time violation within a reasonable time not to exceed 5 business days from the time that the small business concern became aware that the first-time violation had occurred.

**(e) Exceptions**

An agency may impose civil money penalties authorized under Federal law on a small business concern for a first-time violation if—

(1) the small business concern's failure to comply with Federal rules or regulations resulted in actual harm, or constitutes or creates an imminent threat to public health, safety, or the environment; or

(2) the small business concern fails to correct the violation not later than 1 month after initial notification to the agency.

**(f) Expiration**

This section shall not apply to first-time violations caused by a Y2K failure occurring after December 31, 2000.

(Pub. L. 106–37, § 18, July 20, 1999, 113 Stat. 202.)

## CHAPTER 93—INSURANCE

Sec.
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### § 6701. Operation of State law

**(a) State regulation of the business of insurance**

The Act entitled ''An Act to express the intent of Congress with reference to the regulation of the business of insurance'' and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the ''McCarran-Ferguson Act'') remains the law of the United States.

**(b) Mandatory insurance licensing requirements**

No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to subsections (c), (d), and (e) of this section.

**(c) Affiliations**

**(1) In general**

Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution, or an affiliate thereof, from being affiliated directly or indirectly or associated with any person, as authorized or permitted by this Act or any other provision of Federal law.

**(2) Insurance**

With respect to affiliations between depository institutions, or any affiliate thereof, and any insurer, paragraph (1) does not prohibit—

(A) any State from—

(i) collecting, reviewing, and taking actions (including approval and disapproval) on applications and other documents or reports concerning any proposed acquisition of, or a change or continuation of control of, an insurer domiciled in that State; and

(ii) exercising authority granted under applicable State law to collect information concerning any proposed acquisition of, or a change or continuation of control of, an insurer engaged in the business of insurance in, and regulated as an insurer by, such State;

during the 60-day period preceding the effective date of the acquisition or change or continuation of control, so long as the collecting, reviewing, taking actions, or exercising authority by the State does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution;

(B) any State from requiring any person that is acquiring control of an insurer domiciled in that State to maintain or restore the capital requirements of that insurer to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the insurer, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after

the date of notification under subparagraph (A); or

(C) any State from restricting a change in the ownership of stock in an insurer, or a company formed for the purpose of controlling such insurer, after the conversion of the insurer from mutual to stock form so long as such restriction does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution.

**(d) Activities**

**(1) In general**

Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution or an affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in any activity authorized or permitted under this Act and the amendments made by this Act.

**(2) Insurance sales**

**(A) In general**

In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.

**(B) Certain State laws preserved**

Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions that are substantially the same as but no more burdensome or restrictive than those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy by a depository institution or an affiliate of a depository institution, solely because the policy has been issued or underwritten by any person who is not associated with such depository institution or affiliate when the insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product by a depository institution, or any affiliate of a depository institution, unless such charge would be required when the depository institution or affiliate is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by a depository institution or any affiliate of a depository institution that would cause a reasonable person to believe mistakenly that—

(I) the Federal Government or a State is responsible for the insurance sales activities of, or stands behind the credit of, the institution or affiliate; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution or affiliate;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term ''services as an insurance agent or broker'' does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the depository institution or an affiliate thereof) to any person other than an officer, director, employee, agent, or affiliate of a depository institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on existing insureds of the depository institution or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer, agent, or broker, other than a prohibition that would prevent any such depository institution or affiliate—

(I) from engaging in any activity described in this clause that would not violate section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.], as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the depository institution or an affiliate of the depository institution.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from a depository institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the depository institution or any affiliate thereof, that a written disclosure be provided to the consumer or prospective customer indicating that the customer's choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by any depository institution or, if appropriate, an affiliate of any such institution or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution, or any affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution or an affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

**(C) Limitations**

**(i) OCC deference**

Section 6714(e) of this title does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

**(ii) Nondiscrimination**

Subsection (e) of this section does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

**(iii) Construction**

Nothing in this paragraph shall be construed—

(I) to limit the applicability of the decision of the Supreme Court in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B); or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.

**(3) Insurance activities other than sales**

State statutes, regulations, interpretations, orders, and other actions shall not be preempted under paragraph (1) to the extent that they—

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act entitled ''An Act to express the intent of Congress with reference to the regulation of the business of insurance'' and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the ''McCarran-Ferguson Act'');

(B) apply only to persons that are not depository institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

(C) do not relate to or directly or indirectly regulate insurance sales, solicitations, or cross marketing activities; and

(D) are not prohibited under subsection (e) of this section.

**(4) Financial activities other than insurance**

No State statute, regulation, order, interpretation, or other action shall be preempted under paragraph (1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (f) of this section; and

(D) it—

(i) does not distinguish by its terms between depository institutions, and affiliates thereof, engaged in the activity at issue and other persons engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such depository institution or affiliate engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, or affiliates thereof, engaged in the activity at issue, or any person who has an association with any such depository institution or affiliate, that is substantially more adverse than its impact on other persons engaged in the same activity that are not depository institutions or affiliates thereof, or persons who do not have an association with any such depository institution or affiliate;

(iii) does not effectively prevent a depository institution or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

**(e) Nondiscrimination**

Except as provided in any restrictions described in subsection (d)(2)(B) of this section, no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of a depository institution, or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between depository institutions, or affiliates thereof, and other persons engaged in such activities, in a manner that is in any way adverse to any such depository institution, or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions, or affiliates thereof, that is substantially more adverse than its impact on other persons providing the same products or services or engaged in the same activities that are not depository institutions, or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution, or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between depository institutions, or affiliates thereof, and persons engaged in the business of insurance.

**(f) Limitation**

Subsections (c) and (d) of this section shall not be construed to affect—

(1) the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State—

(A) to investigate and bring enforcement actions, consistent with section 77r(c) of this title, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions; or

(B) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 80b–3a of this title), or the associated persons of a broker, dealer, or investment adviser (consistent with such section 80b–3a of this title); or

(2) State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies, or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws if such laws, regulations, orders, interpretations, or other actions are not inconsistent with the purposes of this Act to authorize or permit certain affiliations and to remove barriers to such affiliations.

**(g) Definitions**

For purposes of this section, the following definitions shall apply:

**(1) Affiliate**

The term ''affiliate'' means any company that controls, is controlled by, or is under common control with another company.

**(2) Antitrust laws**

The term ''antitrust laws'' has the meaning given the term in subsection (a) of section 12 of this title, and includes section 45 of this title (to the extent that such section 45 relates to unfair methods of competition).

**(3) Depository institution**

The term ''depository institution''—

(A) has the meaning given the term in section 1813 of title 12; and

(B) includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

**(4) Insurer**

The term ''insurer'' means any person engaged in the business of insurance.

**(5) State**

The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Pub. L. 106–102, title I, § 104, Nov. 12, 1999, 113 Stat. 1352.)

REFERENCES IN TEXT

The McCarran-Ferguson Act, referred to in subsecs. (a) and (d)(3)(A), is act Mar. 9, 1945, ch. 20, 59 Stat. 33, which is classified generally to chapter 20 (§ 1011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1011 of this title and Tables.

