

109TH CONGRESS
2D SESSION

S. 2509

To authorize the issuance of charters and licenses for carrying on the sale, solicitation, negotiation, and underwriting of insurance or any other insurance operations, to provide a comprehensive system for the regulation and supervision of National Insurers and National Agencies, to provide for policyholder protections in the event of an insolvency or impairment of a National Insurer, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 5, 2006

Mr. SUNUNU (for himself and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To authorize the issuance of charters and licenses for carrying on the sale, solicitation, negotiation, and underwriting of insurance or any other insurance operations, to provide a comprehensive system for the regulation and supervision of National Insurers and National Agencies, to provide for policyholder protections in the event of an insolvency or impairment of a National Insurer, and for other purposes.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “National Insurance Act of 2006”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Definitions.

TITLE I—OFFICE OF NATIONAL INSURANCE

Subtitle A—Establishment of Office of National Insurance

- Sec. 1101. Establishment.
- Sec. 1102. Commissioner of National Insurance.
- Sec. 1103. Office personnel matters.
- Sec. 1104. Division of Insurance Fraud.
- Sec. 1105. Division of Consumer Affairs.
- Sec. 1106. Insurance self-regulatory organizations.
- Sec. 1107. Office of the Ombudsman.

Subtitle B—Supervision of National Insurers and National Agencies

- Sec. 1121. Examination of National Insurers and National Agencies.
- Sec. 1122. Examination fees and other assessments.
- Sec. 1123. Disclosure of information.
- Sec. 1124. Reporting requirement.
- Sec. 1125. Relationship to State law.

Subtitle C—Enforcement of Federal Insurance Laws

- Sec. 1141. National Insurer license suspension, restriction, or revocation.
- Sec. 1142. Suspension, restriction, or revocation of Federal license of National Agencies and federally licensed insurance producers.
- Sec. 1143. Cease-and-desist proceedings.
- Sec. 1144. Affirmative action to correct conditions resulting from violations or conduct.
- Sec. 1145. Suspension, removal, and prohibition authority.
- Sec. 1146. Suspension or prohibition based on criminal activity.
- Sec. 1147. Ancillary provisions.
- Sec. 1148. Hearings and judicial review of removal, suspension, or prohibition order.
- Sec. 1149. Civil and criminal penalties.
- Sec. 1150. Public disclosures of final orders and agreements.
- Sec. 1151. Foreign investigations.
- Sec. 1152. Action or proceeding against non-United States Insurers.
- Sec. 1153. Cooperation between Commissioner and State commissioners.

Subtitle D—Insurance Fraud

- Sec. 1161. Investigation of insurance fraud.
- Sec. 1162. Penalties.

TITLE II—NATIONAL INSURANCE COMPANIES AND NATIONAL INSURANCE AGENCIES

Subtitle A—Organization, Licensing, and Operations

- Sec. 1201. Organization, operation, and regulation of National Insurance Companies and National Insurance Agencies.
- Sec. 1202. United States branches of non-United States Insurers.
- Sec. 1203. Federal licensing of National Insurers.
- Sec. 1204. Corporate governance.
- Sec. 1205. Conversion of State Insurer to National Insurer or State Insurance Agency to National Agency.
- Sec. 1206. Conversion of National Insurer to State Insurer or National Agency to State Agency.
- Sec. 1207. Powers.
- Sec. 1208. Separate accounts of National Life Insurer.
- Sec. 1209. Protected cells.
- Sec. 1210. Chartering and licensing commencement date.

Subtitle B—Financial, Product, and Market Regulation

- Sec. 1211. Transitional financial regulations.
- Sec. 1212. Other financial regulations.
- Sec. 1213. Product regulation for National Life Insurers.
- Sec. 1214. Product regulation for National Property/Casualty Insurers.
- Sec. 1215. Regulation of sales and marketing.

Subtitle C—Reinsurance

- Sec. 1221. Federal licensing of reinsurers.
- Sec. 1222. Credit for reinsurance.
- Sec. 1223. Relationship to State law.

Subtitle D—Acquisitions of Control; Mergers; Bulk Transfers; Domestication

- Sec. 1231. Acquisition of control of National Insurers and National Agencies.
- Sec. 1232. Mergers, consolidations, and acquisitions of National Insurers.
- Sec. 1233. Bulk transfers.
- Sec. 1234. Domestication of United States branch of a non-United States Insurer.
- Sec. 1235. Mergers, consolidations, and acquisitions of National Agencies.

Subtitle E—Conversions

- Sec. 1241. Definitions.
- Sec. 1242. Conversion of stock life insurer to National Life Insurer in mutual form.
- Sec. 1243. Conversion of mutual insurer to National Insurer in stock form.

Subtitle F—State Taxation

- Sec. 1251. State taxation of National Insurers.
- Sec. 1252. State taxation of National Agencies.

TITLE III—INSURANCE PRODUCERS AND OTHER INSURANCE SERVICING PERSONS

- Sec. 1301. Federal licensing of insurance producers.

- Sec. 1302. Producer database.
- Sec. 1303. Supervision and oversight of federally licensed insurance producers.
- Sec. 1304. Relationship to State law.
- Sec. 1305. Licensing commencement date.

TITLE IV—HOLDING COMPANIES

- Sec. 1401. Definitions.
- Sec. 1402. Registration.
- Sec. 1403. Standards and management of a National Insurer within an insurance holding company system.
- Sec. 1404. Relationship to State law.
- Sec. 1405. Conflict with other Federal laws.
- Sec. 1406. No delegation permitted.

TITLE V—RECEIVERSHIP

- Sec. 1501. Appointment of Office as receiver.
- Sec. 1502. Automatic stay.
- Sec. 1503. Powers and duties.
- Sec. 1504. Rulemaking.
- Sec. 1505. Judicial review.

TITLE VI—INSOLVENCY PROTECTION

- Sec. 1601. Participation in guaranty associations.
- Sec. 1602. Qualified and nonqualified State.
- Sec. 1603. Establishment of the National Insurance Guaranty Corporation.
- Sec. 1604. Benefits for policy holders of National Insurers.
- Sec. 1605. Claims covered for policyholders of National Property/Casualty Insurers.
- Sec. 1606. Powers and duties of the Corporation.
- Sec. 1607. Subrogation.
- Sec. 1608. Assessments.
- Sec. 1609. Regulation.
- Sec. 1610. State taxation.
- Sec. 1611. Examination of the Corporation; annual report.

TITLE VII—CONFORMING AMENDMENTS AND MISCELLANEOUS PROVISIONS

- Sec. 1701. Nondiscrimination.
- Sec. 1702. Application of the Federal antitrust laws to National Insurers, National Agencies, and federally licensed insurance producers.
- Sec. 1703. Application of State law and regulation to National Insurers, National Agencies, and federally licensed insurance producers.
- Sec. 1704. Federal Court jurisdiction.
- Sec. 1705. Federal Court venue.
- Sec. 1706. Judicial review.
- Sec. 1707. Amendment to Freedom of Information Act.
- Sec. 1708. Amendments to the Federal securities laws.
- Sec. 1709. Amendments to the Employee Retirement Income Security Act of 1974.
- Sec. 1710. Amendments to the Gramm-Leach-Bliley Act.
- Sec. 1711. Amendments to the Federal Deposit Insurance Act.
- Sec. 1712. Amendments to the Bank Holding Company Act of 1956.
- Sec. 1713. Amendments to title 18 (crimes and criminal procedure).

Sec. 1714. Amendments to Americans with Disabilities Act of 1990.
Sec. 1715. Amendment to Age Discrimination in Employment Act.
Sec. 1716. Amendments to the Fair Credit Reporting Act.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to—

3 (1) establish a comprehensive system of Federal
4 chartering, licensing, regulation, and supervision for
5 insurers and insurance producers that is inde-
6 pendent of the State system of insurance licensing,
7 regulation, and supervision, yet that requires feder-
8 ally chartered and licensed insurers and producers to
9 comply with certain State laws, including State tax
10 laws;

11 (2) provide for the creation of an Office of Na-
12 tional Insurance within the Department of the
13 Treasury that is funded by assessments imposed
14 upon federally chartered and licensed insurers and
15 insurance producers; and

16 (3) provide for the appointment of a Commis-
17 sioner of National Insurance, who, among other du-
18 ties, is authorized to—

19 (A) issue Federal charters and licenses to
20 insurers and insurance producers;

21 (B) exclusively regulate and supervise the
22 operations and solvency of federally chartered
23 or licensed insurers and producers on a uni-
24 form, nationwide basis, including the conduct of

1 such insurers and producers with policyholders;
2 and
3 (C) protect the interests of policyholders
4 by establishing a comprehensive scheme for the
5 receivership for federally chartered insurers
6 that requires federally chartered insurers to
7 participate in qualified State guaranty funds.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) **AFFILIATE.**—The term “affiliate” means
11 any person that controls, is controlled by, or is
12 under common control with another person.

13 (2) **AFFILIATE INSURER.**—The term “affiliate
14 insurer” means any person that controls, is con-
15 trolled by, or is under common control with, a Na-
16 tional Insurer or a National Agency.

17 (3) **BUSINESS OF INSURANCE.**—The term
18 “business of insurance” has the meaning given to
19 such term in section 1033(f) of title 18, United
20 States Code.

21 (4) **COMMISSIONER.**—The term “Commis-
22 sioner” means the Commissioner of National Insur-
23 ance.

24 (5) **CONTROL.**—The term “control”, including
25 the terms “controlling”, “controlled by”, and “under

1 common control with”, means the possession, direct
 2 or indirect, of the power to direct or cause the direc-
 3 tion of the management and policies of a business
 4 entity, whether through the ownership of voting se-
 5 curities, by contract or otherwise, unless the power
 6 is the result of an official position with or corporate
 7 office held by a person. For purposes of sections
 8 1204(c), 1231, 1243(g), and title III, control shall
 9 be presumed to exist if any person, directly or indi-
 10 rectly, owns, controls, holds with the power to vote,
 11 or holds proxies representing, 10 percent or more of
 12 the voting securities of any other person.

13 (6) CORPORATION.—The term “Corporation”
 14 means the National Insurance Guaranty Corporation
 15 that is established in section 1603.

16 (7) FEDERAL BANKING AGENCIES.—The term
 17 “Federal banking agencies” means the Office of the
 18 Comptroller of the Currency, the Board of Gov-
 19 ernors of the Federal Reserve System, the Federal
 20 Deposit Insurance Corporation, and the Office of
 21 Thrift Supervision.

