROUND RECORD CHECK
5 REQUIRED.—

6 “(A) IN GENERAL.—An insurance pro-
7 ducer shall not be eligible to become a member
8 of the Association unless the insurance pro-
9 ducer has undergone a national criminal back-
10 ground record check of its Federal Bureau of
11 Investigation identification record that complies
12 with regulations prescribed by the Attorney
13 General under subparagraph (L).

14 “(B) CRIMINAL BACKGROUND RECORD
15 CHECK REQUESTED BY HOME STATE.—An in-
16 surance producer who is licensed in a State and
17 who has undergone a national criminal back-
18 ground record check of its Federal Bureau of
19 Investigation identification record during the 2-
20 year period preceding the date of submission of
21 an application to become a member of the Asso-
22 ciation, in compliance with such requirements
23 as a condition for such licensure, shall be
24 deemed to have undergone a national criminal

1 background record check for purposes of sub-
2 paragraph (A).

3 “(C) CRIMINAL BACKGROUND RECORD
4 CHECK REQUESTED BY ASSOCIATION.—

5 “(i) IN GENERAL.—The Association
6 shall, upon request by an insurance pro-
7 ducer licensed in a State, submit identi-
8 fication information obtained from the in-
9 surance producer, and a request for a na-
10 tional criminal background record check of
11 the insurance producer, to the Federal Bu-
12 reau of Investigation.

13 “(ii) BYLAWS OR RULES.—The board
14 of directors of the Association shall pre-
15 scribe bylaws or rules for obtaining and
16 utilizing identification information and
17 criminal history record information, includ-
18 ing the establishment of reasonable fees re-
19 quired to perform a criminal background
20 record check and appropriate safeguards
21 for maintaining confidentiality and security
22 of the information.

23 “(D) FORM OF REQUEST.—A submission
24 under subparagraph (C)(i) shall include such
25 identification information as required by the At-

1 torney General concerning the person about
2 whom the record is requested and a statement
3 signed by the person authorizing the Associa-
4 tion to obtain the information.

5 “(E) PROVISION OF INFORMATION BY AT-
6 TORNEY GENERAL.—Upon receiving a submis-
7 sion under subparagraph (C)(ii) from the Asso-
8 ciation, the Attorney General shall search all
9 records of the Criminal Justice Information
10 Services Division of the Federal Bureau of In-
11 vestigation that the Attorney General deems ap-
12 propriate for criminal history records cor-
13 responding to the identification information
14 provided under subparagraph (D) and provide
15 all information contained in the records that
16 pertains to the request to the Association.

17 “(F) LIMITATION ON PERMISSIBLE USES
18 OF INFORMATION.—The Association may use
19 information provided under subparagraph (E)
20 only—

21 “(i) for purposes of determining com-
22 pliance with membership criteria estab-
23 lished by the Association; or

24 “(ii) to disclose to State insurance
25 regulators, or Federal or State law en-

1 forcement agencies, in conformance with
2 applicable law.

3 “(G) APPLICANT ACCESS TO CRIMINAL
4 HISTORY RECORDS.—Notwithstanding subpara-
5 graph (F), an insurance producer shall have the
6 right to obtain from the Association a copy of
7 any criminal history record information con-
8 cerning the insurance producer that is provided
9 to the Association under subparagraph (E).

10 “(H) PENALTY FOR IMPROPER USE OR
11 DISCLOSURE.—Whoever knowingly uses any in-
12 formation provided under subparagraph (E) for
13 a purpose not authorized in subparagraph (F),
14 or discloses any such information to anyone not
15 authorized to receive it, shall be fined under
16 title 18, United States Code, imprisoned for not
17 more than 2 years, or both.

18 “(I) RELIANCE ON INFORMATION.—Nei-
19 ther the Association nor any of its directors, of-
20 ficers, or employees shall be liable in any action
21 for using information provided under subpara-
22 graph (E) as permitted under subparagraph
23 (F) in good faith and in reasonable reliance on
24 its accuracy.

1 “(J) FEES.—The Attorney General may
2 charge a reasonable fee to defray the expense of
3 conducting the search and providing the infor-
4 mation under subparagraph (E), and any such
5 fee shall be collected and remitted by the Asso-
6 ciation.

7 “(K) RULE OF CONSTRUCTION.—Nothing
8 in this paragraph shall be construed as—

9 “(i) requiring a State insurance regu-
10 lator to perform criminal background
11 checks under this section; or

12 “(ii) limiting any other authority that
13 allows access to criminal background
14 records.