This Act, referred to in subsecs. (c)(1), (d)(1), (4)(D)(iii), (iv), (e), and (f)(2), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

Section 106 of the Bank Holding Company Act Amendments of 1970, referred to in subsec. (d)(2)(B)(viii)(I), is Pub. L. 91–607, title I, § 106, Dec. 31, 1970, 84 Stat. 1766, as amended, which is classified generally to chapter 22 (§ 1971 et seq.) of Title 12, Banks and Banking.

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–160, § 1(a), Dec. 26, 2007, 121 Stat. 1839, provided that: ''This Act [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2007'.''

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–144, § 1, Dec. 22, 2005, 119 Stat. 2660, provided that: ''This Act [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Extension Act of 2005'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–297, § 1(a), Nov. 26, 2002, 116 Stat. 2322, provided that: ''This Act [amending section 248 of Title 12, Banks and Banking, and sections 1606 and 1610 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as notes under this section and section 1610 of Title 28, and amending provisions set out as a note under section 1610 of Title 28] may be cited as the 'Terrorism Risk Insurance Act of 2002'.''

TERRORISM INSURANCE PROGRAM

Pub. L. 107–297, title I, Nov. 26, 2002, 116 Stat. 2322, as amended by Pub. L. 109–144, §§ 2–8, Dec. 22, 2005, 119 Stat. 2660–2662; Pub. L. 110–160, §§ 2–5, Dec. 26, 2007, 121 Stat. 1839–1841, provided that:

''SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

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

''(1) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

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

''(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

''(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

''(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

''(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

''(b) PURPOSE.—The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

''(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

''(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

''SEC. 102. DEFINITIONS.

''In this title, the following definitions shall apply:

''(1) ACT OF TERRORISM.—

''(A) CERTIFICATION.—The term 'act of terrorism' means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

''(i) to be an act of terrorism;

''(ii) to be a violent act or an act that is dangerous to—

''(I) human life;

''(II) property; or

''(III) infrastructure;

''(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

''(I) an air carrier or vessel described in paragraph (5)(B); or

''(II) the premises of a United States mission; and

''(iv) to have been committed by an individual or individuals, 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 shall be certified by the Secretary as an act of terrorism if—

''(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or

''(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

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

''(D) NONDELEGATION.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

''(2) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer.

''(3) CONTROL.—An entity has 'control' over another entity, if—

''(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other entity;

''(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

''(C) the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

''(4) DIRECT EARNED PREMIUM.—The term 'direct earned premium' means a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraphs (A) and (B) of paragraph (5).

''(5) INSURED LOSS.—The term 'insured loss' means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—

''(A) occurs within the United States; or

''(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

''(6) INSURER.—The term 'insurer' means any entity, including any affiliate thereof—

''(A) that is—

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

''(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

''(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;

''(iv) a State residual market insurance entity or State workers' compensation fund; or

''(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

''(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and

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

''(7) INSURER DEDUCTIBLE.—The term 'insurer deductible' means—

''(A) for the Transition Period, the value of an insurer's direct earned premiums over the calendar year immediately preceding the date of enactment of this Act [Nov. 26, 2002], multiplied by 1 percent;

''(B) for Program Year 1, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 1, multiplied by 7 percent;

''(C) for Program Year 2, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 2, multiplied by 10 percent;

''(D) for Program Year 3, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 3, multiplied by 15 percent;

''(E) for Program Year 4, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 4, multiplied by 17.5 percent;

''(F) for Program Year 5 and each Program Year thereafter, the value of an insurer's direct earned premiums over the calendar year immediately preceding that Program Year, multiplied by 20 percent; and

''(G) notwithstanding subparagraphs (A) through (F), for the Transition Period or any Program Year, if an insurer has not had a full year of operations during the calendar year immediately preceding such Period or Program Year, such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums.

''(8) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners.

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

''(10) PROGRAM.—The term 'Program' means the Terrorism Insurance Program established by this title.

''(11) PROGRAM YEARS.—

''(A) TRANSITION PERIOD.—The term 'Transition Period' means the period beginning on the date of enactment of this Act [Nov. 26, 2002] and ending on December 31, 2002.

''(B) PROGRAM YEAR 1.—The term 'Program Year 1' means the period beginning on January 1, 2003 and ending on December 31, 2003.

''(C) PROGRAM YEAR 2.—The term 'Program Year 2' means the period beginning on January 1, 2004 and ending on December 31, 2004.

''(D) PROGRAM YEAR 3.—The term 'Program Year 3' means the period beginning on January 1, 2005 and ending on December 31, 2005.

''(E) PROGRAM YEAR 4.—The term 'Program Year 4' means the period beginning on January 1, 2006 and ending on December 31, 2006.

''(F) PROGRAM YEAR 5.—The term 'Program Year 5' means the period beginning on January 1, 2007 and ending on December 31, 2007.

''(G) ADDITIONAL PROGRAM YEARS.—Except when used as provided in subparagraphs (B) through (F), the term 'Program Year' means, as the context requires, any of Program Year 1, Program Year 2, Program Year 3, Program Year 4, Program Year 5, or any of calendar years 2008 through 2014.

''(12) PROPERTY AND CASUALTY INSURANCE.—The term 'property and casualty insurance'—

''(A) means commercial lines of property and casualty insurance, including excess insurance, work-

ers' compensation insurance, and directors and officers liability insurance; and

''(B) does not include—

''(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;

''(ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance;

''(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

''(iv) insurance for medical malpractice;

''(v) health or life insurance, including group life insurance;

''(vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.);

''(vii) reinsurance or retrocessional reinsurance;

''(viii) commercial automobile insurance;

''(ix) burglary and theft insurance;

''(x) surety insurance;

''(xi) professional liability insurance; or

''(xii) farm owners multiple peril insurance.

''(13) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(14) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

''(15) UNITED STATES.—The term 'United States' means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

''(16) RULE OF CONSTRUCTION FOR DATES.—With respect to any reference to a date in this title, such day shall be construed—

''(A) to begin at 12:01 a.m. on that date; and

''(B) to end at midnight on that date.

''SEC. 103. TERRORISM INSURANCE PROGRAM.

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insurance Program.

''(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

''(3) MANDATORY PARTICIPATION.—Each entity that meets the definition of an insurer under this title shall participate in the Program.

''(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless—

''(1) the person that suffers the insured loss, or a person acting on behalf of that person, files a claim with the insurer;

''(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

''(A) in the case of any policy that is issued before the date of enactment of this Act [Nov. 26, 2002], not later than 90 days after that date of enactment;

''(B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer, purchase, and renewal of the policy; and

''(C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy;

''(3) in the case of any policy that is issued after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the insurer provides clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under subsection (e)(2), at the time of offer, purchase, and renewal of the policy;

''(4) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

''(5) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

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

''(B) written certification—

''(i) of the underlying claim; and

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

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

''(c) MANDATORY AVAILABILITY.—During each Program Year, each entity that meets the definition of an insurer under section 102—

''(1) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

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

''(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

''(1) IN GENERAL.—The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act [Nov. 26, 2002], that apply the provisions of this title to State residual market insurance entities and State workers' compensation funds.

