

107TH CONGRESS
1ST SESSION

S. 1743

To create a temporary reinsurance mechanism to enhance the availability
of terrorism insurance.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2001

Mr. HOLLINGS (for himself, Mrs. BOXER, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To create a temporary reinsurance mechanism to enhance
the availability of terrorism insurance.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “National Terrorism Reinsurance Fund Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purpose.
- Sec. 4. National terrorism reinsurance program.
- Sec. 5. Fund operations.
- Sec. 6. Coverage provided.

See. 7. Secretary to determine if loss is attributable to terrorism.
See. 8. Mandatory coverage by property and casualty insurers for acts of terrorism.
See. 9. Pass-throughs and other rate increases.
See. 10. Credit for reinsurance.
See. 11. Administrative provisions.
See. 12. Inapplicability of certain laws.
See. 13. Sunset provision.
See. 14. Definitions.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The terrorist attacks on the World Trade
4 Center and Pentagon on September 11, 2001, have
5 inflicted possibly the largest loss ever incurred by in-
6 surers and reinsurers.

7 (2) The magnitude of the loss, and its impact
8 on the current capacity of the reinsurance market,
9 threaten the ability of the property and casualty in-
10 surance market to provide coverage to building own-
11 ers, businesses, and American citizens.

12 (3) It is necessary to create a temporary rein-
13 surance mechanism to augment the capacity of pri-
14 vate insurers to provide insurance for terrorism re-
15 lated risks.

16 **SEC. 3. PURPOSE.**

17 The purpose of this Act is to facilitate the coverage
18 by property and casualty insurers of the peril for losses
19 due to acts of terrorism by providing additional reinsur-
20 ance capacity for loss or damage due to acts of terrorism

1 occurring within the United States, its territories, and
2 possessions.

3 **SEC. 4. NATIONAL TERRORISM REINSURANCE PROGRAM.**

4 (a) IN GENERAL.—The Secretary of Commerce shall
5 establish and administer a program to provide reinsurance
6 to participating insurers for losses due to acts of ter-
7 rorism.

8 (b) ADVISORY COMMITTEE; MEMBERSHIP.—There is
9 established an advisory committee to provide advice and
10 counsel to the Secretary in carrying out the program of
11 reinsurance established by the Secretary. The advisory
12 committee shall consist of 10 members, as follows:

13 (1) 3 representatives of the property and cas-
14 ualty insurance industry, appointed by the Sec-
15 retary.

16 (2) A representative of property and casualty
17 insurance agents, appointed by the Secretary.

18 (3) A representative of consumers of property-
19 casualty insurance, appointed by the Secretary.

20 (4) A representative of a recognized national
21 credit rating agency, appointed by the Secretary.

22 (5) A representative of the banking or real es-
23 tate industry, appointed by the Secretary.

7 (c) NATIONAL TERRORISM REINSURANCE FUND.—

12 (A) to make such payments as may, from
13 time to time, be required under reinsurance
14 contracts under this Act;

15 (B) to pay such administrative expenses as
16 may be necessary or appropriate to carry out
17 the purposes of this Act, but such expenses may
18 not exceed \$5,000,000 for each of fiscal years
19 2002, 2003, and 2004; and

20 (C) to repay to the Secretary of the Treas-
21 ury such sums, including interest thereon, as
22 may be borrowed from the Treasury for pur-
23 poses of this Act.

10 (D) Funds borrowed by the Secretary from
11 the Treasury.

19 (4) LOANS TO FUND.—The Secretary of the
20 Treasury shall grant loans to the Fund in the man-
21 ner and to the extent provided in this Act.

22 (d) UNDERWRITING STANDARDS.—In order to carry
23 out the responsibilities of the Secretary under this Act and
24 protect the Fund, the Secretary shall establish minimum
25 underwriting standards for participating insurers.

1 (e) MONITORING OF TERRORISM INSURANCE
2 RATES.—

3 (1) SECRETARY TO ESTABLISH SPECIAL COM-
4 MITTEE ON RATES.—The Secretary shall establish a
5 special committee on rates, the size and membership
6 of which shall be determined by the Secretary, ex-
7 cept that the committee shall, at a minimum,
8 include—

9 (A) representatives of providers of insur-
10 ance for losses due to acts of terrorism;

11 (B) representatives of purchasers of such
12 insurance;

13 (C) at least 2 representatives of NAIC;
14 and

15 (D) at least 2 independent insurance actu-
16 aries.