15 “(L) REGULATIONS.—The Attorney Gen-
16 eral shall prescribe regulations to carry out this
17 paragraph, which shall include—

18 “(i) appropriate protections for ensur-
19 ing the confidentiality of information pro-
20 vided under subparagraph (E); and

21 “(ii) procedures providing a reason-
22 able opportunity for an insurance producer
23 to contest the accuracy of information re-
24 garding the insurance producer provided
25 under subparagraph (E).

1 “(M) INELIGIBILITY FOR MEMBERSHIP.—

2 “(i) IN GENERAL.—The Association
3 may, under reasonably consistently applied
4 standards, deny membership to an insur-
5 ance producer on the basis of criminal his-
6 tory information provided under subpara-
7 graph (E), or where the insurance pro-
8 ducer has been subject to disciplinary ac-
9 tion, as described in paragraph (2).

10 “(ii) RIGHTS OF APPLICANTS DENIED
11 MEMBERSHIP.—The Association shall no-
12 tify any insurance producer who is denied
13 membership on the basis of criminal his-
14 tory record information provided under
15 subparagraph (E) of the right of the insur-
16 ance producer to—

17 “(I) obtain a copy of all criminal
18 history record information provided to
19 the Association under subparagraph
20 (E) with respect to the insurance pro-
21 ducer; and

22 “(II) challenge the accuracy and
23 completeness of the information.

24 “(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
25 TERIA.—The Association may establish membership cri-

1 teria that bear a reasonable relationship to the purposes
2 for which the Association was established.

3 “(c) ESTABLISHMENT OF CLASSES AND CATEGORIES
4 OF MEMBERSHIP.—

5 “(1) CLASSES OF MEMBERSHIP.—The Associa-
6 tion may establish separate classes of membership,
7 with separate criteria, if the Association reasonably
8 determines that performance of different duties re-
9 quires different levels of education, training, experi-
10 ence, or other qualifications.

11 “(2) BUSINESS ENTITIES.—The Association
12 shall establish a class of membership and member-
13 ship criteria for business entities. A business entity
14 that applies for membership shall be required to des-
15 ignate an individual Association member responsible
16 for the compliance of the business entity with Asso-
17 ciation rules and the insurance laws, rules, and reg-
18 ulations of any State in which the business entity
19 seeks to do business on the basis of Association
20 membership.

21 “(3) CATEGORIES.—

22 “(A) SEPARATE CATEGORIES FOR INSUR-
23 ANCE PRODUCERS PERMITTED.—The Associa-
24 tion may establish separate categories of mem-
25 bership for insurance producers and for other

1 persons within each class, based on the types of
2 licensing categories that exist under State laws.

3 “(B) SEPARATE TREATMENT FOR DEPOSITORY INSTITUTIONS PROHIBITED.—No special
4 categories of membership, and no distinct mem-
5 bership criteria, shall be established for mem-
6 bers which are depository institutions or for
7 employees, agents, or affiliates of depository in-
8 stitutions.
9

10 “(d) MEMBERSHIP CRITERIA.—

11 “(1) IN GENERAL.—The Association may estab-
12 lish criteria for membership which shall include
13 standards for personal qualifications, education,
14 training, and experience. The Association shall not
15 establish criteria that unfairly limit the ability of a
16 small insurance producer to become a member of the
17 Association, including imposing discriminatory mem-
18 bership fees.

19 “(2) QUALIFICATIONS.—In establishing criteria
20 under paragraph (1), the Association shall not adopt
21 any qualification less protective to the public than
22 that contained in the NAIC Producer Licensing
23 Model Act in effect as of the date of enactment of
24 the National Association of Registered Agents and
25 Brokers Reform Act of 2013, and shall consider the

1 highest levels of insurance producer qualifications
2 established under the licensing laws of the States.

3 “(3) ASSISTANCE FROM STATES.—

4 “(A) IN GENERAL.—The Association may
5 request a State to provide assistance in inves-
6 tigating and evaluating the eligibility of a pro-
7 spective member for membership in the Associa-
8 tion.

9 “(B) RULE OF CONSTRUCTION.—Subpara-
10 graph (A) shall not be construed as requiring or
11 authorizing any State to adopt new or addi-
12 tional requirements concerning the licensing or
13 evaluation of insurance producers.

14 “(4) DENIAL OF MEMBERSHIP.—The Associa-
15 tion may, based on reasonably consistently applied
16 standards, deny membership to any State-licensed
17 insurance producer for failure to meet the member-
18 ship criteria established by the Association.