''(2) TREATMENT OF CERTAIN ENTITIES.—For purposes of the regulations issued pursuant to paragraph (1)—

''(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

''(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.

''(3) TREATMENT OF PARTICIPATION IN CERTAIN ENTITIES.—Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

''(e) INSURED LOSS SHARED COMPENSATION.—

''(1) FEDERAL SHARE.—

''(A) IN GENERAL.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during the Transition Period and each Program Year through Program Year 4 shall be equal to 90 percent, and during Program Year 5 and each Program Year thereafter shall be equal to 85 percent, of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Transition Period or such Program Year.

''(B) PROGRAM TRIGGER.—In the case of a certified act of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from such certified act of terrorism exceed—

''(i) $50,000,000, with respect to such insured losses occurring in Program Year 4; or

''(ii) $100,000,000, with respect to such insured losses occurring in Program Year 5 and any Program Year thereafter.

''(C) PROHIBITION ON DUPLICATIVE COMPENSATION.—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

''(2) CAP ON ANNUAL LIABILITY.—

''(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed $100,000,000,000, during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during any Program Year thereafter—

''(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds $100,000,000,000; and

''(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000.

''(B) INSURER SHARE.—

''(i) IN GENERAL.—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program, except that, notwithstanding paragraph (1) or any other provision of Federal or State law, no insurer may be required to make any payment for insured losses in excess of its deductible under section 102(7) combined with its share of insured losses under paragraph (1)(A) of this subsection.

''(ii) REGULATIONS.—Not later than 240 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Secretary shall issue final regulations for determining the pro rata share of insured losses under the Program when insured losses exceed $100,000,000,000, in accordance with clause (i).

''(iii) REPORT TO CONGRESS.—Not later than 120 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007, the Secretary shall provide a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the process to be used by the Secretary for determining the allocation of pro rata payments for insured losses under the Program when such losses exceed $100,000,000,000.

''(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during any other Program Year. The Secretary shall provide an initial notice to Congress not later than 15 days after the date of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100,000,000,000.

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

''(5) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, unless expressly provided, and shall not be subject to judicial review.

''(6) INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—For purposes of paragraph (7), the insurance marketplace aggregate retention amount shall be—

''(A) for the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, the lesser of—

''(i) $10,000,000,000; and

''(ii) the aggregate amount, for all insurers, of insured losses during such period;

''(B) for Program Year 2, the lesser of—

''(i) $12,500,000,000; and

''(ii) the aggregate amount, for all insurers, of insured losses during such Program Year;

''(C) for Program Year 3, the lesser of—

''(i) $15,000,000,000; and

''(ii) the aggregate amount, for all insurers, of insured losses during such Program Year;

''(D) for Program Year 4, the lesser of—

''(i) $25,000,000,000; and

''(ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and

''(E) for Program Year 5 and any Program Year thereafter, the lesser of—

''(i) $27,500,000,000; and

''(ii) the aggregate amount, for all insurers, of insured losses during such Program Year.

''(7) RECOUPMENT OF FEDERAL SHARE.—

''(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount for each of the periods referred to in subparagraphs (A) through (E) of paragraph (6) shall be the difference between—

''(i) the insurance marketplace aggregate retention amount under paragraph (6) for such period; and

''(ii) the aggregate amount, for all insurers, of insured losses during such period that are not compensated by the Federal Government because such losses—

''(I) are within the insurer deductible for the insurer subject to the losses; or

''(II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).

''(B) NO MANDATORY RECOUPMENT IF UNCOMPENSATED LOSSES EXCEED INSURANCE MARKETPLACE RETENTION.—Notwithstanding subparagraph (A), if the aggregate amount of uncompensated insured losses referred to in clause (ii) of such subparagraph for any period referred to in any of subparagraphs (A) through (E) of paragraph (6) is greater than the insurance marketplace aggregate retention amount under paragraph (6) for such period, the mandatory recoupment amount shall be $0.

''(C) MANDATORY ESTABLISHMENT OF SURCHARGES TO RECOUP MANDATORY RECOUPMENT AMOUNT.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers compensation) occurring during any of the periods referred to in any of subparagraphs (A) through (E) of paragraph (6), terrorism loss risk-spreading premiums in an amount equal to 133 percent of any mandatory recoupment amount for such period.

''(D) DISCRETIONARY RECOUPMENT OF REMAINDER OF FINANCIAL ASSISTANCE.—To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may recoup, through terrorism loss risk-spreading premiums, such additional amounts that the Secretary believes can be recouped, based on—

''(i) the ultimate costs to taxpayers of no additional recoupment;

''(ii) the economic conditions in the commercial marketplace, including the capitalization, profitability, and investment returns of the insurance industry and the current cycle of the insurance markets;

''(iii) the affordability of commercial insurance for small- and medium-sized businesses; and

''(iv) such other factors as the Secretary considers appropriate.

''(E) TIMING OF MANDATORY RECOUPMENT.—

''(i) IN GENERAL.—If the Secretary is required to collect terrorism loss risk-spreading premiums under subparagraph (C)—

''(I) for any act of terrorism that occurs on or before December 31, 2010, the Secretary shall collect all required premiums by September 30, 2012;

''(II) for any act of terrorism that occurs between January 1 and December 31, 2011, the Secretary shall collect 35 percent of any required premiums by September 30, 2012, and the remainder by September 30, 2017; and

''(III) for any act of terrorism that occurs on or after January 1, 2012, the Secretary shall collect all required premiums by September 30, 2017.

''(ii) REGULATIONS REQUIRED.—Not later than 180 days after the date of enactment of this subparagraph [Dec. 26, 2007], the Secretary shall issue regulations describing the procedures to be used for collecting the required premiums in the time periods referred to in clause (i).

''(F) NOTICE OF ESTIMATED LOSSES.—Not later than 90 days after the date of an act of terrorism, the Secretary shall publish an estimate of aggregate insured losses, which shall be used as the basis for determining whether mandatory recoupment will be required under this paragraph. Such estimate shall be updated as appropriate, and at least annually.

''(8) POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.—

''(A) POLICYHOLDER PREMIUM.—Any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

''(i) be imposed as a policyholder premium surcharge on property and casualty insurance policies in force after the date of such establishment;

''(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

''(iii) be based on a percentage of the premium amount charged for property and casualty insurance coverage under the policy.

''(B) COLLECTION.—The Secretary shall provide for insurers to collect terrorism loss risk-spreading premiums and remit such amounts collected to the Secretary.

''(C) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium collected on a discretionary basis pursuant to paragraph (7)(D) may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

''(D) Adjustment for urban and smaller commercial and rural areas and different lines of insurance.—

''(i) ADJUSTMENTS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—

''(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

''(II) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

''(III) the various exposures to terrorism risk for different lines of insurance.

''(ii) RECOUPMENT OF ADJUSTMENTS.—Any mandatory recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums, in accordance with the timing requirements of paragraph (7)(E).

''(E) TIMING OF PREMIUMS.—The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.

''(f) CAPTIVE INSURERS AND OTHER SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.

''(g) REINSURANCE TO COVER EXPOSURE.—

''(1) OBTAINING COVERAGE.—This title may not be construed to limit or prevent insurers from obtaining reinsurance coverage for insurer deductibles or insured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of such deductibles or retentions.