17 (2) DUTIES.—The special committee on rates
18 shall meet at the call of the Secretary and shall—

19 (A) review reports filed with the Secretary
20 by State insurance regulatory authorities;

21 (B) collect data on rate disclosure prac-
22 tices of participating insurers for insurance for
23 covered lines and for losses due to acts of ter-
24 rorism; and

(C) provide such advice and counsel to the
Secretary as the Secretary may require.

3 SEC. 5. FUND OPERATIONS.

4 (a) FUNDING BY PREMIUM.—

5 (1) IN GENERAL.—For the year beginning Jan-
6 uary 1, 2002, and each subsequent year of oper-
7 ation, participating insurers shall pay into the Fund
8 an annual reinsurance contract premium of not less
9 than 3 percent of their respective gross direct writ-
10 ten premiums for covered lines for the calendar year.
11 The annual premium shall be paid in installments at
12 the end of each calendar quarter. The reinsurance
13 contract premium and any annual assessment may
14 be recovered by a participating insurer from its cov-
15 ered lines policyholders as a direct surcharge cal-
16 culated as a uniform percentage of premium.

1 the Fund for credit risk associated with providing
2 reinsurance to that insurer.

3 (b) INITIAL CAPITAL.—

4 (1) LOAN.—The Fund shall have an initial cap-
5 ital of \$2,000,000,000, which the Secretary shall
6 borrow from the Treasury of the United States.
7 Upon application by the Secretary, the Secretary of
8 the Treasury shall transfer that amount to the
9 Fund, out of amounts in the Treasury not otherwise
10 appropriated, at standard market rates.

11 (2) REPAYMENT OF START-UP LOAN.—The Sec-
12 retary shall use premiums received from assessments
13 in calendar year 2002 to repay the loan provided to
14 the Fund under paragraph (1).

15 (c) SHORTFALL LOANS.—

16 (1) IN GENERAL.—If the Secretary determines
17 that the balance in the accounts of the Fund is in-
18 sufficient to cover anticipated claims, administrative
19 expenses, and maintain adequate reserves for any
20 other reason, after taking into account premiums as-
21 sessed under subsection (a) and any other amounts
22 receivable, the Secretary shall borrow from the
23 Treasury an amount sufficient to satisfy the obliga-
24 tions of the Fund and to maintain a positive balance
25 of \$2,000,000,000 in the accounts of the Fund.

1 Upon application by the Secretary, the Secretary of
2 the Treasury shall transfer to the Fund, out of
3 amounts in the Treasury not otherwise appropriated,
4 the requested amount as an interest-bearing loan.

5 (2) INTEREST RATE.—The rate of interest on
6 any loan made to the Fund under paragraph (1)
7 shall be established by the Secretary of the Treasury
8 and based on the weighted average credit rating of
9 the Fund before the loss that made the loan nec-
10 essary.

11 (3) \$50 BILLION LOAN LIMIT.—Notwith-
12 standing any other provision of this Act, the total
13 amount of loans outstanding at any time from the
14 Treasury to the Fund may not exceed the amount
15 by which \$50,000,000,000 exceeds the Fund's as-
16 sets.

17 (4) REPAYMENT OF LOANS BY ASSESSMENT.—
18 Any loan under paragraph (1) shall be repaid from
19 reserves of the Fund, assessments of participating
20 insurers, or a combination thereof. If an assessment
21 is necessary, the maximum annual assessment under
22 this subsection shall be not more than 3 percent of
23 the direct written premium for covered lines. The re-
24 insurance contract premium and any annual assess-
25 ment may be recovered by a participating insurer

1 from its covered lines policyholders as a direct sur-
2 charge calculated as a uniform percentage of pre-
3 mium.