22 (8) FEDERALLY LICENSED INSURANCE PRO-
 23 DUCER.—The term “federally licensed insurance
 24 producer” means a person, including a National
 25 Agency and a natural person acting on behalf of a

1 National Agency, that is an insurance producer li-
 2 censed pursuant to section 1301.

3 (9) FRAUDULENT INSURANCE ACT.—The term
 4 “fraudulent insurance act” has the meaning given to
 5 such term in section 1037A(d)(3) of title 18, United
 6 States Code.

7 (10) FUNCTIONAL REGULATOR.—The term
 8 “functional regulator” shall mean—

9 (A) in the case of a broker-dealer, invest-
 10 ment advisor or investment Company, the Secu-
 11 rities and Exchange Commission;

12 (B) in the case of a State insurer or State
 13 insurance producer, the appropriate State in-
 14 surance regulator of a State that has jurisdic-
 15 tion over such insurer or insurance producer;

16 (C) in the case of a bank holding company
 17 or financial holding company, the Federal Re-
 18 serve Board;

19 (D) in the case of a savings and loan hold-
 20 ing company, the Office of Thrift Supervision;

21 (E) in the case of a national bank, the Of-
 22 fice of the Comptroller of the Currency;

23 (F) in the case of a Federal savings bank
 24 or Federal savings association, the Office of
 25 Thrift Supervision;

1 (G) in the case of a State bank, the appro-
2 priate State banking authority for the State in
3 which the bank is chartered or the Federal De-
4 posit Insurance Corporation, in the case of a
5 State bank that is not a member of the Federal
6 Reserve System, or the Federal Reserve Board,
7 in the case of a State bank that is a member
8 of the Federal Reserve System;

9 (H) in the case of a State savings bank or
10 State savings association, the appropriate bank-
11 ing authority for the State in which the thrift
12 is chartered; and

13 (I) in the case of a commodities company,
14 the Commodities Exchange Commission.

15 (11) FUNCTIONALLY REGULATED AFFILIATE.—

16 The term “functionally regulated affiliate” shall
17 mean—

18 (A) a broker or dealer that is registered
19 under the Securities Exchange Act of 1934;

20 (B) a registered investment adviser, reg-
21 istered by or on behalf of either the Securities
22 and Exchange Commission or any State;

23 (C) an investment company that is reg-
24 istered under the Investment Company Act of
25 1940;

1 (D) a State insurer or State insurance pro-
2 ducer that is subject to supervision by a State
3 insurance regulator;

4 (E) a bank holding company or financial
5 holding company registered with or certified by
6 the Federal Reserve Board;

7 (F) a national bank subject to the super-
8 vision of the Office of the Comptroller of the
9 Currency;

10 (G) a State bank subject to the supervision
11 of a State banking regulator;

12 (H) a Federal savings bank or Federal
13 savings association subject to the supervision of
14 the Office of Thrift Supervision;

15 (I) a State savings bank or State savings
16 association subject to the supervision of a State
17 banking regulator; and

18 (J) a business entity that is subject to reg-
19 ulation by the Commodity Futures Trading
20 Commission, with respect to commodities activi-
21 ties of such entity and activities incidental to
22 such commodities activities.

23 (12) INSOLVENCY; INSOLVENT.—

24 (A) IN GENERAL.—The term “insolvency”
25 or “insolvent” means the inability of an insurer

1 to pay its obligations when they are due or
2 when assets do not exceed liabilities plus the
3 greater of—

4 (i) any capital and surplus required
5 by law for its organization; or

6 (ii) the total par or stated value of its
7 authorized and issued capital stock.

8 (B) LIABILITIES.—In this paragraph, the
9 term “liabilities” shall include reserves required
10 by statute or by rule or specific requirements
11 imposed by the Commissioner upon an insurer.

12 (13) INSURANCE OPERATIONS.—The term “in-
13 surance operations” includes but is not limited to—

14 (A) the business of insurance;

15 (B) all acts and transactions relating to
16 the sale, solicitation, negotiation, and under-
17 writing of insurance;

18 (C) all acts and transactions relating to
19 claims adjustment and settlement; and

20 (D) all acts and transactions relating to
21 the establishment of rates, rules, risk classifica-
22 tions, rating classifications, rating territories
23 and forms (including, but not limited to, en-
24 dorsements, addendums and policy language)
25 for insurance.

1 (14) INSURANCE PERSON.—The term “insur-
2 ance person” has the meaning given such term in
3 section 1037A(d)(4) of title 18.

4 (15) INSURANCE PRODUCER.—The term “in-
5 surance producer” means any person, including a
6 National Agency and a natural person acting on be-
7 half of a National Agency, that sells, solicits or ne-
8 gotiates policies of insurance, except that none of
9 the following is an insurance producer:

10 (A) A National Insurer.

11 (B) An officer, director, or employee of a
12 National Insurer or of an insurance producer,
13 provided that the officer, director, or employee
14 does not receive any commission or other com-
15 pensation on insurance policies written or sold
16 by the National Insurer or insurance producer
17 which commission or other compensation is di-
18 rectly dependent upon the amount of insurance
19 policies written or sold and—

20 (i) the officer, director, or employee’s
21 activities are executive, administrative,
22 managerial, clerical or a combination of
23 these, and are only indirectly related to the
24 sale, solicitation or negotiation of insur-
25 ance;

1 (ii) the officer, director, or employee's
2 function relates to underwriting, loss con-
3 trol, inspection or the processing, adjust-
4 ing, investigating, or settling of a claim on
5 a policy of insurance; or

6 (iii) the officer, director, or employee
7 is acting in the capacity of a special agent
8 or agency supervisor assisting insurance
9 producers where the person's activities are
10 limited to providing technical advice and
11 assistance to federally licensed insurance
12 producers and do not include the sale, so-
13 licitation or negotiation of insurance.

14 (C) A person who secures and furnishes in-
15 formation for the purpose of group insurance
16 policies; or for the purpose of enrolling individ-
17 uals under plans, or issuing certificates under
18 plans or otherwise assisting in administering
19 plans, where no commission or other compensa-
20 tion directly dependent upon the amount of in-
21 surance policies written or sold is paid to the
22 person for the service.

23 (D) An employer or association or its offi-
24 cers, directors, employees, or the trustees of an
25 employee trust plan, to the extent that the em-

1 employer, officer, employee, director or trustee is
2 engaged in the administration or operation of a
3 program of employee benefits for the employer's
4 or association's own employees or the employees
5 of its subsidiaries or affiliates, which program
6 involves the use of insurance written by the Na-
7 tional Insurer, as long as the employers, asso-
8 ciations, officers, directors, employees or trust-
9 ees are not in any manner compensated, di-
10 rectly or indirectly, by the National Insurer.

11 (E) An employee of a National Insurer or
12 an organization employed by a National Insurer
13 that is engaging in the inspection, rating or
14 classification of risks, or in the supervision of
15 the training of insurance producers and that is
16 not individually engaged in the sale, solicitation,
17 or negotiation of insurance.

18 (F) A person whose activities are limited
19 to advertising without the intent to solicit in-
20 surance through communications in printed
21 publications or other forms of electronic mass
22 media, provided that the person does not sell,
23 solicit, or negotiate insurance.

24 (G) A salaried full-time employee who
25 counsels or advises his or her employer relative

1 to the insurance interests of the employer or of
2 the subsidiaries or business affiliates of the em-
3 ployer provided that the employee does not sell
4 or solicit insurance or receive a commission or
5 other compensation directly dependent upon the
6 amount of insurance policies written or sold.

7 (H) A person that sells, solicits, or nego-
8 tiates a funding agreement.

9 (I) Any other kind of person identified by
10 the Commissioner, by regulation, as not being
11 an insurance producer within the meaning of
12 this definition.

13 (16) INSURANCE SECURITIZATION.—The term
14 “insurance securitization” means the issuance of
15 debt instruments by a National Insurer, the pro-
16 ceeds from which support the exposures attributed
17 to a protected cell, where repayment of principal or
18 interest, or both, to investors under the transaction
19 terms is contingent upon the occurrence or non-
20 occurrence of an event with respect to which the Na-
21 tional Insurer is exposed to loss under insurance
22 policies or reinsurance contracts it has written.

23 (17) INSURER-AFFILIATED PARTY.—The term
24 “insurer-affiliated party” means—

1 (A) any director, officer, employee, or con-
2 trolling shareholder (other than a holding com-
3 pany) of, or agent for, a National Insurer or a
4 National Agency;

5 (B) any other person who has filed or is
6 required to file a statement with the Commis-
7 sioner under section 1231;

8 (C) any shareholder (other than a holding
9 company), consultant, joint venture partner,
10 and any other person as determined by the
11 Commissioner (by regulation or case-by-case)
12 who participates in the conduct of the affairs of
13 a National Insurer or a National Agency; and

14 (D) any independent contractor (including
15 any attorney, actuary, or accountant) of a Na-
16 tional Insurer or a National Agency who in that
17 capacity knowingly or recklessly participates in
18 any violation of any law or regulation, any
19 breach of fiduciary duty, or any conduct that
20 involves an undue risk of loss to a National In-
21 surer's policyholders as a whole, and which vio-
22 lation, breach or conduct caused or is likely to
23 cause more than a minimal financial loss to, or
24 a significant adverse effect on, a National In-
25 surer or the policyholders of a National Insurer.

1 (18) INSURER IN FRATERNAL FORM.—The
 2 term “insurer in fraternal form” means an incor-
 3 porated society, order or supreme lodge, without
 4 capital stock (generally known as a fraternal benefit
 5 society), that—

6 (A) is conducted solely for the benefit of
 7 its members and their beneficiaries and not for
 8 profit;

9 (B) is operated on a lodge system with rit-
 10 ualistic form of work;

11 (C) has a representative form of govern-
 12 ment;

13 (D) provides benefits to members and their
 14 dependents; and

15 (E) operates for 1 or more social, intellec-
 16 tual, educational, charitable, benevolent, moral,
 17 fraternal, patriotic, or religious purposes for the
 18 benefit of its members, which may also be ex-
 19 tended to others.

20 (19) NAIC.—The term “NAIC” means the Na-
 21 tional Association of Insurance Commissioners.

22 (20) NATIONAL AGENCY.—The term “National
 23 Agency” means a National Insurance Agency char-
 24 tered under section 1201.

1 (21) NATIONAL INSURER.—The term “National
2 Insurer” means a National Insurance Company
3 chartered under section 1201.

4 (22) NATIONAL LIFE INSURER.—The term
5 “National Life Insurer” means a National Insurer
6 that holds a Federal license to sell, solicit, negotiate,
7 and underwrite 1 or both of life insurance and annu-
8 ities, provided that a National Life Insurer may also
9 sell, solicit, negotiate, and underwrite disability in-
10 come insurance, long-term care insurance, health in-
11 surance, and funding agreements.