''(2) LIMITATION ON FINANCIAL ASSISTANCE.—The amount of financial assistance provided pursuant to this section shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the Transition Period or a Program Year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for such period. If such recoveries and financial assistance for the Transition Period or a Program Year exceed such aggregate amount of insured losses for that period and there is no agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

''(h) GROUP LIFE INSURANCE STUDY.—

''(1) STUDY.—The Secretary shall study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that issue group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States.

''(2) CONDITIONAL COVERAGE.—To the extent that the Secretary determines that such coverage is not or will not be reasonably available to both such insurers and consumers, the Secretary shall, in consultation with the NAIC—

''(A) apply the provisions of this title, as appropriate, to providers of group life insurance; and

''(B) provide such restrictions, limitations, or conditions with respect to any financial assistance provided that the Secretary deems appropriate, based on the study under paragraph (1).

''(i) STUDY AND REPORT.—

''(1) STUDY.—The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage, including personal lines.

''(2) REPORT.—Not later than 9 months after the date of enactment of this Act [Nov. 26, 2002], the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

''SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

''(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

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

''(2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured enti-

ties that participate in the Program are treated comparably under the Program.

''(b) INTERIM RULES AND PROCEDURES.—The Secretary may issue interim final rules or procedures specifying the manner in which—

''(1) insurers may file and certify claims under the Program;

''(2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;

''(3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and

''(4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

''(c) CONSULTATION.—The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

''(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

''(e) CIVIL PENALTIES.—

''(1) IN GENERAL.—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing—

''(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

''(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

''(C) submits to the Secretary fraudulent claims under the Program for insured losses;

''(D) has failed to provide the disclosures required under subsection (f); or

''(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

''(2) AMOUNT.—The amount under this paragraph is the greater of $1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

''(3) RECOVERY OF AMOUNT IN DISPUTE.—A penalty under this subsection for any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations under this title shall be in addition to any such amounts recovered by the Secretary.

''(f) SUBMISSION OF PREMIUM INFORMATION.—

''(1) IN GENERAL.—The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

''(2) ACCESS TO INFORMATION.—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

''(3) AVAILABILITY TO CONGRESS.—The Secretary shall make information compiled under this subsection available to the Congress, upon request.

''(g) FUNDING.—

''(1) FEDERAL PAYMENTS.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program.

''(2) ADMINISTRATIVE EXPENSES.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay reasonable costs of administering the Program.

''SEC. 105. PREEMPTION AND NULLIFICATION OF PRE-EXISTING TERRORISM EXCLUSIONS.

''(a) GENERAL NULLIFICATION.—Any terrorism exclusion in a contract for property and casualty insurance that is in force on the date of enactment of this Act [Nov. 26, 2002] shall be void to the extent that it excludes losses that would otherwise be insured losses.

''(b) GENERAL PREEMPTION.—Any State approval of any terrorism exclusion from a contract for property and casualty insurance that is in force on the date of enactment of this Act, shall be void to the extent that it excludes losses that would otherwise be insured losses.

''(c) REINSTATEMENT OF TERRORISM EXCLUSIONS.—Notwithstanding subsections (a) and (b) or any provision of State law, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that is in force on the date of enactment of this Act [Nov. 26, 2002] and that excludes coverage for an act of terrorism only—

''(1) if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

''(2) if—

''(A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage; and

''(B) the insurer provided notice, at least 30 days before any such reinstatement, of—

''(i) the increased premium for such terrorism coverage; and

''(ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

''SEC. 106. PRESERVATION PROVISIONS.

''(a) STATE LAW.—Nothing in this title shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person—

''(1) except as specifically provided in this title; and

''(2) except that—

''(A) the definition of the term 'act of terrorism' in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title;

''(B) during the period beginning on the date of enactment of this Act [Nov. 26, 2002] and ending on December 31, 2003, rates and forms for terrorism risk insurance covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and, with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms; and

''(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

''(b) EXISTING REINSURANCE AGREEMENTS.—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act [Nov. 26, 2002]. The terms and conditions of such an agreement shall be determined by the language of that agreement.

''SEC. 107. LITIGATION MANAGEMENT.

''(a) PROCEDURES AND DAMAGES.—

''(1) IN GENERAL.—If the Secretary makes a determination pursuant to section 102 that an act of terrorism has occurred, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in subsection (b).

''(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are hereby preempted, except as provided in subsection (b).

''(3) SUBSTANTIVE LAW.—The substantive law for decision in any such action described in paragraph (1) shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is otherwise inconsistent with or preempted by Federal law.

''(4) JURISDICTION.—For each determination described in paragraph (1), not later than 90 days after the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate 1 district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to this section. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

''(5) PUNITIVE DAMAGES.—Any amounts awarded in an action under paragraph (1) that are attributable to punitive damages shall not count as insured losses for purposes of this title.

''(6) AUTHORITY OF THE SECRETARY.—Procedures and requirements established by the Secretary under section 50.82 of part 50 of title 31 of the Code of Federal Regulations (as in effect on the date of issuance of that section in final form) shall apply to any cause of action described in paragraph (1) of this subsection.

''(b) EXCLUSION.—Nothing in this section shall in any way limit the liability of any government, an organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism with respect to which a determination described in subsection (a)(1) was made.

''(c) RIGHT OF SUBROGATION.—The United States shall have the right of subrogation with respect to any payment or claim paid by the United States under this title.

''(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to affect—

''(1) any party's contractual right to arbitrate a dispute; or

''(2) any provision of the Air Transportation Safety and System Stabilization Act (Public Law 107–42; 49 U.S.C. 40101 note.).

''(e) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

''SEC. 108. TERMINATION OF PROGRAM.

''(a) TERMINATION OF PROGRAM.—The Program shall terminate on December 31, 2014.

''(b) CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.—Following the termination of the Program, the Secretary may take such actions as may be necessary to ensure payment, recoupment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this title, in accordance with the provisions of section 103 and regulations promulgated thereunder.

''(c) REPEAL; SAVINGS CLAUSE.—This title is repealed on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

''(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (b) of this section, paragraph (4), (5), (6), (7), or (8) of section 103(e), or subsection (a)(1), (c), (d), or (e) of section 104, as in effect on the day before the date of such repeal, or applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (b) of this section is in effect; or

''(2) to prevent the availability of funding under section 104(g) during any period in which the authority of the Secretary under subsection (b) of this section is in effect.

''(d) STUDY AND REPORT ON THE PROGRAM.—

''(1) STUDY.—The Secretary, in consultation with the NAIC, representatives of the insurance industry and of policy holders, other experts in the insurance field, and other experts as needed, shall assess the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.

''(2) REPORT.—The Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than June 30, 2005.

''(e) ANALYSIS OF MARKET CONDITIONS FOR TERRORISM RISK INSURANCE.—

''(1) IN GENERAL.—The President's Working Group on Financial Markets, in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, shall perform an ongoing analysis regarding the long-term availability and affordability of insurance for terrorism risk.

''(2) REPORT.—Not later than September 30, 2006, and thereafter in 2010 and 2013, the President's Working Group on Financial Markets shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its findings pursuant to the analysis conducted under paragraph (1).