4 **SEC. 6. COVERAGE PROVIDED.**

5 (a) **IN GENERAL.**—The Fund shall provide reinsur-
6 ance for losses resulting from acts of terrorism covered
7 by reinsurance contracts entered into between the Fund
8 and participating insurers that write covered lines of in-
9 surance within the meaning of section 14(5)(A) or that
10 have elected, under section 14(5)(C), to voluntarily include
11 another line of insurance.

12 (b) **RETENTION.**—The Fund shall reimburse particip-
13 ating insurers for losses resulting from acts of terrorism
14 on direct losses in any calendar year in excess of 10 per-
15 cent of a participating insurer's average gross direct writ-
16 ten premiums and policyholders' surplus for covered lines
17 for the most recently ended calendar year for which data
18 are available, based on each participating insurer's annual
19 statement for that calendar year as reported to NAIC.

20 (c) **REIMBURSEMENT AMOUNT.**—If a participating
21 insurer demonstrates to the satisfaction of the Secretary
22 that it has paid claims for losses resulting from acts of
23 terrorism equal to or in excess of the amount of retention
24 required by subsection (b), then the Fund shall reimburse
25 the participating insurer for—

1 (1) 90 percent of its covered losses in calendar
2 year 2002; and

3 (2) a percentage of its covered losses in cal-
4 endar years beginning after calendar year 2002
5 equal to—

11 (B) 80 percent if the insurer pays an as-
12 sessment equal to 3 percent of the insurer's av-
13 erage gross direct written premiums and policy-
14 holders' surplus for the most recently ended cal-
15 endar year; and

16 (C) 70 percent if the insurer pays an as-
17 sessment equal to 2 percent of the insurer's av-
18 erage gross direct written premiums and policy-
19 holders' surplus for the most recently ended cal-
20 endar year.

21 (d) \$50,000,000,000 LIMIT.—Except as provided in
22 subsection (e), the Fund may not reimburse participating
23 insurers for covered losses in excess of a total Fund reim-
24 bursement amount for all participating insurers of
25 \$50,000,000,000.

1 (e) LOSSES EXCEEDING \$50,000,000,000 LIMIT.—If
2 the Secretary determines that reimbursable losses in a cal-
3 endar year from an event exceed \$50,000,000,000, the
4 Secretary—

5 (1) shall pay, out of amounts in the Treasury
6 not otherwise appropriated—

7 (A) 90 percent of the covered losses occur-
8 ring in calendar year 2002 in excess, in the ag-
9 gregate, of \$50,000,000,000 but not in excess
10 of \$100,000,000; and

11 (B) 80 percent of the covered losses occur-
12 ring in calendar year 2003 or 2004 in excess,
13 in the aggregate, of \$50,000,000,000 but not in
14 excess of \$100,000,000; and

15 (2) shall notify the Congress of that determina-
16 tion and transmit to the Congress recommendations
17 for responding to the insufficiency of available
18 amounts to cover reimbursable losses.

19 (f) REPORTS TO STATE REGULATOR; CERTIFI-
20 CATION.—

21 (1) REPORTING TERRORISM COVERAGE.—A
22 participating insurer shall—

23 (A) report the amount of its terrorism in-
24 surance coverage to the insurance regulatory

1 authority for each State in which it does busi-
2 ness; and

3 (B) obtain a certification from the State
4 that it is not providing terrorism insurance cov-
5 erage in excess of its capacity under State sol-
6 vency requirements.

7 (2) REPORTS TO SECRETARY.—The State regu-
8 lator shall furnish a copy of the certification received
9 under paragraph (1) to the Secretary.

10 **SEC. 7. SECRETARY TO DETERMINE IF LOSS IS ATTRIB-
11 UTABLE TO TERRORISM.**

12 (a) INITIAL DETERMINATION.—If a participating in-
13 surer files a claim for reimbursement from the Fund, the
14 Secretary shall make an initial determination as to wheth-
15 er the losses or expected losses were caused by an act of
16 terrorism.

17 (b) NOTICE AND HEARING.—The Secretary shall give
18 public notice of the initial determination and afford all in-
19 terested parties an opportunity to be heard on the question
20 of whether the losses or expected losses were caused by
21 an act of terrorism.

22 (c) FINAL DETERMINATION.—Within 30 days after
23 the Secretary's initial determination, the Secretary shall
24 make a final determination as to whether the losses or
25 expected losses were caused by an act of terrorism.