19 “(e) EFFECT OF MEMBERSHIP.—

20 “(1) AUTHORITY OF ASSOCIATION MEMBERS.—
21 Membership in the Association shall—

22 “(A) authorize an insurance producer to
23 sell, solicit, or negotiate insurance in any State
24 for which the member pays the licensing fee set
25 by the State for any line or lines of insurance

1 specified in the home State license of the insur-
2 ance producer, and exercise all such incidental
3 powers as shall be necessary to carry out such
4 activities, including claims adjustments and set-
5 tlement to the extent permissible under the laws
6 of the State, risk management, employee bene-
7 fits advice, retirement planning, and any other
8 insurance-related consulting activities;

9 “(B) be the equivalent of a nonresident in-
10 surance producer license for purposes of author-
11 izing the insurance producer to engage in the
12 activities described in subparagraph (A) in any
13 State where the member pays the licensing fee;
14 and

15 “(C) be the equivalent of a nonresident in-
16 surance producer license for the purpose of sub-
17 jecting an insurance producer to all laws, regu-
18 lations, provisions or other action of any State
19 concerning revocation, suspension, or other en-
20 forcement action related to the ability of a
21 member to engage in any activity within the
22 scope of authority granted under this subsection
23 and to all State laws, regulations, provisions,
24 and actions preserved under paragraph (5).

1 “(2) VIOLENT CRIME CONTROL AND LAW EN-
2 FORCEMENT ACT OF 1994.—Nothing in this subtitle
3 shall be construed to alter, modify, or supercede any
4 requirement established by section 1033 of title 18,
5 United States Code.

6 “(3) AGENT FOR REMITTING FEES.—The Asso-
7 ciation shall act as an agent for any member for
8 purposes of remitting licensing fees to any State
9 pursuant to paragraph (1).

10 “(4) REGULATOR NOTIFICATION.—

11 “(A) IN GENERAL.—The Association shall
12 notify the States and National Association of
13 Insurance Commissioners (hereinafter referred
14 to in this subtitle as ‘NAIC’) or its designee
15 when an insurance producer has satisfied the
16 membership criteria of this section. The States
17 and NAIC or its designee shall have 10 business
18 days after the notification to provide the Asso-
19 ciation with evidence that the insurance pro-
20 ducer does not satisfy the criteria for member-
21 ship for consideration by the Association in its
22 final membership determination.

23 “(B) ONGOING DISCLOSURES REQUIRED.—
24 On an ongoing basis, the Association shall dis-
25 close to the States and NAIC or its designee

1 the States in which each member is authorized
2 to operate. The Association shall immediately
3 notify the States and NAIC or its designee
4 when a member is newly authorized to operate
5 in one or more States, or is no longer author-
6 ized to operate in one or more States on the
7 basis of Association membership.

8 “(5) PRESERVATION OF STATE CONSUMER PRO-
9 TECTION AND MARKET CONDUCT REGULATION.—No
10 provision of this section shall be construed as alter-
11 ing or affecting the applicability or continuing effec-
12 tiveness of any law, regulation, provision, or other
13 action of any State, including any law, regulation,
14 provision, or other action that—

15 “(A) regulates market conduct, insurance
16 producer conduct, or unfair trade practices;

17 “(B) establishes consumer protections; or

18 “(C) requires insurance producers to be
19 appointed by a licensed or authorized insurer,
20 to the extent that the law, regulation, provision, or
21 other action is not inconsistent with the provisions
22 of this subtitle related to market entry for non-
23 resident insurance producers, and then only to the
24 extent of the inconsistency.

1 “(f) BIENNIAL RENEWAL.—Membership in the Asso-
2 ciation shall be renewed on a biennial basis.

3 “(g) CONTINUING EDUCATION.—

4 “(1) IN GENERAL.—The Association shall es-
5 tablish, as a condition of membership, continuing
6 education requirements which shall be comparable to
7 the continuing education requirements under the li-
8 censing laws of a majority of the States.

9 “(2) STATE CONTINUING EDUCATION REQUIRE-
10 MENTS.—A member may not be required to satisfy
11 continuing education requirements imposed under
12 the laws, regulations, provisions, or actions of any
13 State other than the home State of the member.

14 “(3) RECIPROCITY.—The Association shall not
15 require a member to satisfy continuing education re-
16 quirements that are equivalent to any continuing
17 education requirements of the home State of the
18 member that have been satisfied by the member dur-
19 ing the applicable licensing period.

20 “(4) LIMITATION ON ASSOCIATION.—The Asso-
21 ciation shall not directly or indirectly offer any con-
22 tinuing education courses for insurance producers.