''(f) INSURANCE FOR NUCLEAR, BIOLOGICAL, CHEMICAL, AND RADIOLOGICAL TERRORIST EVENTS.—

''(1) STUDY.—The Comptroller General of the United States shall examine—

''(A) the availability and affordability of insurance coverage for losses caused by terrorist attacks involving nuclear, biological, chemical, or radiological materials;

''(B) the outlook for such coverage in the future; and

''(C) the capacity of private insurers and State workers compensation funds to manage risk associated with nuclear, biological, chemical, and radiological terrorist events.

''(2) REPORT.—Not later than 1 year after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report containing a detailed statement of the findings under paragraph (1), and recommendations for any legislative, regulatory, administrative, or other actions at the Federal, State, or local levels that the Comptroller General considers appropriate to expand the availability and

affordability of insurance for nuclear, biological, chemical, or radiological terrorist events.

''(g) AVAILABILITY AND AFFORDABILITY OF TERRORISM INSURANCE IN SPECIFIC MARKETS.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism risk insurance available.

''(2) ELEMENTS OF STUDY.—The study required by paragraph (1) shall contain—

''(A) an analysis of both insurance and reinsurance capacity in specific markets, including pricing and coverage limits in existing policies;

''(B) an assessment of the factors contributing to any capacity constraints that are identified; and

''(C) recommendations for addressing those capacity constraints.

''(3) REPORT.—Not later than 180 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Comptroller General shall submit a report on the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.''

[Pub. L. 110–160, § 4(b)(2), Dec. 26, 2007, 121 Stat. 1840, which directed amendment of section 103(e)(3) of Pub. L. 107–297, set out above, by substituting period for ''‘and the Congress shall’ and all that follows through the end of the paragraph'', was executed by substituting period for ''and the Congress shall'' and all that followed through end of first sentence, to reflect the probable intent of Congress, in light of insertion of last sentence of par. (3) by Pub. L. 110–160, § 4(b)(1).]

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

## SUBCHAPTER I—STATE REGULATION OF INSURANCE

### § 6711. Functional regulation of insurance

The insurance activities of any person (including a national bank exercising its power to act as agent under section 92 of title 12) shall be functionally regulated by the States, subject to section 6701 of this title.

(Pub. L. 106–102, title III, § 301, Nov. 12, 1999, 113 Stat. 1407.)

### § 6712. Insurance underwriting in national banks

**(a) In general**

Except as provided in section 6713 of this title, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

**(b) Authorized products**

For the purposes of this section, a product is authorized if—

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of title 26.

**(c) Definition**

For purposes of this section, the term ''insurance'' means—

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 1821(e)(8)(D)(i) of title 12); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of title 26; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of title 26, if the bank were subject to tax as an insurance company under section 831 of that title; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of title 26.

**(d) Rule of construction**

For purposes of this section, providing insurance (including reinsurance) outside the United States that insures, guarantees, or indemnifies insurance products provided in a State, or that indemnifies an insurance company with regard to insurance products provided in a State, shall be considered to be providing insurance as principal in that State.

(Pub. L. 106–102, title III, § 302, Nov. 12, 1999, 113 Stat. 1407.)

### § 6713. Title insurance activities of national banks and their affiliates

**(a) General prohibition**

No national bank may engage in any activity involving the underwriting or sale of title insurance.

**(b) Nondiscrimination parity exception**

**(1) In general**

Notwithstanding any other provision of law (including section 6701 of this title), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agent, a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.

**(2) Coordination with "wildcard" provision**

A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

**(c) Grandfathering with consistent regulation**

**(1) In general**

Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b) of this section, a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before November 12, 1999.

**(2) Insurance affiliate**

In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in the underwriting of title insurance pursuant to paragraph (1).

**(3) Insurance subsidiary**

In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate other than a subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

**(d) "Affiliate" and "subsidiary" defined**

For purposes of this section, the terms ''affiliate'' and ''subsidiary'' have the same meanings as in section 1841 of title 12.

**(e) Rule of construction**

No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before November 12, 1999, and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

(Pub. L. 106–102, title III, § 303, Nov. 12, 1999, 113 Stat. 1408.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

### § 6714. Expedited and equalized dispute resolution for Federal regulators

**(a) Filing in Court of Appeals**

In the case of a regulatory conflict between a State insurance regulator and a Federal regulator regarding insurance issues, including whether a State law, rule, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, the Federal or State regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

**(b) Expedited review**

The United States Court of Appeals in which a petition for review is filed in accordance with subsection (a) of this section shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

**(c) Supreme Court review**

Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

**(d) Statute of limitation**

No petition may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date on which the first public notice is made of such order, ruling, determination or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

**(e) Standard of review**

The court shall decide a petition filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

(Pub. L. 106–102, title III, § 304, Nov. 12, 1999, 113 Stat. 1409.)

### § 6715. Certain State affiliation laws preempted for insurance companies and affiliates

Except as provided in section 6701(c)(2) of this title, no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of a depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of a depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

(Pub. L. 106–102, title III, § 306, Nov. 12, 1999, 113 Stat. 1415.)

### § 6716. Interagency consultation

#### (a) Purpose

It is the intention of the Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

#### (b) Examination results and other information

##### (1) Information of the Board

Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

##### (2) Banking agency information

Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

##### (3) State insurance regulator information

Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

(A) is engaged in insurance activities and regulated by such insurance regulator; and

(B) is an affiliate of a depository institution or financial holding company.

#### (c) Consultation

Before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

#### (d) Effect on other authority

Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to a depository institution or bank holding company or any affiliate thereof under any provision of law.

#### (e) Confidentiality and privilege

##### (1) Confidentiality

The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees

to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

**(2) Privilege**

The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

**(f) Definitions**

For purposes of this section, the following definitions shall apply:

**(1) Appropriate Federal banking agency; depository institution**

The terms ''appropriate Federal banking agency'' and ''depository institution'' have the same meanings as in section 1813 of title 12.

**(2) Board and financial holding company**

The terms ''Board'' and ''financial holding company'' have the same meanings as in section 1841 of title 12.

(Pub. L. 106–102, title III, § 307, Nov. 12, 1999, 113 Stat. 1415.)

### § 6717. Definition of State

For purposes of this subchapter, the term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Pub. L. 106–102, title III, § 308, Nov. 12, 1999, 113 Stat. 1417.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in original ''this subtitle'', meaning subtitle A (§ 301 et seq.) of title III of Pub. L. 106–102, which enacted this subchapter and section 1831x of Title 12, Banks and Banking. For complete classification of this subtitle to the Code, see Tables.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

## SUBCHAPTER II—REDOMESTICATION OF MUTUAL INSURERS

### § 6731. General application

This subchapter shall only apply to a mutual insurance company in a State which has not enacted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.

(Pub. L. 106–102, title III, § 311, Nov. 12, 1999, 113 Stat. 1417.)

EFFECTIVE DATE

Pub. L. 106–102, title III, § 316, Nov. 12, 1999, 113 Stat. 1422, provided that: ''This subtitle [subtitle B (§§ 311–316) of title III of Pub. L. 106–102, enacting this subchapter] shall take effect on the date of the enactment of this Act [Nov. 12, 1999].''