1 (d) STANDARD OF REVIEW.—The Secretary's deter-
2 mination shall be upheld upon judicial review if based
3 upon substantial evidence.

4 **SEC. 8. MANDATORY COVERAGE BY PROPERTY AND CAS-**
5 **UALTY INSURERS FOR ACTS OF TERRORISM.**

6 (a) IN GENERAL.—An insurer that provides lines of
7 coverage described in section 14(5)(A) or 14(5)(B) may
8 not—

9 (1) exclude or limit coverage in those lines for
10 losses from acts of terrorism in the United States,
11 its territories, and possessions in property and cas-
12 ualty insurance policy forms; or

13 (2) deny or cancel coverage solely due to the
14 risk of losses from acts of terrorism in the United
15 States.

16 (b) TERMS AND CONDITIONS.—Insurance against
17 losses from acts of terrorism in the United States shall
18 be covered with the same deductibles, limits, terms, and
19 conditions as the standard provisions of the policy for non-
20 catastrophic perils.

21 **SEC. 9. PASS-THROUGHS AND OTHER RATE INCREASES.**

22 (a) LIMITATION ON RATE INCREASES FOR COVERED
23 RISKS.—Except as provided in subsection (b), a partici-
24 pating insurer that provides lines of coverage described in
25 section 14(5)(A) or 14(5)(B) may not increase annual

1 rates on covered risks during any period in which the in-
2 surer participates in the Fund by a percent in excess of
3 the sum of—

4 (1) the percent used to determine the insurer's
5 assessment under section 5(a)(1); and

10 (b) TERRORISM-RELATED INCREASES IN EXCESS OF
11 PASS-THROUGHS.—

12 (1) REPORTS BY INSURERS.—Not less than 30
13 days before the date on which a participating insurer
14 increases the premium rate for insurance on any
15 covered line of insurance described in section 14(5)
16 based, in whole or in part, on risk associated with
17 insurance against losses due to acts of terrorism, the
18 insurer shall file a report with the State insurance
19 regulatory authority for the State in which the pre-
20 mium increase is effective that—

21 (A) explains the need for the increased
22 premium; and

23 (B) identifies the portion of the increase
24 properly attributable to risk associated with in-

(C) demonstrates, by substantial evidence, why that portion of the increase is warranted.

11 (B) may include a determination with re-
12 spect to whether an insurer has met the re-
13 quirement of paragraph (1)(C); and

14 (C) may include with the report any com-
15 mentsary or analysis it deems appropriate.

16 SEC. 10. CREDIT FOR REINSURANCE.

17 Each State shall afford an insurer obtaining reinsur-
18 ance from the Fund credit for such reinsurance on the
19 same basis and to the same extent that credit for reinsur-
20 ance would be available to that insurer under applicable
21 State law when reinsurance is obtained from an assuming
22 insurer licensed or accredited in that State.

1 **SEC. 11. ADMINISTRATIVE PROVISIONS; REPORTS AND**
2 **ANALYSIS.**

3 (a) IN GENERAL.—In carrying out this Act, the Sec-
4 retary may—

5 (1) issue such rules and regulations as may be
6 necessary to administer this Act;

7 (2) enter into reinsurance contracts, adjust and
8 pay claims as provided in this Act, and carry out the
9 activities necessary to implement this Act;

10 (3) set forth the coverage provided by the Fund
11 to accomplish the purposes of this Act;

12 (4) provide for an audit of the books and
13 records of the Fund by the General Accounting Of-
14 fice;

15 (5) take appropriate action to collect premiums
16 or assessments under this Act; and

17 (6) audit the reports, claims, books, and records
18 of participating insurers.

19 (b) REPORTS FROM INSURERS.—Participating insur-
20 ers shall submit reports on a quarterly or other basis (as
21 required by the Secretary) to the Secretary, the Federal
22 Trade Commission, and the General Accounting Office
23 setting forth rates, premiums, risk analysis, coverage, re-
24 serves, claims made for reimbursement from the Fund,
25 and such additional financial and actuarial information as

1 the Secretary may require regarding lines of coverage de-
2 scribed in section 14(5)(A) or 14(5)(B).