23 “(h) PROBATION, SUSPENSION AND REVOCATION.—

24 “(1) DISCIPLINARY ACTION.—The Association
25 may place an insurance producer that is a member

1 of the Association on probation or suspend or revoke
2 the membership of the insurance producer in the As-
3 sociation, or assess monetary fines or penalties, as
4 the Association determines to be appropriate, if—

5 “(A) the insurance producer fails to meet
6 the applicable membership criteria or other
7 rules of the Association;

8 “(B) the insurance producer has been sub-
9 ject to disciplinary action pursuant to a final
10 adjudicatory proceeding under the jurisdiction
11 of a State insurance regulator;

12 “(C) an insurance license held by the in-
13 surance producer has been suspended or re-
14 voked by a State insurance regulator; or

15 “(D) the insurance producer has been con-
16 victed of a crime that would have resulted in
17 the denial of membership pursuant to sub-
18 section (a)(4)(M)(i) at the time of application
19 and the Association has received a copy of the
20 final disposition from a court of competent ju-
21 risdiction.

22 “(2) VIOLATIONS OF ASSOCIATION RULES.—

23 The Association shall have the power to investigate
24 alleged violations of Association rules.

1 “(3) REPORTING.—The Association shall imme-
2 diately notify NAIC or its designee when the mem-
3 bership of an insurance producer has been placed on
4 probation or has been suspended, revoked, or other-
5 wise terminated, or when the Association has as-
6 sessed monetary fines or penalties.

7 “(i) CONSUMER COMPLAINTS.—

8 “(1) IN GENERAL.—The Association shall—

9 “(A) refer any complaint against a mem-
10 ber of the Association from a consumer relating
11 to alleged misconduct or violations of State in-
12 surance laws to the State insurance regulator
13 where the consumer resides and, when appro-
14 priate, to any additional State insurance regu-
15 lator, as determined by rules adopted by the
16 Association; and

17 “(B) make any related records and infor-
18 mation available to NAIC or its designee and to
19 each State insurance regulator to whom the
20 complaint is forwarded.

21 “(2) TELEPHONE AND OTHER ACCESS.—The
22 Association shall maintain a toll-free number for
23 purposes of this subsection and, as practicable, other
24 alternative means of communication with consumers,
25 such as an Internet webpage.

1 “(3) FINAL DISPOSITION OF INVESTIGATION.—
2 State insurance regulators shall provide the Associa-
3 tion with information regarding the final disposition
4 of a complaint referred pursuant to paragraph
5 (1)(A), but nothing shall be construed to compel a
6 State to release confidential investigation reports or
7 other information protected by State law to the As-
8 sociation.

9 “(j) INFORMATION SHARING.—The Association may
10 share documents, materials, or other information, includ-
11 ing confidential and privileged documents, with a State,
12 Federal, or international regulatory agency or enforce-
13 ment authority, or with NAIC or its designee, provided
14 that the recipient has the authority and agrees to maintain
15 the confidentiality or privileged status of the document,
16 material, or other information.

17 **“SEC. 324. BOARD OF DIRECTORS.**

18 “(a) ESTABLISHMENT.—There is established the
19 board of directors of the Association (hereafter in this sub-
20 title referred to as the ‘Board’), which shall have authority
21 to govern and supervise all activities of the Association.

22 “(b) POWERS.—The Board shall have such of the
23 powers and authority of the Association as may be speci-
24 fied in the bylaws of the Association.

25 “(c) COMPOSITION.—

1 “(1) IN GENERAL.—The Board shall consist of
2 13 members who shall be appointed by the Presi-
3 dent, by and with the advice and consent of the Sen-
4 ate, of whom—

5 “(A) 8 shall be State insurance commis-
6 sioners appointed in the manner provided in
7 paragraph (2);

8 “(B) 2 shall be representatives of property
9 and casualty insurance producers;

10 “(C) 1 shall be a representative of life or
11 health insurance producers;

12 “(D) 1 shall be a representative of prop-
13 erty and casualty insurers; and

14 “(E) 1 shall be a representative of life or
15 health insurers.

16 “(2) STATE INSURANCE REGULATOR REP-
17 RESENTATIVES.—

18 “(A) Before making any appointments
19 pursuant to subparagraph (A) of paragraph
20 (1), the President shall request a list of rec-
21 ommended candidates from NAIC, which shall
22 not be binding on the President. If NAIC fails
23 to submit a list of recommendations within 15
24 business days of the request, the President may

1 make the requisite appointments without con-
2 sidering the views of NAIC.

3 “(B) Not more than 4 members appointed
4 to membership on the Board pursuant to sub-
5 paragraph (A) of paragraph (1) shall belong to
6 the same political party.

