

107TH CONGRESS  
1ST SESSION

# S. 1744

To ensure the continued financial capacity of insurers to provide coverage  
for risks from terrorism.

---

## IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2001

Mr. MCCAIN introduced the following bill; which was read twice and referred  
to the Committee on Commerce, Science, and Transportation

---

## A BILL

To ensure the continued financial capacity of insurers to  
provide coverage for risks from terrorism.

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 AND TABLE OF CONTENTS.**

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

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Congressional findings.
- Sec. 3. Submission of premium information to Secretary of Commerce.
- Sec. 4. Individual company retention.
- Sec. 5. Federal cost-sharing for commercial insurers.
- Sec. 6. Terrorism loss repayment surcharge.
- Sec. 7. Administration of surcharges.

Sec. 8. State preemption.

Sec. 9. Consistent State guidelines for coverage for acts of terrorism.

Sec. 10. Consultation with State insurance regulators and NAIC.

Sec. 11. Limitation on punitive damages.

Sec. 12. Definitions.

Sec. 13. Regulations.

## 1 **SEC. 2. CONGRESSIONAL FINDINGS.**

2 The Congress finds that—

3 (1) the terrorist attacks on the World Trade  
4 Center and the Pentagon of September 11, 2001, re-  
5 sulted in a large number of deaths and injuries, the  
6 destruction and damage to buildings, and interrup-  
7 tion of business operations;

8 (2) the attacks have inflicted the largest losses  
9 for a man-made event ever incurred by insurers and  
10 reinsurers;

11 (3) while the insurance and reinsurance indus-  
12 tries have committed to pay the losses arising from  
13 the September 11 attacks, the resulting disruption  
14 has created widespread market uncertainties with re-  
15 gard to the risk of losses arising from possible fu-  
16 ture terrorist attacks;

17 (4) such uncertainty threatens the continued  
18 availability of United States commercial property  
19 casualty insurance for terrorism risk at meaningful  
20 coverage levels;

21 (5) the unavailability of affordable commercial  
22 property and casualty insurance for terrorist acts

1 threatens the growth and stability of the United  
2 States economy, by, among other things, impeding  
3 the ability of financial services providers to finance  
4 commercial property acquisitions and new construc-  
5 tion;

6 (6) in the past, the private insurance markets  
7 have shown a remarkable resiliency in adapting to  
8 changed circumstances, and, given time, the private  
9 markets will diversify and develop risk spreading  
10 mechanisms to increase capacity and guard against  
11 possible future losses incurred by terrorist attacks;

12 (7) it is necessary in the short-term, however,  
13 to provide Federal assistance and to create a tem-  
14 porary industry risk sharing program to ensure the  
15 continued availability of commercial property and  
16 casualty insurance and reinsurance for terrorism-re-  
17 lated risks;

18 (8) such action is necessary to limit immediate  
19 market disruptions, encourage economic stabiliza-  
20 tion, and facilitate a transition to a viable market  
21 for private terrorism risk insurance; and

22 (9) Federal involvement in the provision of  
23 commercial terrorism insurance should be short-term  
24 and should provide appropriate incentives for insur-  
25 ance companies and the commercial property insur-

1       ance industry to continue providing terrorism insur-  
 2       ance while minimizing terrorism risk and protecting  
 3       American taxpayers.

4   **SEC. 3. SUBMISSION OF PREMIUM INFORMATION TO THE**  
 5                   **SECRETARY.**

6       To the extent such information is not otherwise avail-  
 7   able to the Secretary, the Secretary may require each in-  
 8   surer to submit, to the Secretary or to the NAIC, a state-  
 9   ment specifying the aggregate premium amount of cov-  
 10  erage written by such insurer for properties and persons  
 11  in the United States under each line of commercial prop-  
 12  erty and casualty insurance sold by such insurer during  
 13  such periods as the Secretary may provide.

14   **SEC. 4. INDIVIDUAL COMPANY RETENTION.**

15       (a) IN GENERAL.—For purposes of this Act, a “trig-  
 16  gering determination” is a determination by the Secretary  
 17  that a commercial insurer’s annual insured losses for cov-  
 18  ered lines resulting from acts of terrorism occurring in cal-  
 19  endar year 2002 or 2003 exceed the greater of—

20               (1) \$10,000,000; or

21               (2) 5 percent of the commercial insurer’s gross  
 22   direct written premiums on covered lines for the pre-  
 23   ceding calendar year.