3 (c) FTC ANALYSIS AND ENFORCEMENT.—The Fed-
4 eral Trade Commission shall review the reports submitted
5 under subsection (b), treating the information contained
6 in the reports as privileged and confidential, for the pur-
7 pose of determining whether any insurer is engaged in un-
8 fair methods of competition or unfair or deceptive acts or
9 practices in or affecting commerce (within the meaning
10 of section 5 of the Federal Trade Commission Act (15
11 U.S.C. 45)).

12 (d) GAO REVIEW.—The Comptroller General shall
13 provide for review and analysis of the reports submitted
14 under subsection (b), and, if necessary, provide of audit
15 of reimbursement claims filed by insurers with the Fund.

16 (e) REPORTS BY SECRETARY.—No later than March
17 31st of each calendar year, the Secretary shall transmit
18 to the Senate Committee on Commerce, Science, and
19 Technology and the House of Representatives Committee
20 on Commerce an annual report on insurance rate in-
21 creases for the preceding calendar year in the United
22 States based upon the reports received by the Secretary
23 under this Act. The Secretary may include in the report
24 a recommendation for legislation to impose Federal regu-
25 lation of insurance rates on covered lines of insurance if

- 1 the Secretary determines that premium rates for insur-
- 2 ance on covered lines of insurance are—
 - 3 (1) unreasonable; and
 - 4 (2) attributable to insurance for losses from
 - 5 acts of terrorism.

6 SEC. 12. INAPPLICABILITY OF CERTAIN LAWS.

7 (a) IN GENERAL.—State laws relating to insurance
8 rates, insurance policy forms, insurance rates on any cov-
9 ered lines of insurance described in section 14(5)(A) or
10 14(5)(B), insurer financial requirements, and insurer li-
11 censing do not apply to contracts entered into by the
12 Fund. The Fund is not subject to State tax and is exempt
13 from Federal income tax. The reinsurance contract pre-
14 mium paid and assessments collected by insurers shall not
15 be subject to local, State, or Federal tax. The reinsurance
16 contract premium and assessments recovered from policy-
17 holders shall not be subject to local, State, or Federal tax.

18 (b) EXCEPTION FOR UNFAIR TRADE PRACTICE
19 LAWS.—Notwithstanding subsection (a), nothing in this
20 Act supersedes or preempts a State law that prohibits un-
21 fair methods of competition in commerce, unfair or decep-
22 tive acts or practices in commerce, or unfair insurance
23 claims practices.

1 **SEC. 13. SUNSET PROVISION.**

2 (a) ASSESSMENT AND COLLECTION OF PREMIUMS.—

3 The Secretary shall continue the premium assessment and
4 collection operations of the Fund under this Act as long
5 as loans due from the Fund to the United States Treasury
6 are outstanding.

7 (b) PROVISION OF REINSURANCE.—The Secretary
8 shall suspend other operations of the Fund for new con-
9 tract years on the close of business on December 31, 2004,
10 and may suspend the offering of reinsurance contracts for
11 new contract years at any time before that date if the Sec-
12 retary determines that the reinsurance provided by the
13 Fund is no longer needed for covered lines due to market
14 conditions.

15 (c) REVIEW OF PRIVATE REINSURANCE AVAIL-
16 ABILITY.—The Secretary shall review the cost and avail-
17 ability of private reinsurance for acts of terrorism at least
18 annually and shall report the findings and any rec-
19 ommendations to Congress by June 1 of each year the
20 Fund is in operation.

21 (d) DISSOLUTION OF FUND.—

22 (1) DISTRIBUTION FOR RESERVES.—When the
23 Secretary determines that all Fund operations have
24 been terminated, the Secretary shall dissolve the
25 Fund. Any unencumbered Fund assets remaining
26 after the satisfaction of all outstanding claims, loans

1 from the Treasury, and other liabilities of the Fund
2 shall be distributed, on a pro rata basis based on
3 premiums paid, to any insurer that—

4 (A) participated in the Fund during its op-
5 eration; and

6 (B) demonstrates, to the satisfaction of the
7 Secretary, that any amount received as a dis-
8 tribution from the Fund will be permanently
9 credited to a reserve account maintained by
10 that insurer against claims for industrywide ag-
11 gregate losses of \$2,000,000,000 from—

12 (i) acts of terrorism in the United
13 States; or

14 (ii) the effects of earthquakes, vol-
15 canic eruptions, tsunamis, or hurricanes.