7 “(C) If fewer than 8 State insurance com-
8 missioners accept appointment to the Board,
9 the President may appoint the remaining State
10 insurance commissioner members of the Board
11 from among individuals who are former State
12 insurance commissioners, provided that any
13 former insurance commissioner so appointed
14 shall not be employed by or have a present di-
15 rect or indirect financial interest in any insurer,
16 insurance producer, or other entity in the insur-
17 ance industry other than direct or indirect own-
18 ership of, or beneficial interest in, an insurance
19 policy or annuity contract written or sold by an
20 insurer.

21 “(3) PRIVATE SECTOR REPRESENTATIVES.—In
22 making any appointments pursuant to subpara-
23 graphs (B) through (E) of paragraph (1), the Presi-
24 dent may seek recommendations for candidates from
25 national trade associations representing the category

1 of individuals described, which shall not be binding
2 on the President.

3 “(4) STATE INSURANCE COMMISSIONER DE-
4 FINED.—For purposes of this subsection, the term
5 ‘State insurance commissioner’ means a person who
6 serves in the position in State government, or on the
7 board, commission, or other body that is the prin-
8 cipal insurance regulatory authority for the State.

9 “(d) TERMS.—

10 “(1) IN GENERAL.—The term of each Board
11 member shall be for 2 years, except that—

12 “(A) the term of—

13 “(i) 4 of the State insurance commis-
14 sioner members of the Board initially ap-
15 pointed under subparagraph (A) of para-
16 graph (1);

17 “(ii) 1 of the property and casualty
18 insurance producer members of the Board
19 initially appointed under subparagraph (B)
20 of paragraph (1); and

21 “(iii) 1 of the insurer representative
22 members of the Board initially appointed
23 under subparagraphs (D) and (E) of para-
24 graph (1),

1 shall be 1 year, as designated by the President
2 at the time of the nomination of the members;

3 “(B) a member of the Board may continue
4 to serve after the expiration of the term to
5 which the member was appointed until a suc-
6 cessor is qualified; and

7 “(C) any member of the Board appointed
8 to fill a vacancy occurring before the expiration
9 of the term for which the predecessor of the
10 member was appointed shall be appointed only
11 for the remainder of that term.

12 “(2) SUCCESSIVE TERMS.—Board members
13 may be reappointed to successive terms.

14 “(e) INITIAL APPOINTMENTS.—The appointment of
15 initial Board members shall be made no later than 90 days
16 after the date of enactment of the National Association
17 of Registered Agents and Brokers Reform Act of 2013.

18 “(f) MEETINGS.—

19 “(1) IN GENERAL.—The Board shall meet at
20 the call of the chairperson, as requested in writing
21 to the chairperson by at least 5 members of the
22 Board, or as otherwise provided by the bylaws of the
23 Association.

24 “(2) QUORUM REQUIRED.—A majority of direc-
25 tors shall constitute a quorum.

1 “(3) VOTING.—Decisions of the Board shall re-
2 quire the approval of a majority of all directors
3 present at a meeting, a quorum being present.

4 “(4) INITIAL MEETING.—The Board shall hold
5 its first meeting not later than 45 days after the
6 date on which all initial members of the Board have
7 been appointed.

8 “(g) RESTRICTION ON CONFIDENTIAL INFORMA-
9 TION.—Members of the Board appointed pursuant to
10 paragraph (3) of subsection (c) shall not have access to
11 confidential information received by the Association in
12 connection with complaints, investigations, or disciplinary
13 proceedings involving insurance producers.

14 “(h) ETHICS AND CONFLICTS OF INTEREST.—The
15 Board shall issue and enforce an ethical conduct code to
16 address permissible and prohibited activities of Board
17 members and Association officers, employees, agents, or
18 consultants. The code shall, at a minimum, include provi-
19 sions that prohibit any Board member or Association offi-
20 cer, employee, agent or consultant from—

21 “(1) engaging in unethical conduct in the
22 course of performing Association duties;

23 “(2) participating in the making or influencing
24 the making of any Association decision, the outcome
25 of which he or she knows or had reason to know

1 would have a reasonably foreseeable material finan-
2 cial effect, distinguishable from its effect on the pub-
3 licly generally, on the person or a member of his or
4 her immediate family;

5 “(3) accepting any gift from any person or enti-
6 ty other than the Association that is given because
7 of the position held by the person in the Association;

8 “(4) making political contributions to any per-
9 son or entity on behalf of the Association; and

10 “(5) lobbying or paying someone to lobby on be-
11 half of the Association.

12 **“SEC. 325. OFFICERS.**

13 “(a) POSITIONS.—The officers of the Association
14 shall consist of a chairperson and a vice chairperson of
15 the Board, an executive director, secretary, and treasurer
16 of the Association, and such other officers and assistant
17 officers as may be deemed necessary.