1 (b) DETERMINATIONS REGARDING EVENTS.—For  
 2 purposes of subsection (a), the Secretary shall have the  
 3 sole authority to determine whether—

4 (1) an act of terrorism occurred; and

5 (2) it occurred during calendar year 2002 or  
 6 2003.

7 **SEC. 5. FEDERAL COST-SHARING FOR COMMERCIAL INSUR-**  
 8 **ERS.**

9 (a) IN GENERAL.—The Secretary shall provide finan-  
 10 cial assistance, pursuant to a triggering determination, to  
 11 commercial insurers in accordance with this section to  
 12 cover insured losses resulting from acts of terrorism,  
 13 which shall be repaid in accordance with subsection (e).

14 (b) AMOUNT.—Subject to subsection (e), with respect  
 15 to a triggering determination, the amount of financial as-  
 16 sistance made available under this section to each com-  
 17 mercial insurer shall be equal to 80 percent of the amount  
 18 of the covered losses of the insurer as a result of the acts  
 19 of terrorism.

20 (c) AGGREGATE LIMITATION.—The aggregate  
 21 amount of financial assistance provided pursuant to this  
 22 section may not exceed \$100,000,000,000.

23 (d) LIMITATIONS.—The Secretary may establish limi-  
 24 tations to ensure that payments under this section in con-  
 25 nection with a triggering determination are made only to

1 commercial insurers that are not in default of any obliga-  
2 tion under section 6 to collect surcharges.

3 (e) REPAYMENT.—Financial assistance made avail-  
4 able under this section shall be repaid through surcharges  
5 collected by commercial insurers under section 6 and re-  
6 mitted to the Secretary. Any such amounts collected or  
7 remitted shall be deposited into the general fund of the  
8 Treasury. The aggregate amount of financial assistance  
9 repaid pursuant to this subsection may not exceed—

10 (1) \$50,000,000,000, plus market rate interest  
11 for assistance provided for acts of terrorism occur-  
12 ring in calendar year 2002; and

13 (2) \$50,000,000,000 for acts of terrorism oc-  
14 ccurring in calendar year 2003.

15 (f) EMERGENCY DESIGNATION.—Congress des-  
16 ignates the amount of new budget authority and outlays  
17 in all fiscal years resulting from this section as an emer-  
18 gency requirement pursuant to section 252(e) of the Bal-  
19 anced Budget and Emergency Deficit Control Act of 1985  
20 (2 U.S.C. 901(e)). Such amount shall be available only  
21 to the extent that a request, that includes designation of  
22 such amount as an emergency requirement as defined in  
23 such Act, is transmitted by the President to Congress.

1 **SEC. 6. TERRORISM LOSS REPAYMENT SURCHARGE.**

2 (a) IMPOSITION AND COLLECTION.—If, pursuant to  
3 a triggering determination, the Secretary Provides Federal  
4 assistance to commercial insurers under this Act, the Sec-  
5 retary shall—

6 (1) establish and impose a policyholder pre-  
7 mium surcharge, as provided under this section, on  
8 commercial insurers' covered lines of insurance writ-  
9 ten after such determination, for the purpose of re-  
10 paying financial assistance made available under sec-  
11 tion 5 in connection with such triggering determina-  
12 tion; and

13 (2) provide for commercial insurers to collect  
14 such surcharge and remit amounts collected to the  
15 Secretary.

16 (b) AMOUNT AND DURATION.—The surcharge under  
17 this section shall be established in such amount, and shall  
18 apply to covered lines of insurance written during such  
19 period, as the Secretary determines is necessary to recover  
20 the aggregate amount of financial assistance provided  
21 under section 5 subject to the limitation in section 5(e).

22 (c) LIMITATION ON SURCHARGE.—The surcharge ap-  
23 plied to any policyholder under this section—

24 (1) may not exceed 6 percent of the policy-  
25 holder's annual premium for covered lines of insur-  
26 ance; and

1           (2) shall be imposed with respect to all covered  
2       lines of insurance written during the period referred  
3       to in subsection (b).

4 **SEC. 7. ADMINISTRATION OF ASSESSMENTS AND SUR-**  
5 **CHARGES.**

6       (a) MANNER AND METHOD.—The Secretary shall  
7       provide for the manner and method of imposing, col-  
8       lecting, and remitting surcharges under section 6, includ-  
9       ing the timing and procedures of making such surcharges,  
10      notifying commercial insurers of surcharge requirements,  
11      collecting surcharges through commercial insurers, and re-  
12      funding or crediting of any excess amounts remitted.