16 (2) RETENTION REQUIREMENT FOR TAPPING
17 RESERVE.—Amounts credited to a reserve under
18 paragraph (a) may not be used by an insurer to pay
19 claims until the insurer has paid claims for losses re-
20 sulting from acts or events described in paragraph
21 (1)(B) in excess of 10 percent of that insurer's aver-
22 age gross direct written premiums and policyholders'
23 surplus for covered lines for the most recently ended
24 calendar year for which data are available.

15 SEC. 14. DEFINITIONS.

16 In this Act:

20 (2) NAIC.—The term “NAIC” means the National
21 Association of Insurance Commissioners.

22 (3) FUND.—The term “Fund” means the Na-
23 tional Terrorism Reinsurance Fund established
24 under section 4.

7 (5) COVERED LINE.—

14 (i) Fire

15 (ii) Allied lines.

16 (iii) Commercial multiple peril.

17 (iv) Ocean marine.

18 (v) Inland marine.

19 (vi) Workers compensation.

20 (vii) Products liability.

21 (viii) Commercial auto

22 personal injury protection), other commercial
23 auto liability, or commercial auto physical
24 damage.

25 (ix) Aircraft (all peril).

1 (x) Fidelity and surety.

2 (xi) Burglary and theft.

3 (xii) Boiler and machinery.

4 (xiii) Any other line of insurance that

5 is reported by property and casualty insur-

6 ers in required financial reports on Statu-

7 tory Page 14 of the NAIC Annual State-

8 ment Blank which is voluntarily elected by

9 an participating insurer to be included in

10 its reinsurance contract with the Fund.

11 (B) OTHER LINES.—For purposes of

12 clause (xiii), the lines of business that may be

13 voluntarily selected are the following:

14 (i) Farmowners multiple peril.

15 (ii) Homeowners multiple peril.

16 (iii) Mortgage guaranty.

17 (iv) Financial guaranty.

18 (v) Private passenger automobile in-

19 surance.

20 (C) ELECTION.—The election to volun-

21 tarily include another line of insurance, if made,

22 must apply to all affiliated insurers that are

23 members of an insurer group. Any voluntary

24 election is on a one-time basis and is irrev-

25 ovable.

13 (8) TERRORISM; ACT OF TERRORISM.—

14 (A) IN GENERAL.—The terms “terrorism”
15 and “act of terrorism” mean any act, certified
16 by the Secretary in concurrence with the Sec-
17 retary of State and the Attorney General, as a
18 violent act or act dangerous to human life,
19 property or infrastructure, within the United
20 States, its territories and possessions, that is
21 committed by an individual or individuals acting
22 on behalf of foreign agents or foreign interests
23 (other than a foreign government) as part of an
24 effort to coerce or intimidate the civilian popu-
25 lation of the United States or to influence the

1 policy or affect the conduct of the United
2 States government.

3 (B) ACTS OF WAR.—No act shall be cer-
4 tified as an act of terrorism if the act is com-
5 mitted in the course of a war declared by the
6 Congress of the United States or by a foreign
7 government.

8 (C) FINALITY OF CERTIFICATION.—Any
9 certification, or determination not to certify, by
10 the Secretary under subparagraph (A) is final
11 and not subject to judicial review.

12 (9) INSURER.—

13 (A) IN GENERAL.—The term “insurer”
14 means an entity writing covered lines on a di-
15 rect basis and licensed as a property and cas-
16 ualty insurer, risk retention group, or other en-
17 tity authorized by law as a residual market
18 mechanism providing property or casualty cov-
19 erage in at least one jurisdiction of the United
20 States, its territories, or possessions.

21 (B) VOLUNTARY PARTICIPATION.—A State
22 workers’ compensation, auto, or property insur-
23 ance Fund may voluntarily participate as an in-
24 surer.

○