18 “(b) MANNER OF SELECTION.—Each officer of the
19 Board and the Association shall be elected or appointed
20 at such time, in such manner, and for such terms as may
21 be prescribed in the bylaws of the Association.

22 **“SEC. 326. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

23 “(a) ADOPTION AND AMENDMENT OF BYLAWS AND
24 RULES.—

1 “(1) COPY REQUIRED TO BE FILED.—The
2 Board shall submit to the President and NAIC any
3 proposed bylaw or rules of the Association or any
4 proposed amendment to the bylaws or rules, accom-
5 panied by a concise general statement of the basis
6 and purpose of such proposal. Rules shall be promul-
7 gated in accordance with the Federal Administrative
8 Procedure Act.

9 “(2) EFFECTIVE DATE.—Any proposed bylaw
10 or rule or proposed amendment to the bylaws or
11 rules shall take effect, after notice published in the
12 Federal Register and opportunity for comment, upon
13 such date as the Association may designate, unless
14 suspended under subsection (c) of section 330.

15 “(b) DISCIPLINARY ACTION BY THE ASSOCIATION.—

16 “(1) SPECIFICATION OF CHARGES.—In any pro-
17 ceeding to determine whether membership shall be
18 denied, suspended, revoked, or not renewed or to de-
19 termine whether a member of the Association should
20 be placed on probation (in this section referred to as
21 a ‘disciplinary action’) or whether to assess fines or
22 monetary penalties, the Association shall bring spe-
23 cific charges, notify the member of the charges, give
24 the member an opportunity to defend against the
25 charges, and keep a record.

1 “(2) SUPPORTING STATEMENT.—A determina-
2 tion to take disciplinary action shall be supported by
3 a statement setting forth—

4 “(A) any act or practice in which the mem-
5 ber has been found to have been engaged;

6 “(B) the specific provision of this subtitle,
7 the rules or regulations under this subtitle, or
8 the rules of the Association which any such act
9 or practice is deemed to violate; and

10 “(C) the sanction imposed and the reason
11 for the sanction.

12 “(3) INELIGIBILITY OF PRIVATE SECTOR REP-
13 PRESENTATIVES.—Members of the Board appointed
14 pursuant to section 324(c)(3) shall not participate in
15 any disciplinary action, and shall not have access to
16 confidential information concerning the actions.

17 **“SEC. 327. POWERS.**

18 “In addition to all the powers conferred upon a non-
19 profit corporation by the District of Columbia Nonprofit
20 Corporation Act, the Association shall have the following
21 powers:

22 “(1) To establish and collect such membership
23 fees as the Association finds necessary to impose to
24 cover the costs of its operations.

1 “(2) To adopt, amend, and repeal bylaws and
2 rules governing the conduct of Association business
3 and performance of its duties.

4 “(3) To establish procedures for providing no-
5 tice and opportunity for comment pursuant to sec-
6 tion 326(a).

7 “(4) To enter into and perform such agree-
8 ments as necessary to carry out its duties.

9 “(5) To hire employees, professionals, or spe-
10 cialists, and elect or appoint officers, and to fix their
11 compensation, define their duties and give them ap-
12 propriate authority to carry out the purposes of this
13 subtitle, and determine their qualification; and to es-
14 tablish the Association’s personnel policies and pro-
15 grams relating to, among other things, conflicts of
16 interest, rates of compensation, and qualifications of
17 personnel.

18 “(6) To borrow money.

19 “(7) To secure funding for such amounts as the
20 Association determines to be necessary and appro-
21 priate to organize and begin operations of the Asso-
22 ciation, which shall be treated as loans to be repaid
23 by the Association with interest at market rate, ex-
24 cept that the Board shall not secure funding from

1 an insurer, insurance producer, or insurance associa-
2 tion, but may secure funding from NAIC.

3 **“SEC. 328. REPORT BY ASSOCIATION.**

4 “(a) IN GENERAL.—As soon as practicable after the
5 close of each fiscal year, the Association shall submit to
6 the President and NAIC a written report regarding the
7 conduct of its business, and the exercise of the other rights
8 and powers granted by this subtitle, during such fiscal
9 year.

10 “(b) FINANCIAL STATEMENTS.—Each report sub-
11 mitted under subsection (a) with respect to any fiscal year
12 shall include financial statements setting forth the finan-
13 cial position of the Association at the end of such fiscal
14 year and the results of its operations (including the source
15 and application of its funds) for such fiscal year.