12 (23) NATIONAL PROPERTY/CASUALTY IN-
13 SURER.—The term “National Property/Casualty In-
14 surer” means a National Insurer that holds a Fed-
15 eral license to sell, solicit, negotiate, and underwrite
16 any combination of lines of property/casualty insur-
17 ance, provided that a National Property/Casualty In-
18 surer may also sell, solicit, negotiate, and underwrite
19 health insurance.

20 (24) NEGOTIATE.—The term “negotiate”, in
21 the context of negotiating insurance, means the act
22 of conferring directly with or offering advice directly
23 to a purchaser or prospective purchaser of a par-
24 ticular policy of insurance concerning any of the
25 substantive benefits, terms, or conditions of the con-

1 tract, provided that the person engaged in that act
2 either sells insurance to or obtains insurance cov-
3 erage for purchasers.

4 (25) NON-UNITED STATES INSURER.—The term
5 “non-United States Insurer” means a business enti-
6 ty that is chartered or licensed by a foreign country
7 to sell, solicit, negotiate, and underwrite insurance.

8 (26) OFFICE.—The term “Office” means the
9 Office of National Insurance.

10 (27) PERSON.—The term “person” means any
11 natural person, business entity, governmental body
12 or entity, voluntary organization, or similar organi-
13 zation.

14 (28) POLICY OF INSURANCE; INSURANCE POL-
15 ICY.—The term “policy of insurance” or “insurance
16 policy” means a policy, contract, certificate, or other
17 evidence of insurance. “Policy of insurance” includes
18 an annuity contract and a funding agreement.

19 (29) POLICYHOLDER.—The term “policyholder”
20 of an insurance policy means the person who is iden-
21 tified as the legal owner under the terms of the in-
22 surance policy or who is otherwise vested with legal
23 title to the insurance policy. An assignment, absolute
24 on its face, completed in accordance with the terms
25 of the insurance policy and properly recording the

1 assignee as the policyholder on the books of the in-
 2 surer vests legal title in the name of the assignee.
 3 The term “policyholder” does not include a person
 4 with a mere beneficial interest in an insurance policy
 5 or a person to whom an insurance policy is assigned
 6 for collateral security purposes.

7 (30) PROPERTY/CASUALTY INSURANCE.—The
 8 term “property/casualty insurance”—

9 (A) means a product that insures, guaran-
 10 tees, or indemnifies against liability, loss of life,
 11 loss of health, or loss through damage to or de-
 12 struction of property, including surety bonds,
 13 private passenger or commercial automobile,
 14 homeowners, mortgage guaranty, financial
 15 guaranty, commercial multiperil, general liabil-
 16 ity, professional liability, workers’ compensa-
 17 tion, fire and allied lines, farm or ranch owners
 18 multiperil, aircraft, fidelity, surety, medical
 19 malpractice, ocean marine, inland marine, and
 20 boiler and machinery insurance; and

21 (B) does not include life insurance, dis-
 22 ability income insurance, long-term care insur-
 23 ance, health insurance, annuities, a funding
 24 agreement, or title insurance.

1 (31) PROTECTED CELL.—The term “protected
2 cell” means an identified pool of assets and liabil-
3 ities of a National Insurer segregated and insulated
4 from the remainder of the National Insurer’s assets
5 and liabilities. The remainder of the National Insur-
6 er’s assets and liabilities includes general account
7 assets and liabilities, separate account assets and li-
8 abilities, and assets and liabilities of other protected
9 cells.

10 (32) PROTECTED CELL ACCOUNT.—The term
11 “protected cell account” means a specifically identi-
12 fied bank or custodial account established by a Na-
13 tional Insurer for the purpose of segregating the
14 protected cell assets of 1 protected cell from the pro-
15 tected cell assets of other protected cells and from
16 the assets of the National Insurer’s general account
17 and separate accounts.

18 (33) SELL.—The term “sell”, in the context of
19 selling a policy of insurance, includes exchanging a
20 policy of insurance by any means, for money or any
21 other valuable consideration, on behalf of an insurer.

22 (34) SEPARATE ACCOUNT.—The term “separate
23 account” means an account established and main-
24 tained by a National Life Insurer under which in-
25 come, gains, and losses, whether or not realized,

1 from assets allocated to such account, are, in accord-
2 ance with the applicable contract, credited to or
3 charged against such account without regard to
4 other income, gains, or losses of the National Life
5 Insurer.

6 (35) SOLICIT.—The term “solicit”, in the con-
7 text of soliciting a policy of insurance, means at-
8 tempting to sell insurance or asking or urging a per-
9 son to apply for a particular kind of insurance from
10 a particular insurer.

11 (36) STATE.—The term “State” means each of
12 the 50 States, the District of Columbia, the Com-
13 monwealth of Puerto Rico, any territory of the
14 United States, Guam, American Samoa, the Trust
15 Territory of the Pacific Islands, the United States
16 Virgin Islands, and the Commonwealth of the North-
17 ern Mariana Islands.

18 (37) STATE INSURANCE AGENCY.—The term
19 “State insurance agency” means an insurance pro-
20 ducer that is incorporated under State law.

21 (38) STATE INSURER.—The term “State in-
22 surer” means an insurer incorporated or organized
23 under the laws of a State.

24 (39) SUBSIDIARY.—The term “subsidiary”
25 means a business entity controlled, directly or indi-

1 rectly, by another business entity. For the purposes
2 of this definition—

3 (A) a business entity is conclusively pre-
4 sumed to be controlled by a person that, di-
5 rectly or indirectly, with power to vote, owns,
6 controls, or holds a majority of the outstanding
7 voting securities of such business entity;

8 (B) no presumption, either of control or of
9 absence of control, arises if such ownership,
10 control, or holding of voting securities is less
11 than a majority but more than 5 percent;

12 (C) absence of control is presumed if such
13 ownership, control or holding of voting securi-
14 ties is 5 percent or less; and

15 (D) in determining control, voting securi-
16 ties held in separate accounts of a business en-
17 tity shall be deemed to be owned by the busi-
18 ness entity, but voting securities in an invest-
19 ment advisory account that are not owned by a
20 business entity but are held in an account as to
21 which the business entity is an investment ad-
22 viser shall not be deemed to be controlled or
23 held by such business entity.

24 (40) TRUSTEED ASSETS.—The term “trusteed
25 assets” means assets required or permitted by this

1 title to be deposited by a non-United States insurer
2 with a qualified trustee for the security of its policy-
3 holders and creditors in the United States.

4 (41) TRUSTEED SURPLUS.—The term “trusteed
5 surplus” means, with respect to a United States
6 branch, the value of the insurer’s trustee assets de-
7 posited with a trustee under section 1202(b), plus
8 accrued investment income thereon where such in-
9 come is collectible by the trustee, less the aggregate
10 net amount of all of its reserves and other liabilities
11 in the United States as determined under section
12 1202(b).

13 (42) UNITED STATES BRANCH.—The term
14 “United States branch” means the business unit
15 through which business is transacted within the
16 United States by a non-United States insurer and
17 the assets and liabilities of the insurer within the
18 United States pertaining to such business.

19 (43) UNITED STATES HOLDING COMPANY.—
20 The term “United States holding company” means,
21 with respect to a National Insurer, a person orga-
22 nized or incorporated in a State that directly or indi-
23 rectly controls a National Insurer.

24 (44) VIOLATION.—The term “violation” in-
25 cludes any action or inaction (alone or with another

1 or others) for or toward causing, bringing about,
 2 participating in, counseling, or aiding or abetting a
 3 violation.

4 (45) VOTING SECURITIES.—The term “voting
 5 securities” means securities of any class or any own-
 6 ership interest having voting power for the election
 7 of directors, trustees, or management of a business
 8 entity, other than securities having such power only
 9 by reason of the happening of a contingency.

10 **TITLE I—OFFICE OF NATIONAL**
 11 **INSURANCE**
 12 **Subtitle A—Establishment of Office**
 13 **of National Insurance**

14 **SEC. 1101. ESTABLISHMENT.**

15 (a) IN GENERAL.—There is established, in the De-
 16 partment of the Treasury, the Office of National Insur-
 17 ance, which shall be headed by the Commissioner of Na-
 18 tional Insurance.

19 (b) OFFICES.—The Commissioner shall establish a
 20 main office in Washington, D.C., not fewer than 6 regional
 21 offices, and such additional offices, within or outside the
 22 United States, as the Commissioner determines to be nec-
 23 essary to carry out the provisions of this Act.

24 (c) FUNDING.—The operations of the Office, includ-
 25 ing the compensation of the Commissioner and all employ-

ees of the Office, shall be paid from fees and assessments imposed under the terms of section 1122.

(d) **APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.**—The Office shall be an agency of the United States for purposes of subchapter II of chapter 5 and chapter 6 of title 5, United States Code.

(e) **ANNUAL REPORT.**—The Commissioner shall prepare and submit to Congress an annual report on the activities of the Office.

SEC. 1102. COMMISSIONER OF NATIONAL INSURANCE.

(a) **APPOINTMENT.**—

(1) **IN GENERAL.**—The Commissioner of National Insurance shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(2) **TERM.**—The Commissioner shall be appointed for a term of 5 years.

(3) **VACANCY.**—A vacancy in the position of the Commissioner, which occurs before the expiration of the term for which the Commissioner was appointed shall be filled in the manner established under paragraph (1). The Commissioner appointed to fill the vacancy shall be appointed only for the remainder of the term of the preceding Commissioner.

1 (4) SERVICE AFTER TERM.—An individual may
2 serve as the Commissioner after the expiration of
3 the term for which appointed until the earlier of—

4 (A) such time as a successor has been ap-
5 pointed; or

6 (B) 1 year after the expiration of the indi-
7 vidual's term.

8 (5) PROHIBITION ON FINANCIAL INTERESTS.—

9 The Commissioner may not have a direct or indirect
10 financial interest in any National Insurer, National
11 Agency, or other federally licensed insurance pro-
12 ducer, except that the Commissioner may own, di-
13 rectly or indirectly, or may have a direct or indirect
14 beneficial interest in any insurance policy written or
15 sold by a National Insurer or National Agency.

16 (6) OVERSIGHT.—The Commissioner shall be
17 subject to the general oversight of the Secretary of
18 the Treasury, who may not intervene in any matter
19 or proceeding before the Commissioner unless other-
20 wise specifically provided by law.

21 (7) EXECUTIVE SCHEDULE.—

22 (A) IN GENERAL.—The Commissioner
23 shall receive compensation at the rate pre-
24 scribed by law under section 5314 of title 5,

1 United States Code, for positions at level III of
 2 the Executive Schedule.

3 (B) TECHNICAL AMENDMENT.—Section
 4 5314 of title 5, United States Code, is amended
 5 by inserting “Commissioner of National Insur-
 6 ance, Department of the Treasury.” as a new
 7 item after “Administrator, Pipeline and Haz-
 8 ardous Materials Safety Administration.”.