### § 6732. Redomestication of mutual insurers

**(a) Redomestication**

A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f) of this section, the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.

**(b) Resulting domicile**

Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

**(c) Licenses preserved**

The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subchapter shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

**(d) Effectiveness of outstanding policies and contracts**

**(1) In general**

All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

**(2) Forms**

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

**(e) Notice**

A redomesticating insurer shall give notice of the proposed transfer to the State insurance

regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.

**(f) Procedural requirements**

No mutual insurer may redomesticate to another State and reorganize into a mutual holding company pursuant to this section unless the State insurance regulator of the transferee domicile determines that the plan of reorganization of the insurer includes the following requirements:

**(1) Approval by board of directors and policyholders**

The reorganization is approved by at least a majority of the board of directors of the mutual insurer and at least a majority of the policyholders who vote after notice, disclosure of the reorganization and the effects of the transaction on policyholder contractual rights, and reasonable opportunity to vote, in accordance with such notice, disclosure, and voting procedures as are approved by the State insurance regulator of the transferee domicile.

**(2) Continued voting control by policyholders; review of public stock offering**

After the consummation of a reorganization, the policyholders of the reorganized insurer shall have the same voting rights with respect to the mutual holding company as they had before the reorganization with respect to the mutual insurer. With respect to an initial public offering of stock, the offering shall be conducted in compliance with applicable securities laws and in a manner approved by the State insurance regulator of the transferee domicile.

**(3) Award of stock or grant of options to officers and directors**

During the applicable period provided for under the State law of the transferee domicile following completion of an initial public offering, or for a period of six months if no such applicable period is provided, neither a stock holding company nor the converted insurer shall award any stock options or stock grants to persons who are elected officers or directors of the mutual holding company, the stock holding company, or the converted insurer, except with respect to any such awards or options to which a person is entitled as a policyholder and as approved by the State insurance regulator of the transferee domicile.

**(4) Policyholder rights**

Upon reorganization into a mutual holding company, the contractual rights of the policyholders are preserved.

**(5) Fair and equitable treatment of policyholders**

The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.

(Pub. L. 106–102, title III, § 312, Nov. 12, 1999, 113 Stat. 1417.)

**§ 6733. Effect on State laws restricting redomestication**

**(a) In general**

Unless otherwise permitted by this subchapter, State laws of any transferor domicile that conflict with the purposes and intent of this subchapter are preempted, including but not limited to—

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate, or has redomesticated, pursuant to this subchapter;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate, or has redomesticated, pursuant to this subchapter, but only to the extent that such law would treat such insured licensee or other intermediary differently than if the person procured insurance from, or placed insurance with, an insured licensee or other intermediary which had not redomesticated; and

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subchapter, any certificate of authority, agent appointment or license, rate approval, or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

**(b) Differential treatment prohibited**

No State law, regulation, interpretation, or functional equivalent thereof, of a State other than a transferee domicile may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

**(c) Laws prohibiting operations**

If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer promptly following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed State in which the redomesticated insurer is doing business to determine the insurer's financial condition, if—

(A) the State insurance regulator of the transferee domicile has not begun an examination of the redomesticated insurer and has not scheduled such an examination to begin before the end of the 1-year period beginning on the date of the redomestication; and

(B) any such examination is coordinated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in—

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in section 6734(a) of this title;

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

(Pub. L. 106–102, title III, § 313, Nov. 12, 1999, 113 Stat. 1419.)

### § 6734. Other provisions

**(a) Judicial review**

The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section[1] involving any redomesticating or redomesticated insurer.

**(b) Severability**

If any provision of this section,[1] or the application thereof to any person or circumstances, is held invalid, the remainder of the section,[1] and the application of such provision to other persons or circumstances, shall not be affected thereby.

(Pub. L. 106–102, title III, § 314, Nov. 12, 1999, 113 Stat. 1420.)

[1] See References in Text note below.

REFERENCES IN TEXT

This section, referred to in text, probably should be a reference to this subtitle, meaning subtitle B (§§ 311–316) of title III of Pub. L. 106–102, which is classified generally to this subchapter.

### § 6735. Definitions

For purposes of this subchapter, the following definitions shall apply:

**(1) Court of competent jurisdiction**

The term ''court of competent jurisdiction'' means a court authorized pursuant to section 6734(a) of this title to adjudicate litigation arising under this subchapter.

**(2) Domicile**

The term ''domicile'' means the State in which an insurer is incorporated, chartered, or organized.

**(3) Insurance licensee**

The term ''insurance licensee'' means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

**(4) Institution**

The term ''institution'' means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

**(5) Licensed State**

The term ''licensed State'' means any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

**(6) Mutual insurer**

The term ''mutual insurer'' means a mutual insurer organized under the laws of any State.

**(7) Person**

The term ''person'' means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

**(8) Policyholder**

The term ''policyholder'' means the owner of a policy issued by a mutual insurer, except that, with respect to voting rights, the term means a member of a mutual insurer or mutual holding company granted the right to vote, as determined under applicable State law.

**(9) Redomesticated insurer**

The term ''redomesticated insurer'' means a mutual insurer that has redomesticated pursuant to this subchapter.

**(10) Redomesticating insurer**

The term ''redomesticating insurer'' means a mutual insurer that is redomesticating pursuant to this subchapter.

**(11) Redomestication or transfer**

The term ''redomestication'' or ''transfer'' means the transfer of the domicile of a mutual

insurer from one State to another State pursuant to this subchapter.

**(12) State insurance regulator**

The term ''State insurance regulator'' means the principal insurance regulatory authority of a State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

**(13) State law**

The term ''State law'' means the statutes of any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

**(14) Transferee domicile**

The term ''transferee domicile'' means the State to which a mutual insurer is redomesticating pursuant to this subchapter.

**(15) Transferor domicile**

The term ''transferor domicile'' means the State from which a mutual insurer is redomesticating pursuant to this subchapter.

(Pub. L. 106–102, title III, § 315, Nov. 12, 1999, 113 Stat. 1420.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

## SUBCHAPTER III—NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS

### § 6751. State flexibility in multistate licensing reforms

**(a) In general**

The provisions of this subchapter shall take effect unless, not later than 3 years after November 12, 1999, at least a majority of the States—

(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.

**(b) Uniformity required**

States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) of this section if the States—

(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;

(2) establish uniform continuing education requirements for licensed insurance producers;

(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

**(c) Reciprocity required**

States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) of this section if the following conditions are met:

**(1) Administrative licensing procedures**

At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting—

(A) a request for licensure;

(B) the application for licensure that the producer submitted to its home State;

(C) proof that the producer is licensed and in good standing in its home State; and

(D) the payment of any requisite fee to the appropriate authority.

**(2) Continuing education requirements**

A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.

**(3) No limiting nonresident requirements**

A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

**(4) Reciprocal reciprocity**

Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

**(d) Determination**

**(1) NAIC determination**

At the end of the 3-year period beginning on November 12, 1999, the National Association of Insurance Commissioners (hereafter in this subchapter referred to as the ''NAIC'') shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) of this section has been achieved.