16 **“SEC. 329. LIABILITY OF THE ASSOCIATION AND THE DI-**
17 **RECTORS, OFFICERS, AND EMPLOYEES OF**
18 **THE ASSOCIATION.**

19 “(a) IN GENERAL.—The Association shall not be
20 deemed to be an insurer or insurance producer within the
21 meaning of any State law, rule, regulation, or order regu-
22 lating or taxing insurers, insurance producers, or other en-
23 tities engaged in the business of insurance, including pro-
24 visions imposing premium taxes, regulating insurer sol-
25 vency or financial condition, establishing guaranty funds

1 and levying assessments, or requiring claims settlement
2 practices.

3 “(b) LIABILITY OF DIRECTORS, OFFICERS, AND EM-
4 PLOYEES.—No director, officer, or employee of the Asso-
5 ciation shall be personally liable to any person for any ac-
6 tion taken or omitted in good faith in any matter within
7 the scope of their responsibilities in connection with the
8 Association.

9 **“SEC. 330. PRESIDENTIAL OVERSIGHT.**

10 “(a) REMOVAL OF BOARD.—If the President deter-
11 mines that the Association is acting in a manner contrary
12 to the interests of the public or the purposes of this sub-
13 title or has failed to perform its duties under this subtitle,
14 the President may remove the entire existing Board for
15 the remainder of the term to which the members of the
16 Board were appointed and appoint, in accordance with
17 section 324 and with the advice and consent of the Senate,
18 new members to fill the vacancies on the Board for the
19 remainder of the terms.

20 “(b) REMOVAL OF BOARD MEMBER.—The President
21 may remove a member of the Board only for neglect of
22 duty or malfeasance in office.

23 “(c) SUSPENSION OF RULES OR ACTIONS.—Fol-
24 lowing notice to the Board, the President, or a person des-
25 ignated by the President for such purpose, may suspend

1 the effectiveness of any rule, or prohibit any action, of the
2 Association which the President or the designee deter-
3 mines is contrary to the purposes of this subtitle.

4 **“SEC. 331. RELATIONSHIP TO STATE LAW.**

5 “(a) **PREEMPTION OF STATE LAWS.**—State laws,
6 regulations, provisions, or other actions purporting to reg-
7 ulate insurance producers shall be preempted to the extent
8 provided in subsection (b).

9 “(b) **PROHIBITED ACTIONS.**—

10 “(1) **IN GENERAL.**—No State shall—

11 “(A) impede the activities of, take any ac-
12 tion against, or apply any provision of law or
13 regulation arbitrarily or discriminatorily to, any
14 insurance producer because that insurance pro-
15 ducer or any affiliate plans to become, has ap-
16 plied to become, or is a member of the Associa-
17 tion;

18 “(B) impose any requirement upon a mem-
19 ber of the Association that it pay fees different
20 from those required to be paid to that State
21 were it not a member of the Association; or

22 “(C) impose any continuing education re-
23 quirements on any nonresident insurance pro-
24 ducer that is a member of the Association.

1 “(2) STATES OTHER THAN A HOME STATE.—
2 No State, other than a member’s home State,
3 shall—

4 “(A) impose any licensing, personal or cor-
5 porate qualifications, education, training, expe-
6 rience, residency, continuing education, or
7 bonding requirement upon a member of the As-
8 sociation that is different from the criteria for
9 membership in the Association or renewal of
10 such membership;

11 “(B) impose any requirement upon a mem-
12 ber of the Association that it be licensed, reg-
13 istered, or otherwise qualified to do business or
14 remain in good standing in the State, including
15 any requirement that the insurance producer
16 register as a foreign company with the sec-
17 retary of state or equivalent State official;

18 “(C) require that a member of the Associa-
19 tion submit to a criminal history record check
20 as a condition of doing business in the State; or

21 “(D) impose any licensing, registration, or
22 appointment requirements upon a member of
23 the Association, or require a member of the As-
24 sociation to be authorized to operate as an in-
25 surance producer, in order to sell, solicit, or ne-

1 gotiate insurance for commercial property and
2 casualty risks to an insured with risks located
3 in more than one State, if the member is li-
4 censed or otherwise authorized to operate in the
5 State where the insured maintains its principal
6 place of business and the contract of insurance
7 insures risks located in that State.

8 “(3) PRESERVATION OF STATE DISCIPLINARY
9 AUTHORITY.—Nothing in this section may be con-
10 strued to prohibit a State from investigating and
11 taking appropriate disciplinary action, including sus-
12 pension or revocation of authority of an insurance
13 producer to do business in a State, in accordance
14 with State law and that is not inconsistent with the
15 provisions of this section, against a member of the
16 Association as a result of a complaint or for any al-
17 leged activity, regardless of whether the activity oc-
18 curred before or after the insurance producer com-
19 menced doing business in the State pursuant to As-
20 sociation membership.