9 (b) POWERS OF THE COMMISSIONER.—

10 (1) IN GENERAL.—

11 (A) POWERS.—The Commissioner shall—

12 (i) oversee the organization, incorpo-
 13 ration, operation, regulation, and super-
 14 vision of National Insurers and National
 15 Agencies;

16 (ii) issue charters and licenses for Na-
 17 tional Insurers and National Agencies;

18 (iii) license, regulate, and supervise
 19 federally licensed insurance producers
 20 other than National Agencies; and

21 (iv) have exclusive authority to deter-
 22 mine whether a person subject to this Act
 23 has complied with the Act or the applica-
 24 tion of any State law to matters regulated

1 under this Act, including the determination
2 of any complaint raised by any person.

3 (B) FINAL AGENCY ACTION.—A deter-
4 mination of the Commissioner under subpara-
5 graph (A)(iv) shall be the final agency action
6 for purposes of judicial review of that action.

7 (2) RULEMAKING.—

8 (A) ISSUANCE OF REGULATIONS AND
9 OTHER ACTIONS.—The Commissioner may issue
10 such rules, regulations, orders, and interpreta-
11 tions as the Commissioner determines to be
12 necessary to carry out the purposes of this Act.

13 (B) AUTONOMY.—The Secretary of the
14 Treasury may not delay or prevent the issuance
15 of any rule, regulation, order, or interpretation
16 by the Commissioner unless otherwise specifi-
17 cally authorized by law.

18 (C) NO DELEGATION PERMITTED.—The
19 Commissioner may not delegate any authority
20 conferred under subparagraph (A) to any insur-
21 ance self-regulatory organization.

22 (3) LITIGATION AUTHORITY.—

23 (A) IN GENERAL.—The Commissioner may
24 sue and be sued, complain and defend, and oth-
25 erwise litigate, in the Commissioner's name and

1 through the Commissioner's own attorney, in
2 any Federal or State court, other than the Su-
3 preme Court of the United States in which the
4 Commissioner shall be represented by the Solie-
5 itor General of the United States.

6 (B) ENFORCEMENT.—The Commissioner
7 may apply to the United States district court
8 for the jurisdiction in which the main office of
9 a National Insurer or National Agency is lo-
10 cated, or in which any other federally licensed
11 insurance producer or other person is located,
12 for the enforcement of any effective and out-
13 standing rule, regulation, order, or interpreta-
14 tion issued pursuant to this Act.

15 (4) CONSULTATION WITH STATE INSURANCE
16 REGULATORS.—The Commissioner may, as appro-
17 priate, consult with State insurance regulators re-
18 sponsible for the supervision of States insurers,
19 State insurance agencies, and State licensed insur-
20 ance producers regarding regulatory and supervisory
21 matters of common interest.

22 (5) INTERNATIONAL COORDINATION AND CO-
23 OPERATION.—

24 (A) IN GENERAL.—The Commissioner may
25 engage in international efforts to secure bilat-

1 eral and multilateral cooperation and agree-
2 ments, as appropriate, with respect to insurance
3 regulation in global markets in order to pro-
4 mote open and fair competition in such markets
5 and to improve the quality and uniformity of in-
6 surance regulation in all countries.

7 (B) FOREIGN INSURANCE REGULATORS.—

8 The Commissioner may provide appropriate
9 technical assistance to, and cooperation with,
10 individual foreign insurance regulators and re-
11 gional and global regulatory organizations in in-
12 surance matters affecting international com-
13 merce, including—

14 (i) the development and implementa-
15 tion of international regulatory standards;
16 and

17 (ii) the development and implementa-
18 tion of bilateral and multilateral mutual
19 recognition agreements on the licensing of
20 insurance companies and insurance pro-
21 ducers.

22 (C) CONSULTATION AND COOPERATION.—

23 In exercising the authority granted under sub-
24 paragraphs (A) and (B), the Commissioner—

1 (i) shall consult and cooperate with
2 the Executive Office of the President and
3 the United States Trade Representative;
4 and

5 (ii) may include a representative of
6 any interested State insurance regulators
7 as the Commissioner determines to be ap-
8 propriate.

9 (6) INDEPENDENCE IN CONGRESSIONAL TESTI-
10 MONY AND RECOMMENDATIONS.—Section 111 of
11 Public Law 93–495 (12 U.S.C. 250) is amended by
12 inserting “the Commissioner of the National Insur-
13 ance,” after “the Director of the Office of Thrift Su-
14 pervision,”.

15 (c) GAO AUDIT.—The Commissioner shall make
16 available to the Comptroller General of the United States
17 all books and records necessary to audit all of the activities
18 of the Office.

19 **SEC. 1103. OFFICE PERSONNEL MATTERS.**

20 (a) IN GENERAL.—The Commissioner may employ
21 such examiners, lawyers, accountants, actuaries and other
22 employees as are necessary to carry out the provisions of
23 this Act.

24 (b) COMPENSATION.—The Commissioner shall fix the
25 compensation and number of employees of the Office with-

1 out regard to chapter 51 or subchapter III of chapter 53
2 of title 5, United States Code.

3 (c) ADDITIONAL COMPENSATION.—The Commis-
4 sioner may provide additional compensation and benefits
5 to employees of the Office if the same type of compensa-
6 tion or benefits are then being provided by any Federal
7 banking agency or, if not then being provided, could be
8 provided by any such agency under applicable provisions
9 of law or regulation. In setting and adjusting the total
10 amount of compensation and benefits for employees of the
11 Office, the Commissioner shall consult, and seek to main-
12 tain comparability with, the Federal banking agencies.

13 (d) ACTING COMMISSIONER.—The Commissioner
14 shall designate an employee of the Office to serve as the
15 Acting Commissioner during the absence or disability of
16 the Commissioner.

17 (e) DELEGATION OF POWERS.—

18 (1) EMPLOYEES AND OTHERS.—Unless other-
19 wise prohibited by this Act, the Commissioner may
20 delegate to any employee, representative, or agent
21 any power of the Commissioner.

22 (2) SELF-REGULATORY ORGANIZATIONS.—Un-
23 less otherwise prohibited by this Act, the Commis-
24 sioner may, by regulation, delegate to any insurance
25 self-regulatory organization any power of the Com-

1 missioner in accordance with the terms of section
2 1106.

3 **SEC. 1104. DIVISION OF INSURANCE FRAUD.**

4 (a) ESTABLISHMENT.—There is established, within
5 the Office, a Division of Insurance Fraud.

6 (b) AUTHORITY.—The Division of Insurance Fraud
7 shall have all powers necessary to enforce the terms of
8 subtitle D, other than the power to execute search and
9 arrest warrants.

10 **SEC. 1105. DIVISION OF CONSUMER AFFAIRS.**

11 (a) ESTABLISHMENT.—There is established, within
12 the Office, a Division of Consumer Affairs.

13 (b) AUTHORITY.—The Division of Consumer Affairs
14 shall support the Commissioner in the implementation and
15 enforcement of the market conduct regulations issued pur-
16 suant to section 1215.

17 **SEC. 1106. INSURANCE SELF-REGULATORY ORGANIZA-**
18 **TIONS.**

19 (a) AUTHORITY OF THE COMMISSIONER.—Subject to
20 the terms of this section, and the regulations issued pursu-
21 ant to this section, the Commissioner shall have the au-
22 thority to—

23 (1) provide for the registration of an insurance
24 self-regulatory organization; and

(2) supervise and regulate any registered insurance self-regulatory organization, which shall include the authority to—

(A) review, approve, abrogate, modify, or add to the operating rules of an insurance self-regulatory organization;

(B) review, approve, abrogate, or modify any disciplinary action taken by an insurance self-regulatory organization;

(C) remove, suspend, or bar an individual from serving as an officer or director of an insurance self-regulatory organization;

(D) remove or suspend a member of an insurance self-regulatory organization; and

(E) suspend or revoke the registration of an insurance self-regulatory organization.

(b) **AUTHORITY OF REGISTERED INSURANCE SELF-REGULATORY ORGANIZATIONS.**—An insurance self-regulatory organization that is registered by the Commissioner shall have the authority to—

(1) carry out the purpose of this Act; and

(2) enforce compliance by its members with the provisions of this Act, applicable regulations issued by the Commissioner, and the rules of the organization.

1 (c) MEMBERSHIP.—An insurance self-regulatory or-
2 ganization may be formed by, and consist exclusively of—

3 (1) National Insurers;

4 (2) National Agencies;

5 (3) federally licensed insurance producers; or

6 (4) any combination of National Insurers, Na-
7 tional Agencies and federally licensed insurance pro-
8 ducers.

9 (d) REGULATIONS.—Not later than 2 years after the
10 date of enactment of this Act, the Commissioner shall
11 issue regulations governing the registration and operations
12 of insurance self-regulatory organizations. Such regula-
13 tions shall establish—

14 (1) the procedures insurance self-regulatory or-
15 ganizations must follow to be registered by the Com-
16 missioner, which shall provide for public notice and
17 an opportunity for public comment on the proposed
18 registration;

19 (2) the standards that the Commissioner shall
20 apply in reviewing a proposed registration, which
21 shall require an insurance self-regulatory organiza-
22 tion to demonstrate that—

23 (A) it has the capacity to—

24 (i) carry out the purpose of this Act;

25 and

1 (ii) enforce compliance by its members
2 with the provisions of this Act, applicable
3 regulations, and the rules of the organiza-
4 tion; and

5 (B) its operating rules—

6 (i) assure a fair representation of its
7 members in the selection of its directors
8 and the administration of its affairs;

9 (ii) provide for the equitable allocation
10 of fees, dues, and other charges among its
11 members;

12 (iii) provide for the organization to
13 take appropriate disciplinary actions
14 against members, including the revocation
15 of membership status, for violations of this
16 Act, the regulations issued pursuant to this
17 Act, or the operating rules of the organiza-
18 tion; and

19 (iv) include procedures for members
20 that are subject to disciplinary actions to
21 obtain review of such actions by the Com-
22 missioner;

23 (3) the procedures and standards the Commis-
24 sioner shall follow in reviewing, approving, abro-
25 gating, or modifying any new operating rule or any

1 amendment to an existing operating rule that is pro-
2 posed by an insurance self-regulatory organization,
3 which shall include procedures for public notice and
4 comment on such rule or amendment;

5 (4) the procedures and standards the Commis-
6 sioner shall follow in abrogating, modifying, or add-
7 ing to the operating rules of an insurance self-regu-
8 latory organization;

9 (5) the procedures and standards the Commis-
10 sioner shall follow in reviewing, approving, abro-
11 gating, or modifying any disciplinary action by an
12 insurance self-regulatory organization;

13 (6) the procedures and standards the Commis-
14 sioner shall follow in removing, suspending, or bar-
15 ing any individual from serving as an officer, or di-
16 rector of an insurance self-regulatory organization;

17 (7) the procedures and standards the Commis-
18 sioner shall follow in suspending or revoking the reg-
19 istration of an insurance self-regulatory organiza-
20 tion; and

21 (8) such other matters as the Commissioner de-
22 termines appropriate to ensure and protect the pub-
23 lic interest and the interests of policyholders.