**(2) Judicial review**

The appropriate United States district court shall have exclusive jurisdiction over any challenge to the NAIC's determination under this section and such court shall apply the standards set forth in section 706 of title 5 when reviewing any such challenge.

**(e) Continued application**

If, at any time, the uniformity or reciprocity required by subsections (b) and (c) of this section no longer exists, the provisions of this subchapter shall take effect 2 years after the date on which such uniformity or reciprocity ceases to exist, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

**(f) Savings provision**

No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c) of this section, unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

**(g) Uniform licensing**

Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1) of this section.

(Pub. L. 106–102, title III, § 321, Nov. 12, 1999, 113 Stat. 1422.)

### § 6752. National Association of Registered Agents and Brokers

**(a) Establishment**

There is established the National Association of Registered Agents and Brokers (hereafter in this subchapter referred to as the ''Association'').

**(b) Status**

The Association shall—

(1) be a nonprofit corporation;

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

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

(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y–1001 et seq.).

(Pub. L. 106–102, title III, § 322, Nov. 12, 1999, 113 Stat. 1424.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(4), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b)(4), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

### § 6753. Purpose

The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

(Pub. L. 106–102, title III, § 323, Nov. 12, 1999, 113 Stat. 1424.)

### § 6754. Relationship to the Federal Government

The Association shall be subject to the supervision and oversight of the NAIC.

(Pub. L. 106–102, title III, § 324, Nov. 12, 1999, 113 Stat. 1424.)

### § 6755. Membership

**(a) Eligibility**

**(1) In general**

Any State-licensed insurance producer shall be eligible to become a member in the Association.

**(2) Ineligibility for suspension or revocation of license**

Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year period preceding the date on which such producer applies for membership.

**(3) Resumption of eligibility**

Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or

(B) the suspension or revocation is subsequently overturned.

**(b) Authority to establish membership criteria**

The Association shall have the authority to establish membership criteria that—

(1) bear a reasonable relationship to the purposes for which the Association was established; and

(2) do not unfairly limit the access of smaller agencies to the Association membership.

**(c) Establishment of classes and categories**

**(1) Classes of membership**

The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

**(2) Categories**

The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are depository institutions or for their employees, agents, or affiliates.

**(d) Membership criteria**

**(1) In general**

The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

**(2) Minimum standard**

In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

**(e) Effect of membership**

Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

**(f) Annual renewal**

Membership in the Association shall be renewed on an annual basis.

**(g) Continuing education**

The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

**(h) Suspension and revocation**

The Association may—

(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke the membership of an insurance producer if—

(A) the producer fails to meet the applicable membership criteria of the Association; or

(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

**(i) Office of consumer complaints**

**(1) In general**

The Association shall establish an office of consumer complaints that shall—

(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

**(2) Records and referrals**

The office of consumer complaints of the Association shall—

(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and

(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

**(3) Telephone and other access**

The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.

(Pub. L. 106–102, title III, § 325, Nov. 12, 1999, 113 Stat. 1424.)

**§ 6756. Board of directors**

**(a) Establishment**

There is established the board of directors of the Association (hereafter in this subchapter referred to as the ''Board'') for the purpose of governing and supervising the activities of the Association and the members of the Association.

**(b) Powers**

The Board shall have such powers and authority as may be specified in the bylaws of the Association.

**(c) Composition**

**(1) Members**

The Board shall be composed of 7 members appointed by the NAIC.

**(2) Requirement**

At least 4 of the members of the Board shall each have significant experience with the reg-

ulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

**(3) Initial Board membership**

**(A) In general**

If, by the end of the 2-year period beginning on November 12, 1999, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

**(B) Alternate composition**

If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

**(C) Inoperability**

If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 6762 of this title.

**(d) Terms**

The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with one-third of the directors to be appointed each year.

**(e) Board vacancies**

A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

**(f) Meetings**

The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

(Pub. L. 106–102, title III, § 326, Nov. 12, 1999, 113 Stat. 1426.)

## § 6757. Officers

**(a) In general**

**(1) Positions**

The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.

**(2) Manner of selection**

Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

**(b) Criteria for chairperson**

Only individuals who are members of the NAIC shall be eligible to serve as the chairperson of the board of directors.

(Pub. L. 106–102, title III, § 327, Nov. 12, 1999, 113 Stat. 1427.)

## § 6758. Bylaws, rules, and disciplinary action

**(a) Adoption and amendment of bylaws**

**(1) Copy required to be filed with the NAIC**

The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

**(2) Effective date**

Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

(A) 30 days after the date of the filing of a copy with the NAIC;

(B) upon such later date as the Association may designate; or

(C) upon such earlier date as the NAIC may determine.

**(3) Disapproval by the NAIC**

Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—

(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subchapter and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) of this section be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such subsection.

**(b) Adoption and amendment of rules**

**(1) Filing proposed regulations with the NAIC**

**(A) In general**

The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

**(B) Other rules and amendments ineffective**

No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

**(2) Initial consideration by the NAIC**

Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—

(A) by order approve such proposed rule or amendment; or

(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

**(3) NAIC proceedings**

**(A) In general**

Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—

(i) include notice of the grounds for disapproval under consideration;

(ii) provide opportunity for hearing; and

(iii) be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.

**(B) Disposition of proposal**

At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

**(C) Extension of time for consideration**

The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—

(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or

(ii) such longer period as to which the Association consents.

**(4) Standards for review**

**(A) Grounds for approval**

The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.

**(B) Approval before end of notice period**

The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date on which the Association files proposed rules or amendments in accordance with paragraph (1), unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.

**(5) Alternate procedure**

**(A) In general**

Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association shall take effect—

(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the NAIC shall for good cause determine.

**(B) Abrogation by the NAIC**

**(i) In general**

At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or clause (ii) of this subparagraph, the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subchapter.

**(ii) Effect of reconsideration by the NAIC**

Any action of the NAIC pursuant to clause (i) shall—

(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and

(II) not be considered to be a final action.

**(c) Action required by the NAIC**

The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subchapter, require the Association to adopt, amend, or repeal any bylaw, rule, or amendment of the Association, whenever adopted.

**(d) Disciplinary action by the Association**

**(1) Specification of charges**

In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed (hereafter in this section referred to as a ''disciplinary action''), the Association shall bring specific charges, notify such member of such charges, give the member an opportunity to defend against the charges, and keep a record.

**(2) Supporting statement**

A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this subchapter, the rules or regulations under this subchapter, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

**(e) NAIC review of disciplinary action**

**(1) Notice to the NAIC**

If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

**(2) Review by the NAIC**

Any disciplinary action taken by the Association shall be subject to review by the NAIC—

(A) on the NAIC's own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—

(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

**(f) Effect of review**

The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

**(g) Scope of review**

**(1) In general**

In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

(A) determine whether the action should be taken;

(B) affirm, modify, or rescind the disciplinary sanction; or

(C) remand to the Association for further proceedings.

**(2) Dismissal of review**

The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

(A) the specific grounds on which the action is based exist in fact;

(B) the action is in accordance with applicable rules and regulations; and

(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subchapter.

(Pub. L. 106–102, title III, § 328, Nov. 12, 1999, 113 Stat. 1427.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(4)(A), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

## § 6759. Assessments

**(a) Insurance producers subject to assessment**

The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b) of this section, except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

**(b) NAIC assessments**

The NAIC may assess the Association for any costs that the NAIC incurs under this subchapter.