13      (b) EFFECT OF SURCHARGES ON URBAN AND  
14      SMALLER COMMERCIAL AND RURAL AREAS AND DIF-  
15      FERENT LINES OF INSURANCE.—In determining the  
16      method and manner of imposing surcharges under section  
17      6, and the amount thereof, the Secretary shall take into  
18      consideration—

19           (1) the economic impact of any such surcharges  
20      on commercial centers of urban areas, including the  
21      effect on commercial rents and commercial insurance  
22      premiums, particularly rents and premiums charged  
23      to small businesses, and the availability of lease  
24      space and commercial insurance within urban areas;



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

6           (3) the various exposures to terrorism risk for  
7           different lines of commercial property and casualty  
8           insurance.

9           (c) **TIMING OF COVERAGES AND ASSESSMENTS.**—  
10          The Secretary may adjust the timing of coverages and as-  
11          sessments provided under this Act to provide for equiva-  
12          lent application of the provisions of this Act to commercial  
13          insurers and policies that are not based on a calendar  
14          year.

15          (d) **APPLICATION TO SELF-INSURANCE ARRANGE-**  
16          **MENTS.**—The Secretary may, in consultation with the  
17          NAIC, apply the provisions of this Act, as appropriate,  
18          to self-insurance arrangements by municipalities and other  
19          public entities, but only if such application is determined  
20          before the occurrence of a triggering event and all of the  
21          provisions of this Act are applied uniformly to such enti-  
22          ties.

23          **SEC. 8. STATE PREEMPTION.**

24          (a) **COVERED PERILS.**—A commercial insurer shall  
25          be considered to have complied with any State law that

1 requires or regulates the provision of insurance coverage  
 2 for acts of terrorism if the insurer provides coverage in  
 3 accordance with the definitions regarding acts of terrorism  
 4 under the regulations issued by the Secretary.

5 (b) FILE AND USE.—With respect only to covered  
 6 lines of insurance covering acts of terrorism, any provision  
 7 of State law that requires, as a condition precedent to the  
 8 effectiveness of rates or policies for such insurance that  
 9 is made available by an insurer licensed to transact such  
 10 business in the State, any action (including prior approval  
 11 by the State insurance regulator for such State) other  
 12 than filing of such rates and policies and related informa-  
 13 tion with such State insurance regulator is preempted to  
 14 the extent such law requires such additional actions for  
 15 such insurance coverage. This subsection shall not be con-  
 16 sidered to preempt a provision of State law solely because  
 17 the law provides that rates and policies for such insurance  
 18 coverage are, upon such filing, subject to subsequent re-  
 19 view and action, which may include actions to disapprove  
 20 or discontinue use of such rates or policies, by the State  
 21 insurance regulator.

22 **SEC. 9. CONSISTENT STATE GUIDELINES FOR COVERAGE**  
 23 **FOR ACTS OF TERRORISM.**

24 (a) SENSE OF CONGRESS REGARDING COVERED  
 25 PERILS.—It is the sense of the Congress that—

1           (1) the NAIC, in consultation with the Sec-  
2       retary, should develop appropriate definitions for  
3       acts of terrorism and appropriate standards for  
4       making determinations regarding events or occur-  
5       rences of acts of terrorism;

6           (2) each State should adopt the definitions and  
7       standards developed by the NAIC for purposes of  
8       regulating insurance coverage made available in that  
9       State;

10          (3) in consulting with the NAIC, the Secretary  
11       should advocate and promote the development of  
12       definitions and standards that are appropriate for  
13       purposes of this Act; and

14          (4) after consultation with the NAIC, the Sec-  
15       retary should adopt definitions for acts of terrorism  
16       and standards for determinations that are appro-  
17       priate for this Act.

18       (b) GUIDELINES REGARDING DISCLOSURE OF PRIC-  
19       ING AND TERMS OF COVERAGE.—

20           (1) SENSE OF CONGRESS.—It is the sense of  
21       the Congress that the States should require, by laws  
22       or regulations governing the provision of commercial  
23       property and casualty insurance that includes cov-  
24       erage for acts of terrorism, that the price of any  
25       such terrorism coverage, including the costs of any

1 terrorism related assessments or surcharges under  
2 this Act, be separately disclosed.