1 **SEC. 1107. OFFICE OF THE OMBUDSMAN.**

2 (a) ESTABLISHMENT OF THE OFFICE OF THE OM-
3 BUDSMAN.—There is established within the Office, an Of-
4 fice of the Ombudsman. The Commissioner shall appoint
5 an Ombudsman to administer the Office of the Ombuds-
6 man. The Ombudsman shall report directly to the Com-
7 missioner.

8 (b) DUTIES OF THE OMBUDSMAN.—The Ombudsman
9 shall act as a liaison between the Office and any person
10 adversely affected by the Office’s supervisory or regulatory
11 activities, including the failure of the Office to take a re-
12 quested action. The Ombudsman shall assure that safe-
13 guards exist to encourage complainants to come forward
14 and preserve confidentiality.

15 (c) POWERS OF THE OMBUDSMAN.—The powers of
16 the Ombudsman are the following:

17 (1) with the prior consent of the Commissioner,
18 the Ombudsman may stay any appealable decision or
19 action during the resolution of an appealable matter;
20 and

21 (2) review and report any weakness in policy or
22 procedures to the Commissioner, and make rec-
23 ommendations regarding changes in such policies or
24 procedures.

25 (d) APPEALABLE MATTERS.—Any party adversely af-
26 fected by an Office decision or action may seek Ombuds-

1 man review of such decision or action, except for the fol-
 2 lowing:

3 (1) Appointments of receiver or conservators.

4 (2) Preliminary examination conclusions com-
 5 municated to the regulated entity before a final ex-
 6 amination report is issued.

7 (3) Any formal enforcement-related action or
 8 decision, including the issuance of a formal super-
 9 visory agreement, a cease-and-desist order, a civil
 10 money penalty, or to take prompt corrective action,
 11 issue a safety and soundness order, or commence a
 12 formal investigation.

13 (4) Formal and informal rulemakings pursuant
 14 to subchapter II of chapter 5 of title 5, United
 15 States Code.

16 (5) Decisions or recommended decisions fol-
 17 lowing formal adjudications conducted pursuant to
 18 subchapter II of chapter 5 of title 5, United States
 19 Code.

20 (6) Requests for agency records pursuant to
 21 section 552 of title 5, United States Code (com-
 22 monly referred to as the Freedom of Information
 23 Act).

24 (e) PROCEDURES FOR FILING AN APPEAL TO THE
 25 OMBUDSMAN.—An aggrieved party may seek review of an

1 appealable matter by filing a written appeal with the Of-
2 fice of the Ombudsman. In the case of a National Insurer
3 or National Agency, the appeal shall be signed by the
4 President or Chief Executive Officer of the Insurer or
5 Agency. The appeal shall set forth all of the reasons for
6 the appeal and supporting documentation. The Ombuds-
7 man may arrange for a meeting of Office personnel and
8 the complainants to discuss the appeal.

9 (f) EFFECT OF FILING AN APPEAL.—Unless the Om-
10 budsman determines otherwise, and obtains the concur-
11 rence of the Commissioner, material supervisory decisions
12 and actions are not stayed pending an appeal.

13 (g) DECISION OF THE OMBUDSMAN.—After a thor-
14 ough investigation of the matter, and after considering all
15 relevant information provided by the complainant and the
16 Office, the Ombudsman shall issue a written determina-
17 tion of the appeal. Such determination shall become the
18 final decision of the Office, unless reversed, modified, or
19 stayed by the Commissioner.

20 (h) RETALIATION PROHIBITED.—The Office and its
21 staff may not take any adverse action against a complain-
22 ant for appealing any decision or action to the Ombuds-
23 man. Upon learning of any possible retaliatory actions, the
24 Ombudsman shall investigate the matter, and if the Om-
25 budsman determines that reasonable grounds exist to con-

1 clude that retaliation has taken place, shall refer the mat-
 2 ter to the Commissioner.

3 **Subtitle B—Supervision of Na-**
 4 **tional Insurers and National**
 5 **Agencies**

6 **SEC. 1121. EXAMINATION OF NATIONAL INSURERS AND NA-**
 7 **TIONAL AGENCIES.**

8 (a) IN GENERAL.—

9 (1) EXAMINATION.—The Commissioner shall
 10 provide for examinations of National Insurers and
 11 National Agencies.

12 (2) REGULAR AND SPECIAL EXAMINATIONS OF
 13 NATIONAL INSURERS.—Not less than once during
 14 each 36-month period, the Commissioner shall con-
 15 duct an on-site examination of each National In-
 16 surer, and may conduct a special examination of a
 17 National Insurer whenever the Commissioner deter-
 18 mines that a special examination is necessary.

19 (3) EXAMINATION OF NATIONAL AGENCIES.—
 20 The Commissioner may examine a National Agency
 21 only in response to a complaint or any other evi-
 22 dence that the National Agency has violated or is
 23 about to violate—

24 (A) a law, rule, or regulation;

1 (B) any condition imposed in writing by
2 the Commissioner in connection with issuing a
3 license for a federally licensed insurance pro-
4 ducer; or

5 (C) any written agreement entered into
6 with the Commissioner.

7 (4) AFFILIATES.—

8 (A) IN GENERAL.—In making examina-
9 tions of National Insurers or National Agencies,
10 the Commissioner may, to the extent necessary
11 to discover information concerning activities of
12 an affiliate that may have a materially adverse
13 effect on the operations, management, or finan-
14 cial condition of the National Insurer or Na-
15 tional Agency—

16 (i) require an affiliate to make such
17 reports and provide such material as the
18 Commissioner may direct; and

19 (ii) conduct an examination of the af-
20 fairs of an affiliate, if—

21 (I) the Commissioner has reason-
22 able cause to believe that the activities
23 of the affiliate may have such an ef-
24 fect;

1 (II) the examination is limited to
2 the extent necessary to disclose infor-
3 mation related to such effect; and

4 (III) the Commissioner is unable
5 to obtain the necessary information
6 from the National Insurer or National
7 Agency.

8 (B) ACCEPTANCE OF AVAILABLE INFORMA-
9 TION.—To the extent that the Commissioner re-
10 quires an affiliate to make reports or provide
11 material under subparagraph (A), the Commis-
12 sioner shall, to the fullest extent possible, ac-
13 cept—

14 (i) reports that the affiliate has pro-
15 vided or been required to provide to other
16 Federal or State regulatory authorities or
17 appropriate self-regulatory organizations;

18 (ii) information that is otherwise re-
19 quired to be reported publicly; and

20 (iii) audited financial statements.

21 (C) USE OF REGULATORY REPORTS.—If
22 the Commissioner determines to conduct an ex-
23 amination of an affiliate under subparagraph
24 (B) and such affiliate is a functionally regu-
25 lated affiliate, the Commissioner shall, to the

1 fullest extent possible, rely on the examination
2 reports made by the functional regulator of
3 such affiliate.

4 (b) ACCESS TO PEOPLE AND RECORDS.—

5 (1) IN GENERAL.—The Commissioner, upon re-
6 quest, shall be given prompt and reasonable access
7 to National Insurer or National Agency officers, em-
8 ployees, and agents, and relevant books, records, and
9 documents in the course of supervision, oversight, or
10 examination of any National Insurer or National
11 Agency.

12 (2) COURT ORDER.—If prompt and reasonable
13 access is not given as required under paragraph (1),
14 the Commissioner may apply to the United States
15 district court for the judicial district in which the
16 main office of the National Insurer or the National
17 Agency is located, or in which the person denying
18 such access resides or carries on business, for an
19 order requiring that such information be promptly
20 provided.

21 (3) SUBPOENA POWER.—In connection with ex-
22 aminations of National Insurers, National Agencies,
23 or affiliates under this section and the examination
24 of federally licensed insurance producers under sec-
25 tion 1301, the Commissioner may—

1 (A) administer oaths and affirmations;

2 (B) examine, take, and preserve testimony
3 under oath as to any matter in respect of the
4 affairs or ownership of any such National In-
5 surer, National Agency, affiliate, or federally li-
6 censed insurance producer;

7 (C) issue subpoenas; and

8 (D) in order to enforce a subpoena issued
9 under subparagraph (C), apply to the United
10 States district court for the judicial district—

11 (i) in which the main office of the Na-
12 tional Insurer, National Agency, or affil-
13 iate is located;

14 (ii) in which the federally licensed in-
15 surance producer is located; or

16 (iii) in which the witness resides or
17 carries on business.

18 **SEC. 1122. EXAMINATION FEES AND OTHER ASSESSMENTS.**

19 (a) EXAMINATION FEE.—

20 (1) NATIONAL INSURERS, NATIONAL AGENCIES,
21 AND FEDERALLY LICENSED INSURANCE PRO-
22 DUCERS.—The Commissioner shall assess the cost of
23 conducting examinations of National Insurers, Na-
24 tional Agencies, and federally licensed insurance pro-
25 ducers against each such Insurer, Agency, or pro-

1 ducer, as the Commissioner determines to be appro-
2 priate.

3 (2) AFFILIATES.—The Commissioner shall as-
4 sess the cost of conducting examinations of affiliates
5 against each such affiliate, as the Commissioner de-
6 termines to be appropriate.

7 (3) REFUSAL TO PAY.—

8 (A) IN GENERAL.—Subject to subpara-
9 graph (B), if any affiliate refuses to pay an as-
10 sessment imposed pursuant to paragraph (2),
11 the Commissioner may assess such cost against
12 the affiliated National Insurer or National
13 Agency.

14 (B) SHARED AFFILIATES.—If an affiliate
15 is an affiliate of more than 1 National Insurer
16 or National Agency, the assessment with re-
17 spect to that affiliate may be assessed against,
18 and collected from, any affiliated National In-
19 surer or National Agency, in such proportions
20 as the Commissioner may prescribe.

21 (b) PROCESSING FEE.—The Commissioner may as-
22 sess a fee against any person who submits to the Office
23 an application, filing, statement, notice, or request for ap-
24 proval to cover the cost of processing such submission.