(Pub. L. 106–102, title III, § 329, Nov. 12, 1999, 113 Stat. 1430.)

## § 6760. Functions of the NAIC

**(a) Administrative procedure**

Determinations of the NAIC, for purposes of making rules pursuant to section 6758 of this title, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

**(b) Examinations and reports**

**(1) Examinations**

The NAIC may make such examinations and inspections of the Association and require the Association to furnish to the NAIC such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subchapter.

**(2) Report by Association**

As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subchapter, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

(Pub. L. 106–102, title III, § 330, Nov. 12, 1999, 113 Stat. 1430.)

## § 6761. Liability of the Association and the directors, officers, and employees of the Association

**(a) In general**

The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

**(b) Liability of the Association, its directors, officers, and employees**

Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subchapter.

(Pub. L. 106–102, title III, § 331, Nov. 12, 1999, 113 Stat. 1430.)

## § 6762. Elimination of NAIC oversight

**(a) In general**

The Association shall be established without NAIC oversight and the provisions set forth in section 6754 of this title, subsections (a), (b), (c), and (e) of section 6758 of this title, and sections 6759(b) and 6760 of this title shall cease to be effective if, at the end of the 2-year period beginning on the date on which the provisions of this subchapter take effect pursuant to section 6751 of this title—

(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or

reciprocity requirements of subsections (a), (b), and (c) of section 6751 of this title; and

(2) the NAIC has not approved the Association's bylaws as required by section 6758 of this title or is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

**(b) Board appointments**

If the repeals required by subsection (a) of this section are implemented, the following shall apply:

**(1) General appointment power**

The President, with the advice and consent of the Senate, shall appoint the members of the Association's Board established under section 6756 of this title from lists of candidates recommended to the President by the NAIC.

**(2) Procedures for obtaining NAIC appointment recommendations**

**(A) Initial determination and recommendations**

After the date on which the provisions of subsection (a) of this section take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 6756(c) of this title, the President shall, with the advice and consent of the Senate, make the requisite appointments without considering the views of the NAIC.

**(B) Subsequent appointments**

After the initial appointments, the NAIC shall provide a list of at least six recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least six recommended candidates or comply with the requirements of section 6756(c) of this title, the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

**(C) Presidential oversight**

**(i) Removal**

If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

**(ii) Suspension of rules or actions**

The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

**(c) Annual report**

As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subchapter, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

(Pub. L. 106–102, title III, § 332, Nov. 12, 1999, 113 Stat. 1431.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(2), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

**§ 6763. Relationship to State law**

**(a) Preemption of State laws**

State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b) of this section.

**(b) Prohibited actions**

No State shall—

(1) impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(2) impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency;

(3) impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section; or

(4) implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 6755 of this title.

**(c) Savings provision**

Except as provided in subsections (a) and (b) of this section, no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws.

(Pub. L. 106–102, title III, § 333, Nov. 12, 1999, 113 Stat. 1432.)

### § 6764. Coordination with other regulators

#### (a) Coordination with State insurance regulators

The Association shall have the authority to—

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 6763 of this title;

(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

#### (b) Coordination with the National Association of Securities Dealers

The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subchapter and the Federal securities laws.

(Pub. L. 106–102, title III, § 334, Nov. 12, 1999, 113 Stat. 1433.)

### § 6765. Judicial review

#### (a) Jurisdiction

The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subchapter. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

#### (b) Exhaustion of remedies

An aggrieved person shall be required to exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

#### (c) Standards of review

The standards set forth in section 553 of title 5 shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5 shall be applied whenever a disciplinary action of the Association is judicially reviewed.

(Pub. L. 106–102, title III, § 335, Nov. 12, 1999, 113 Stat. 1433.)

### § 6766. Definitions

For purposes of this subchapter, the following definitions shall apply:

#### (1) Home State

The term ''home State'' means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

#### (2) Insurance

The term ''insurance'' means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.

#### (3) Insurance producer

The term ''insurance producer'' means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

#### (4) State

The term ''State'' includes any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

#### (5) State law

The term ''State law'' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(Pub. L. 106–102, title III, § 336, Nov. 12, 1999, 113 Stat. 1433.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

## SUBCHAPTER IV—RENTAL CAR AGENCY INSURANCE ACTIVITIES

### § 6781. Standard of regulation for motor vehicle rentals

#### (a) Protection against retroactive application of regulatory and legal action

Except as provided in subsection (b) of this section, during the 3-year period beginning on November 12, 1999, it shall be a presumption that no State law imposes any licensing, appointment, or education requirements on any person who solicits the purchase of or sells insurance connected with, and incidental to, the lease or rental of a motor vehicle.

#### (b) Preeminence of State insurance law

No provision of this section shall be construed as altering the validity, interpretation, construction, or effect of—

(1) any State statute;

(2) the prospective application of any court judgment interpreting or applying any State statute; or

(3) the prospective application of any final State regulation, order, bulletin, or other statutorily authorized interpretation or action,

which, by its specific terms, expressly regulates or exempts from regulation any person who so-

licits the purchase of or sells insurance connected with, and incidental to, the short-term lease or rental of a motor vehicle.

**(c) Scope of application**

This section shall apply with respect to—

(1) the lease or rental of a motor vehicle for a total period of 90 consecutive days or less; and

(2) insurance which is provided in connection with, and incidentally to, such lease or rental for a period of consecutive days not exceeding the lease or rental period.

**(d) Motor vehicle defined**

For purposes of this section, the term ''motor vehicle'' has the same meaning as in section 13102 of title 49.

(Pub. L. 106–102, title III, § 341, Nov. 12, 1999, 113 Stat. 1434.)

## CHAPTER 94—PRIVACY

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### SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

### § 6801. Protection of nonpublic personal information

**(a) Privacy obligation policy**

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

**(b) Financial institutions safeguards**

In furtherance of the policy in subsection (a) of this section, each agency or authority described in section 6805(a) of this title, other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(Pub. L. 106–102, title V, § 501, Nov. 12, 1999, 113 Stat. 1436; Pub. L. 111–203, title X, § 1093(1), July 21, 2010, 124 Stat. 2095.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 inserted '', other than the Bureau of Consumer Financial Protection,'' after ''section 6805(a) of this title'' in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 106–102, title V, § 510, Nov. 12, 1999, 113 Stat. 1445, provided that: ''This subtitle [subtitle A (§§ 501–510) of title V of Pub. L. 106–102, enacting this subchapter and amending section 1681s of this title] shall take effect 6 months after the date on which rules are required to be prescribed under section 504(a)(3) [15 U.S.C. 6804(a)(3)], except—

''(1) to the extent that a later date is specified in the rules prescribed under section 504; and

''(2) that sections 504 [15 U.S.C. 6804] and 506 [enacting section 6806 of this title and amending section 1681s of this title] shall be effective upon enactment [Nov. 12, 1999].''

### § 6802. Obligations with respect to disclosures of personal information

**(a) Notice requirements**

Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

**(b) Opt out**

**(1) In general**

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

**(2) Exception**

This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or