21 **“SEC. 332. COORDINATION WITH OTHER REGULATORS.**

22 “(a) COORDINATION WITH STATE INSURANCE REGU-
23 LATORS.—The Association may—

24 “(1) establish a central clearinghouse, or utilize
25 NAIC or any other appropriate entity as a central

1 clearinghouse, through which members of the Asso-
2 ciation may pursuant to section 323(e) disclose their
3 intent to operate in 1 or more States and pay the
4 licensing fees to the appropriate States; and

5 “(2) establish a national database for the collec-
6 tion of regulatory information concerning the activi-
7 ties of insurance producers or contract with NAIC
8 or any other entity to utilize such a database.

9 “(b) COORDINATION WITH THE FINANCIAL INDUS-
10 TRY REGULATORY AUTHORITY.—The Association shall
11 coordinate with the Financial Industry Regulatory Au-
12 thority in order to ease any administrative burdens that
13 fall on persons that are members of both associations, con-
14 sistent with the requirements of this subtitle and the Fed-
15 eral securities laws.

16 **“SEC. 333. RIGHT OF ACTION.**

17 “(a) RIGHT OF ACTION.—Any person aggrieved by
18 a decision or action of the Association may, after reason-
19 ably exhausting available avenues for resolution within the
20 Association, commence a civil action in an appropriate
21 United States district court, and obtain all appropriate re-
22 lief.

23 “(b) ASSOCIATION INTERPRETATIONS.—In any such
24 action, the court shall give appropriate weight to the Asso-
25 ciation’s interpretation of its bylaws and this subtitle.

1 **“SEC. 334. DEFINITIONS.**

2 “For purposes of this subtitle, the following defini-
3 tions shall apply:

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

8 “(2) HOME STATE.—The term ‘home State’
9 means the State in which the insurance producer
10 maintains its principal place of residence or business
11 and is licensed to act as an insurance producer.

12 “(3) INSURANCE.—The term ‘insurance’ means
13 any product, other than title insurance or bail
14 bonds, defined or regulated as insurance by the ap-
15 propriate State insurance regulatory authority.

16 “(4) INSURANCE PRODUCER.—The term ‘insur-
17 ance producer’ means any insurance agent or
18 broker, excess or surplus lines broker or agent, in-
19 surance consultant, limited insurance representative,
20 and any other individual or entity that sells, solicits,
21 or negotiates policies of insurance or offers advice,
22 counsel, opinions or services related to insurance.

23 “(5) PRINCIPAL PLACE OF BUSINESS.—The
24 term ‘principal place of business’ means the State in
25 which an insurance producer maintains the head-
26 quarters of the insurance producer and, in the case

1 of a business entity, where high-level officers of the
2 entity direct, control, and coordinate the business
3 activities of the business entity.

4 “(6) PRINCIPAL PLACE OF RESIDENCE.—The
5 term ‘principal place of residence’ means the State
6 in which an insurance producer resides for the great-
7 est number of days during a calendar year.

8 “(7) STATE.—The term ‘State’ includes any
9 State, the District of Columbia, any territory of the
10 United States, and Puerto Rico, Guam, American
11 Samoa, the Trust Territory of the Pacific Islands,
12 the Virgin Islands, and the Northern Mariana Is-
13 lands.

14 “(8) STATE LAW.—

15 “(A) IN GENERAL.—The term ‘State law’
16 includes all laws, decisions, rules, regulations,
17 or other State action having the effect of law,
18 of any State.

19 “(B) LAWS APPLICABLE IN THE DISTRICT
20 OF COLUMBIA.—A law of the United States ap-
21 plicable only to or within the District of Colum-
22 bia shall be treated as a State law rather than
23 a law of the United States.”.

24 (b) CLERICAL AMENDMENT.—The table of contents
25 for the Gramm-Leach-Bliley Act is amended by striking

- 1 the items relating to subtitle C of title III and inserting
- 2 the following new items:

“Subtitle C—National Association of Registered Agents and Brokers

- “Sec. 321. National Association of Registered Agents and Brokers.
- “Sec. 322. Purpose.
- “Sec. 323. Membership.
- “Sec. 324. Board of directors.
- “Sec. 325. Officers.
- “Sec. 326. Bylaws, rules, and disciplinary action.
- “Sec. 327. Powers.
- “Sec. 328. Report by Association.
- “Sec. 329. Liability of the Association and the directors, officers, and employees of the Association.
- “Sec. 330. Presidential oversight.
- “Sec. 331. Relationship to State law.
- “Sec. 332. Coordination with other regulators.
- “Sec. 333. Right of action.
- “Sec. 334. Definitions.”.