1 (c) OTHER ASSESSMENTS.—The Commissioner may
 2 assess against National Insurers, National Agencies, and
 3 federally licensed insurance producers such additional fees
 4 as the Commissioner determines to be necessary and ap-
 5 propriate to fund the expenses of the Office.

6 (d) NOTICE.—The Commissioner shall notify Na-
 7 tional Insurers, National Agencies, and federally licensed
 8 insurance producers of—

9 (1) the initial fees and assessments imposed
 10 under this section; and

11 (2) any change in fees and assessments.

12 (e) TREATMENT OF FEES AND ASSESSMENTS.—

13 (1) DEPOSITS.—Amounts received by the Com-
 14 missioner from fees and assessments imposed under
 15 this section shall be deposited in the manner pro-
 16 vided in section 5234 of the Revised Statutes (12
 17 U.S.C. 192) with respect to assessments by the
 18 Comptroller of the Currency.

19 (2) GOVERNMENT FUNDS; APPORTIONMENT.—

20 Notwithstanding any other provision of law,
 21 amounts received by the Commissioner from any fee
 22 or assessment imposed under this section—

23 (A) shall not be considered Government or
 24 public funds or appropriated money; and

1 (B) shall not be subject to apportionment
2 for purpose of chapter 15 of title 31, United
3 States Code, or under any other authority.

4 (f) WORKING CAPITAL FUND.—

5 (1) IN GENERAL.—The Commissioner may im-
6 pose fees and assessments pursuant to subsections
7 (a), (b), and (c), in excess of actual expenses for any
8 given year, to maintain an appropriate working cap-
9 ital fund.

10 (2) REFUNDS.—The Commissioner shall remit
11 to the payers of such fees and assessments any
12 funds collected in excess of what the Commissioner
13 determines to be necessary to maintain such working
14 capital fund.

15 (g) USE OF FUNDS.—The Commissioner may use the
16 combined resources collected through fees and assess-
17 ments imposed pursuant to this section to pay all direct
18 and indirect operating costs of the Office, including the
19 salary and administrative expenses of the Office.

20 (h) APPROPRIATIONS DURING START-UP PERIOD.—

21 (1) AUTHORIZATION.—The Commissioner may
22 borrow from the Secretary of the Treasury such
23 funds as the Commissioner determines to be nec-
24 essary and appropriate to organize and begin oper-
25 ations of the Office.

1 (2) PAYMENT.—Any loan extended pursuant to
2 paragraph (1) shall be repaid, in full (with interest
3 at a rate set by the Secretary of the Treasury),
4 within 30 years following the date of enactment of
5 this Act, with individual payments on any loan to be
6 made in such amounts and at such times as the
7 Commissioner determines to be appropriate.

8 (i) RULEMAKING.—The Commissioner shall promul-
9 gate regulations with respect to the computation, assess-
10 ment, and collection of the fees and assessments provided
11 for in this section.

12 **SEC. 1123. DISCLOSURE OF INFORMATION.**

13 (a) REGULATIONS REQUIRED.—The Commissioner
14 shall, by regulation, establish standards for the disclosure
15 of examination reports, applications, filings, correspond-
16 ence, records, and other information prepared by, or sub-
17 mitted to, the Commissioner.

18 (b) SUPERVISORY PRIVILEGE.—The regulation
19 issued pursuant to subsection (a) shall prohibit the disclo-
20 sure of confidential supervisory information, as such infor-
21 mation is defined by the Commissioner in such regulation.

22 (c) OTHER PRIVILEGES.—The submission of any in-
23 formation to the Commissioner shall not waive or other-
24 wise affect any privilege a person may claim with respect

1 to such information under Federal or State law as to a
2 party other than the Commissioner.

3 **SEC. 1124. REPORTING REQUIREMENT.**

4 (a) GENERAL AUTHORITY.—The Commissioner is
5 authorized to require National Insurers and National
6 Agencies to make such reports, containing such informa-
7 tion and in such form, as the Commissioner may prescribe
8 by regulation.

9 (b) FINANCIAL STATEMENTS.—Each National In-
10 surer holding a Federal license shall submit annual and
11 quarterly financial statements, in compliance with the ac-
12 counting principles and auditing standards specified under
13 section 1211, to the Commissioner at such times and in
14 such form as the Commissioner may require under regula-
15 tions promulgated pursuant to subsection (c).

16 (c) REGULATIONS.—The Commissioner shall promul-
17 gate regulations that—

18 (1) specify the information that shall be dis-
19 closed in the financial statements required under
20 subsection (b); and

21 (2) specify any additional financial schedules
22 that National Insurers shall make available for ex-
23 amination by the Commissioner upon request.

1 **SEC. 1125. RELATIONSHIP TO STATE LAW.**

2 (a) IN GENERAL.—Except as provided under sub-
3 section (b) or otherwise authorized under Federal law, Na-
4 tional Insurers, National Agencies, and federally licensed
5 insurance producers shall not be subject to any form of
6 State licensing, examination, reporting, regulation, or
7 other supervision relating to—

8 (1) the sale, solicitation, or negotiation of insur-
9 ance;

10 (2) the underwriting of insurance; or

11 (3) any other insurance operations, including all
12 products, marketing and sales practices, claims ad-
13 justment and settlement, financial condition and sol-
14 vency, and holding company transactions.

15 (b) APPLICABLE STATE LAWS.—Notwithstanding
16 subsection (a), National Insurers, National Agencies, and
17 federally licensed insurance producers shall be subject
18 to—

19 (1) applicable State unclaimed property and es-
20 cheat laws;

21 (2) applicable tax laws of a State in accordance
22 with sections 1251 and 1252;

23 (3) applicable State law relating to participa-
24 tion in an assigned risk plan, mandatory joint un-
25 derwriting association, or any other mandatory re-
26 sidual market mechanism designed to make insur-

1 ance available to those unable to obtain insurance in
2 the voluntary market, except to the extent that such
3 State law—

4 (A) relates to participation in any vol-
5 untary joint underwriting association or similar
6 arrangement;

7 (B) results in rates in effect for an as-
8 signed risk plan, mandatory joint underwriting
9 association, or any other mandatory residual
10 market mechanism that fail to cover the ex-
11 pected value of all future costs associated with
12 insurance policies written by such residual mar-
13 ket mechanism;

14 (C) requires a National Insurer to use any
15 particular rate, rating element, price or form;
16 or

17 (D) is inconsistent with any provision of
18 this Act;

19 (4) applicable State insurance law that pre-
20 scribes the compulsory coverage requirements for
21 workers' compensation or motor vehicle insurance,
22 or both, that every insurer must provide if the in-
23 surer issues insurance policies in such State, except
24 to the extent that such State law requires a National

1 Insurer to use any particular rate, rating element, or
 2 price;

3 (5) applicable State insurance law mandating
 4 the participation of insurers in an advisory or statis-
 5 tical organization, except to the extent that such
 6 State law requires a National Insurer to use any
 7 particular rate, rating element, price, or form; and

8 (6) applicable State law relating to participa-
 9 tion in a workers' compensation administration
 10 mechanism, except to the extent that such State law
 11 is inconsistent with any provision of this Act.

12 **Subtitle C—Enforcement of** 13 **Federal Insurance Laws**

14 **SEC. 1141. NATIONAL INSURER LICENSE SUSPENSION, RE-** 15 **STRICTION, OR REVOCATION.**

16 (a) IN GENERAL.—In accordance with the conditions
 17 under this section, the Commissioner may revoke or re-
 18 strict the Federal license of a National Insurer if the Com-
 19 missioner determines that the National Insurer—

20 (1) has engaged in conduct that is hazardous to
 21 the National Insurer and that involves an undue risk
 22 to the National Insurer's policyholders;

23 (2) is in a financial or other condition that is
 24 not consistent with the continuation of existing oper-
 25 ations; or

1 (3) has violated any—

2 (A) applicable law or regulation;

3 (B) order or condition imposed in writing
4 by the Commissioner in connection with the ap-
5 proval of an application, filing, statement, no-
6 tice, or other request by the National Insurer;
7 or

8 (C) written agreement entered into be-
9 tween the National Insurer and the Commis-
10 sioner.

11 (b) NOTICE TO NATIONAL INSURER.—

12 (1) IN GENERAL.—If the Commissioner deter-
13 mines under subsection (a) that the Federal license
14 of a National Insurer should be revoked or re-
15 stricted, the Commissioner shall—

16 (A) serve the National Insurer with written
17 notice of the intent of the Commissioner to re-
18 voke or restrict such Federal license;

19 (B) provide the National Insurer with a
20 statement of the basis for the determination to
21 revoke or restrict such Federal license; and

22 (C) notify, not less than 30 days before a
23 hearing under subsection (c), of the date and
24 place of the hearing.

1 (2) NOTICE OF SERVICE.—Any service required
2 or authorized to be made by the Commissioner
3 under this section may be made by registered mail,
4 or in such other manner reasonably calculated to
5 give actual notice as the Commissioner may by regu-
6 lation or otherwise provide.

7 (c) REVOCATION OR RESTRICTION HEARING.—

8 (1) IN GENERAL.—Before revoking or restrict-
9 ing a Federal license, the Commissioner shall con-
10 duct a hearing in accordance with section 554 of
11 title 5, United States Code, to determine if the con-
12 ditions described in subsection (a) exist.

13 (2) AUTHORITY TO REVOKE OR RESTRICT FED-
14 ERAL LICENSE.—If, on the basis of the evidence pre-
15 sented at the hearing under paragraph (1) and the
16 written findings of the Commissioner with respect to
17 such evidence, the Commissioner establishes the ex-
18 istence of any conduct, condition, or violation speci-
19 fied in the notice sent to a National Insurer under
20 subsection (b), the Commissioner may issue an order
21 revoking or restricting the Federal license of the Na-
22 tional Insurer, which shall be effective as of a date
23 subsequent to such finding.

24 (3) CONSENT TO REVOCATION OR RESTRIC-
25 TION.—If a duly authorized representative of the

1 National Insurer fails to appear at the hearing
 2 under this subsection, the National Insurer shall be
 3 deemed to have consented to the revocation or re-
 4 striction of its Federal license, and the Commis-
 5 sioner may immediately revoke or restrict such Fed-
 6 eral license.

7 (d) PUBLICATION OF NOTICE OF REVOCATION OR
 8 RESTRICTION.—

9 (1) NOTICE BY NATIONAL INSURER.—

10 (A) IN GENERAL.—The National Insurer
 11 shall give notice of a revocation or restriction of
 12 its Federal license under this section to each
 13 policyholder affected by the revocation or re-
 14 striction.