3 (2) ADOPTION OF NATIONAL GUIDELINES.—If  
4 the Secretary determines that the States have not  
5 enacted laws or adopted regulations adequately pro-  
6 viding for the disclosures described in paragraph (1)  
7 within a reasonable period of time after the date of  
8 the enactment of this Act, the Secretary shall, after  
9 consultation with the NAIC, adopt guidelines on a  
10 national basis requiring such disclosure in a manner  
11 that supersedes any State law regarding such disclo-  
12 sure.

13 **SEC. 10. CONSULTATION WITH STATE INSURANCE REGU-**  
14 **LATORS AND NAIC.**

15 The Secretary shall consult with the State insurance  
16 regulators and the NAIC in carrying out this Act. The  
17 Secretary may take such actions, including entering into  
18 such agreements and providing such technical and organi-  
19 zational assistance to insurers and State insurance regu-  
20 lators, as may be necessary to provide for the distribution  
21 of financial assistance under section 5 and the collection  
22 and remitting of surcharges under section 6.

23 **SEC. 11. LIMITATION ON PUNITIVE DAMAGES.**

24 (a) IN GENERAL.—In any claim brought in any court  
25 for damages arising from an act of terrorism, as deter-

1 mined by the Secretary, no punitive damages may be  
2 awarded.

3 (b) EXCEPTION.—The preceding sentence does not  
4 apply to a defendant who committed the act of terrorism  
5 or knowingly conspired to commit that act.

6 **SEC. 12. DEFINITIONS.**

7 For purposes of this Act, the following definitions  
8 shall apply:

9 (1) ACT OF TERRORISM.—

10 (A) IN GENERAL.—The term “act of ter-  
11 rorism” means any act that the Secretary de-  
12 termines meets the requirements under sub-  
13 paragraph (B), as such requirements are fur-  
14 ther defined and specified by the Secretary in  
15 consultation with the NAIC.

16 (B) REQUIREMENTS.—An act meets the  
17 requirements of this subparagraph if the act—

18 (i) is unlawful;

19 (ii) causes harm to a person, property,  
20 or entity, in the United States;

21 (iii) is committed by a group of per-  
22 sons or associations who—

23 (I) are not a government of a  
24 foreign country or the de facto gov-  
25 ernment of a foreign country; and

1 (II) are recognized by the De-  
 2 partment of State or the Secretary as  
 3 a terrorist group or have conspired  
 4 with such a group or the group's  
 5 agents or surrogates; and

6 (iv) has as its purpose to overthrow or  
 7 destabilize the government of any country  
 8 or to influence the policy or affect the con-  
 9 duct of the government of the United  
 10 States by coercion.

11 (2) COVERED LINE.—The term “covered line”  
 12 means any one or a combination of the following,  
 13 written on a direct basis, as reported by property  
 14 and casualty insurers in required financial reports  
 15 on Statutory Page 14 of the NAIC Annual State-  
 16 ment Blank:

- 17 (A) Fire.
- 18 (B) Allied lines.
- 19 (C) Commercial multiple peril.
- 20 (D) Ocean marine.
- 21 (E) Inland marine.
- 22 (F) Workers compensation.
- 23 (G) Products liability.

1 (H) Commercial auto no-fault (personal in-  
2 jury protection), other commercial auto liability,  
3 or commercial auto physical damage.

4 (I) Aircraft (all peril).

5 (J) Fidelity and surety.

6 (K) Burglary and theft.

7 (L) Boiler and machinery.

8 (3) COVERED LOSSES.—The term “covered  
9 losses” means direct incurred losses from an act of  
10 terrorism for covered lines in excess of the partici-  
11 pating insurer’s retention, defense, and cost contain-  
12 ment expenses.

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

15 (5) SECRETARY.—The term “Secretary” means  
16 the Secretary of Commerce.

17 (6) STATE.—The term “State” means the  
18 States of the United States, the District of Colum-  
19 bia, the Commonwealth of Puerto Rico, the Com-  
20 monwealth of the Northern Mariana Islands, Guam,  
21 the Virgin Islands, American Samoa, and any other  
22 territory or possession of the United States.

23 (7) STATE INSURANCE REGULATOR.—The term  
24 “State insurance regulator” means, with respect to

1       a State, the principal insurance regulatory authority  
2       of the State.

3 **SEC. 13. REGULATIONS.**

4       The Secretary shall issue any regulations necessary  
5       to carry out this Act.

○