15 (B) TYPE OF NOTICE.—Notice under this
 16 paragraph shall be sent to the policyholder's
 17 last address of record on the books of the Na-
 18 tional Insurer, in such manner and at such time
 19 as the Commissioner determines to be necessary
 20 for the protection of policyholders.

21 (2) NOTICE BY COMMISSIONER.—

22 (A) IN GENERAL.—The Commissioner
 23 shall publish notice of a revocation or restric-
 24 tion under this section. If the Commissioner de-
 25 termines that a National Insurer has not given

1 notice of an order under this subsection in ac-
2 cordance with the requirements of the Commis-
3 sioner, the Commissioner may provide such no-
4 tice in such manner as the Commissioner may
5 find to be necessary and proper.

6 (B) COSTS.—The cost of any notice pro-
7 vided under subparagraph (A) shall be paid by
8 the National Insurer.

9 (e) TEMPORARY SUSPENSION OR RESTRICTION.—

10 (1) IN GENERAL.—If the Commissioner, in the
11 course of a revocation proceeding under this section,
12 finds that the National Insurer poses an immediate
13 threat to the interests of its policyholders or to the
14 public, the Commissioner shall issue an order tempo-
15 rarily suspending or restricting the Federal license
16 of the National Insurer.

17 (2) NOTICE OF TEMPORARY ORDER.—A Na-
18 tional Insurer whose Federal license is temporarily
19 suspended or restricted under this subsection shall
20 give notice of an order issued under this paragraph
21 to each affected policyholder in such manner and at
22 such times as the Commissioner may find to be nec-
23 essary and may order for the protection of policy-
24 holders and the public.

1 (3) EFFECTIVE PERIOD OF TEMPORARY
2 ORDER.—A temporary order issued under paragraph
3 (1) shall—

4 (A) become effective not earlier than 10
5 days from the date of service upon the National
6 Insurer; and

7 (B) unless set aside, limited, or suspended
8 by a court in proceedings authorized under
9 paragraph (4), remain effective and enforceable
10 until the earlier of—

11 (i) the effective date of an order under
12 subsection (c)(2); or

13 (ii) the date on which the Commis-
14 sioner determines that there is insufficient
15 evidence to revoke or restrict a Federal li-
16 cense under this subsection.

17 (4) JUDICIAL REVIEW.—

18 (A) IN GENERAL.—During the 10-day pe-
19 riod beginning on the date on which a tem-
20 porary order has been issued under paragraph
21 (1), the National Insurer may apply to a court
22 described in subparagraph (B) for an injunction
23 setting aside, limiting, or suspending the en-
24 forcement, operation, or effectiveness of such
25 order.

1 (B) JURISDICTION.—The United States
2 District Court for the District of Columbia and
3 the United States district court for the judicial
4 district in which the main office of the National
5 Insurer is located shall have jurisdiction to
6 issue an injunction under this paragraph.

7 (f) DECISION TO SUSPEND, RESTRICT, OR RE-
8 VOKE.—

9 (1) IN GENERAL.—Except as provided under
10 paragraph (2), any decision by the Commissioner to
11 suspend, restrict, or revoke a Federal license under
12 this section shall be made by the Commissioner and
13 may not be delegated.

14 (2) EXCEPTION.—The Commissioner may, by
15 order, designate an employee of the Office who may
16 make a decision described in paragraph (1) if the
17 Commissioner is not able to act by reason of recusal
18 or is otherwise disqualified from acting.

19 (g) JUDICIAL REVIEW.—Any National Insurer whose
20 Federal license has been revoked or restricted by order
21 of the Commissioner under this section shall have the
22 right of judicial review of such order only to the same ex-
23 tent as provided for the review of orders under section
24 1148.

1 **SEC. 1142. SUSPENSION, RESTRICTION, OR REVOCATION OF**
2 **FEDERAL LICENSE OF NATIONAL AGENCIES**
3 **AND FEDERALLY LICENSED INSURANCE PRO-**
4 **DUCERS.**

5 (a) IN GENERAL.—In accordance with the provisions
6 of this section, the Commissioner may revoke or restrict
7 the Federal producer license, including lines of insurance
8 covered by such license, of a National Agency or other fed-
9 erally licensed insurance producer if the Commissioner de-
10 termines that the Agency or producer has—

11 (1) violated any applicable law, regulation,
12 order, condition imposed in writing by the Commis-
13 sioner in connection with the approval of an applica-
14 tion, filing, statement, notice or other request by the
15 producer, or written agreement entered into between
16 the producer and the Commissioner;

17 (2) provided incorrect, misleading, incomplete
18 or materially untrue information in an application
19 for a Federal charter or a Federal producer license;

20 (3) used fraudulent, coercive, or dishonest prac-
21 tices; or

22 (4) demonstrated incompetence,
23 untrustworthiness, or financial irresponsibility as an
24 insurance producer.

25 (b) NOTICE TO FEDERALLY LICENSED INSURANCE
26 PRODUCER.—If the Commissioner determines that any

1 conduct, breach, or violation specified in subsection (a) re-
2 quires revocation or restriction of the Federal producer li-
3 cense of a National Agency or other federally licensed in-
4 surance producer, the Commissioner shall—

5 (1) serve written notice on the National Agency
6 or other federally licensed insurance producer of the
7 Commissioner’s intention to revoke or restrict the
8 Federal producer license;

9 (2) provide the National Agency or other feder-
10 ally licensed insurance producer with a statement of
11 the basis for the determination to revoke or restrict
12 the Federal producer license; and

13 (3) notify the National Agency or other feder-
14 ally licensed insurance producer, not less than 30
15 days before a hearing under subsection (c), of the
16 date and place of the hearing.

17 (c) REVOCATION OR RESTRICTION HEARING.—

18 (1) IN GENERAL.—Before revoking or restrict-
19 ing a Federal producer license, the Commissioner
20 shall conduct a hearing in accordance with section
21 554 of title 5, United States Code, to determine if
22 the conditions described in subsection (a) exist.

23 (2) AUTHORITY TO REVOKE OR RESTRICT FED-
24 ERAL LICENSE.—If, on the basis of the evidence pre-
25 sented at the hearing under paragraph (1) and the

1 written findings of the Commissioner with respect to
2 such evidence, the Commissioner finds any conduct,
3 condition, or violation specified in the notice sent to
4 a National Agency or other federally licensed insur-
5 ance producer under subsection (b), the Commis-
6 sioner may issue an order revoking or restricting the
7 Federal producer license of the National Agency or
8 other federally licensed insurance producer, which
9 shall be effective as of a date subsequent to such
10 finding.

11 (3) CONSENT TO REVOCATION OR RESTRIC-
12 TION.—If a duly authorized representative of the
13 National Agency or other federally licensed insur-
14 ance producer fails to appear at the hearing under
15 this subsection, the National Agency or other feder-
16 ally licensed insurance producer shall be deemed to
17 have consented to the revocation or restriction of its
18 Federal producer license, and the Commissioner may
19 immediately revoke or restrict such Federal producer
20 license.

21 (d) NOTICE OF REVOCATION OR RESTRICTION.—

22 (1) NOTICE BY FEDERALLY LICENSED INSUR-
23 ANCE PRODUCER.—Each National Agency or other
24 federally licensed insurance producer shall give writ-
25 ten notice of such revocation or restriction to each

1 National Insurer, State insurer, or United States
2 branch of a non-United States insurer for which
3 such producer acts as an insurance producer.

4 (2) NOTICE BY COMMISSIONER.—

5 (A) IN GENERAL.—The Commissioner
6 shall publish notice of a revocation or restric-
7 tion under this section. If the Commissioner de-
8 termines that a National Agency or other feder-
9 ally licensed insurance producer has not given
10 notice of an order under this subsection in ac-
11 cordance with the requirements of the Commis-
12 sioner, the Commissioner may provide such no-
13 tice in any manner the Commissioner deter-
14 mines to be necessary and proper.

15 (B) COSTS.—The cost of any notice pro-
16 vided under subparagraph (A) shall be paid by
17 the National Agency or other federally licensed
18 insurance producer.

19 (e) TEMPORARY SUSPENSION OR RESTRICTION.—

20 (1) IN GENERAL.—If the Commissioner, in the
21 course of a revocation or restriction proceeding
22 under this section, finds that the National Agency or
23 other federally licensed insurance producer poses an
24 immediate threat to the interests of the policyholders
25 of a National Insurer, a State insurer, or a United

1 States branch of a non-United States insurer or to
 2 the public, the Commissioner may issue a temporary
 3 order suspending or restricting the Agency's or other
 4 producer's Federal producer license.

5 (2) NOTICE OF TEMPORARY ORDER.—The Na-
 6 tional Agency or other federally licensed insurance
 7 producer shall give notice of a temporary order
 8 issued under this paragraph in such manner and at
 9 such times as the Commissioner may find to be nec-
 10 essary and may order for the protection of policy-
 11 holders and the public.

12 (3) EFFECTIVE PERIOD OF TEMPORARY
 13 ORDER.—Any temporary order issued under para-
 14 graph (1) shall—

15 (A) become effective not earlier than 10
 16 days from the date of service upon the National
 17 Agency or other federally licensed insurance
 18 producer; and

19 (B) unless set aside, limited, or suspended
 20 by a court under paragraph (4), remain effec-
 21 tive and enforceable until an order of the Com-
 22 missioner under subsection (c) becomes final or
 23 until the Commissioner dismisses the pro-
 24 ceedings under paragraph (4).

25 (4) JUDICIAL REVIEW.—

1 (A) IN GENERAL.—During the 10-day pe-
2 riod beginning on the date on which a tem-
3 porary order has been issued under paragraph
4 (1), the National Agency or other federally li-
5 censed insurance producer may apply to a court
6 described in subparagraph (B) for an injunction
7 setting aside, limiting, or suspending the en-
8 forcement, operation, or effectiveness of such
9 order.

10 (B) JURISDICTION.—The United States
11 District Court for the District of Columbia and
12 the United States district court for the judicial
13 district in which the federally licensed insurance
14 producers (or the main office of the National
15 Agency) is located shall have jurisdiction to
16 issue an injunction under this paragraph.

17 (f) JUDICIAL REVIEW.—Any National Agency or
18 other federally licensed insurance producer whose Federal
19 producer license has been revoked or restricted by order
20 of the Commissioner under this subsection shall have the
21 right of judicial review of such order only to the same ex-
22 tent as provided for the review of orders under section
23 1148.

24 **SEC. 1143. CEASE-AND-DESIST PROCEEDINGS.**

25 (a) NOTICE.—

1 (1) ISSUANCE.—The Commissioner may issue
2 and serve upon a National Insurer, National Agency,
3 federally licensed insurance producer, or insurer-af-
4 filiated party a notice of charges if the Commis-
5 sioner determines that such Insurer, Agency, pro-
6 ducer, or party—

7 (A) has engaged, or is about to engage, in
8 conduct that is hazardous to a National In-
9 surer, a State insurer, or a United States
10 branch of a non-United States insurer and in-
11 volves an undue risk to the policyholders, as a
12 whole, of a National Insurer, a State insurer, or
13 a United States branch of a non-United States
14 insurer; or

15 (B) has violated, or is about to violate—

16 (i) a law, rule, or regulation;

17 (ii) any condition imposed in writing
18 by the Commissioner in connection with
19 the granting of any application, filing,
20 statement, notice, or other request by the
21 National Insurer, National Agency or the
22 federally licensed insurance producer; or

23 (iii) any written agreement entered
24 into with the Commissioner.

1 (2) CONTENTS.—The notice issued under para-
2 graph (1) shall—

3 (A) contain a statement of the facts consti-
4 tuting the alleged violations; and

5 (B) state the time and place at which a
6 hearing will be held to determine whether an
7 order to cease and desist should be issued
8 against the National Insurer, National Agency,
9 federally licensed insurance producer, or in-
10 surer-affiliated party.

11 (b) HEARING.—

12 (1) TIMING.—A hearing under this section shall
13 be scheduled for a date which is not earlier than 30
14 days nor later than 60 days after the service of no-
15 tice under subsection (a) unless another date is set
16 by the Commissioner at the request of any party so
17 served.

18 (2) CONSENT.—If a duly authorized representa-
19 tive of a party served notice under subsection (a)
20 fails to appear at a hearing under this section, the
21 party shall be deemed to have consented to the
22 issuance of the cease-and-desist order.

23 (c) CEASE-AND-DESIST ORDER.—

24 (1) IN GENERAL.—If the Commissioner finds,
25 upon the record made at a hearing under this sec-

1 tion, that any violation or conduct specified in the
2 notice of charges has been established, or if the
3 party consents, the Commissioner may issue and
4 serve upon the National Insurer, National Agency,
5 federally licensed insurance producer, or insurer-af-
6 filiated party, an order to cease and desist from any
7 such violation or conduct.

8 (2) CONTENTS.—A cease-and-desist order
9 under this section may—

10 (A) require the National Insurer, National
11 Agency, federally licensed insurance producer,
12 or insurer-affiliated party to cease and desist
13 from the alleged violation or conduct; and

14 (B) take affirmative action to correct the
15 conditions resulting from any such violation or
16 conduct.

17 (3) EFFECTIVE DATE.—A cease-and-desist
18 order shall—

19 (A) take effect on the expiration of the
20 date which is 30 days after the service of such
21 order upon the party or on another date, if
22 issued upon consent; and

23 (B) remain in effect and enforceable as
24 provided therein, unless stayed, modified, termi-

1 nated, or set aside by action of the Commis-
2 sioner or a reviewing court.

3 (4) AUTHORITY TO LIMIT ACTIVITIES.—The au-
4 thority to issue an order under this section includes
5 the authority to place limitations on the activities or
6 functions of a National Insurer, National Agency, a
7 federally licensed insurance producer or an insurer-
8 affiliated party.

9 (5) STANDARD FOR CERTAIN ORDERS.—No au-
10 thority under this section to prohibit any insurer-af-
11 filiated party from withdrawing, transferring, remov-
12 ing, dissipating, or disposing of any funds, assets, or
13 other property may be exercised unless the Commis-
14 sioner meets the standards of Rule 65 of the Federal
15 Rules of Civil Procedure, without regard to the re-
16 quirement of such rule that the applicant show that
17 the injury, loss, or damage is irreparable and imme-
18 diate.

19 (d) TEMPORARY CEASE-AND-DESIST ORDERS.—

20 (1) IN GENERAL.—If the Commissioner deter-
21 mines that the violation, threatened violation, or
22 conduct specified in the notice of charges served
23 under subsection (c)(1) is likely to cause insolvency
24 or significant dissipation of assets or earnings of a
25 National Insurer, a State insurer, a United States

1 branch of a non-United States insurer or is likely to
 2 weaken the condition of a National Insurer, a State
 3 insurer, or a United States branch of a non-United
 4 States insurer or otherwise prejudice the interests of
 5 the policyholders of a National Insurer, a State in-
 6 surer, or a United States branch of a non-United
 7 States insurer before the completion of the pro-
 8 ceedings conducted under subsection (c)(1), the
 9 Commissioner may issue a temporary order requir-
 10 ing the National Insurer, National Agency, pro-
 11 ducer, or party to—

12 (A) cease and desist from any such viola-
 13 tion or conduct; and

14 (B) take affirmative action to prevent or
 15 remedy such insolvency, dissipation, condition,
 16 or prejudice pending completion of such pro-
 17 ceedings.

18 (2) CONTENTS OF ORDER; EFFECTIVE DATE.—

19 An order under paragraph (1)—

20 (A) may include any action authorized
 21 under section 1144(2);

22 (B) shall become effective upon service
 23 upon the National Insurer, National Agency,
 24 producer, or party; and

1 (C) unless set aside, limited, or suspended
2 by a court under paragraph (3), shall remain in
3 effect and enforceable until the date on which—

4 (i) administrative proceedings pursu-
5 ant to such order are completed;

6 (ii) the Commissioner dismisses the
7 charges specified in such order; or

8 (iii) if a cease-and-desist order is
9 issued against such National Insurer, Na-
10 tional Agency, producer, or party, such
11 order is effective.

12 (3) INJUNCTION.—

13 (A) IN GENERAL.—A National Insurer,
14 National Agency, federally licensed insurance
15 producer, or insurer-affiliated party that has
16 been served with a temporary cease-and-desist
17 order may, not later than 10 days after the
18 date of such service, apply to a court described
19 in subparagraph (B) for an injunction setting
20 aside, limiting, or suspending the enforcement,
21 operation, or effectiveness of such order until
22 the completion of administrative proceedings
23 under this section.

24 (B) JURISDICTION.—The United States
25 District Court for the District of Columbia and

1 the United States district court for the judicial
2 district in which the producer, party, or main
3 office of the National Insurer or National Agen-
4 cy is located shall have jurisdiction to issue an
5 injunction under this paragraph.

6 (4) INCOMPLETE OR INACCURATE RECORDS.—

7 (A) TEMPORARY ORDER.—If a notice of
8 charges served under subsection (a) specifies,
9 on the basis of particular facts and cir-
10 cumstances, that the books and records of a
11 National Insurer are so incomplete or inac-
12 curate that the Commissioner is unable,
13 through the normal supervisory process, to de-
14 termine the financial condition of that National
15 Insurer or the details or purpose of any trans-
16 action or transactions that may have a material
17 effect on the financial condition of that Na-
18 tional Insurer, the Commissioner may issue a
19 temporary order requiring—

- 20 (i) the cessation of any activity or
21 practice which gave rise to the incomplete
22 or inaccurate state of the books or records;
23 or

1 (ii) affirmative action to restore such
 2 books or records to a complete and accu-
 3 rate state.

4 (B) EFFECTIVE PERIOD.—Any temporary
 5 order issued under subparagraph (A)—

6 (i) shall become effective upon service;
 7 and

8 (ii) unless set aside, limited, or sus-
 9 pended by a court in proceedings under
 10 paragraph (2), shall remain in effect and
 11 enforceable until the earlier of—

12 (I) the completion of the pro-
 13 ceeding initiated under subsection (a)
 14 in connection with the notice of
 15 charges; or

16 (II) the date the Commissioner
 17 determines, by examination or other-
 18 wise, that the books and records of
 19 the National Insurer accurately reflect
 20 the financial condition of the National
 21 Insurer.

22 **SEC. 1144. AFFIRMATIVE ACTION TO CORRECT CONDITIONS**
 23 **RESULTING FROM VIOLATIONS OR CONDUCT.**

24 The authority granted to the Commissioner under
 25 this subtitle to issue an order that requires a National In-

1 surer, National Agency, a federally licensed insurance pro-
2 ducer, or an insurer-affiliated party to take affirmative ac-
3 tion to correct or remedy any condition resulting from any
4 violation or conduct with respect to which such order is
5 issued includes the authority to require such National In-
6 surer, National Agency, producer or party to—

7 (1) restrict the growth of the National Insurer;

8 (2) dispose of any asset or insurance contract,
9 including any insurance policy;

10 (3) rescind any other agreements or contracts,
11 other than insurance contracts, to which the Na-
12 tional Insurer is the issuer;

13 (4) employ qualified officers or employees, sub-
14 ject to approval by the Commissioner; and

15 (5) take such other action as the Commissioner
16 determines to be appropriate if—

17 (A) such National Insurer, National Agen-
18 cy, producer, or party was unjustly enriched in
19 connection with such violation or conduct; or

20 (B) the violation or conduct involved a
21 reckless disregard for the law or any applicable
22 regulations or prior order of the Commissioner.

1 **SEC. 1145. SUSPENSION, REMOVAL, AND PROHIBITION AU-**
2 **THORITY.**

3 (a) **AUTHORITY TO ISSUE ORDER.**—The Commis-
4 sioner may serve a written notice of the Commissioner’s
5 intention to suspend or remove a party from office or to
6 prohibit any further participation by such party in the
7 conduct of the affairs of any National Insurer or National
8 Agency, if the Commissioner determines that—

9 (1) an insurer-affiliated party has—

10 (A) violated—

11 (i) any law or regulation;

12 (ii) any final cease-and-desist order
13 issued under section 1143;

14 (iii) any condition imposed in writing
15 by the Commissioner in connection with
16 the grant of any application, filing, state-
17 ment, notice, or other request by such Na-
18 tional Insurer or National Agency; or

19 (iv) any written agreement between
20 such National Insurer or National Agency
21 and the Commissioner;

22 (B) engaged or participated in any conduct
23 that—

24 (i) is hazardous to the National In-
25 surer or National Agency; and

1 (ii) involves an undue risk to the pol-
2 icyholders of such National Insurer or the
3 policyholders serviced by such National
4 Agency; or

5 (C) committed or engaged in any act,
6 omission, or practice, which constitutes a
7 breach of fiduciary duty;

8 (2) through any violation, conduct, practice, or
9 breach described in paragraph (1)—

10 (A) such National Insurer or National
11 Agency has suffered, or will probably suffer, fi-
12 nancial loss or other damage;

13 (B) the interests of the policyholders of the
14 National Insurer or the policyholders serviced
15 by the National Agency have been, or could be,
16 prejudiced; or

17 (C) such party has received financial gain
18 or other benefit by reason of such violation,
19 practice, or breach; and

20 (3) the violation, conduct, practice, or breach—

21 (A) involves personal dishonesty on the
22 part of such party; or

23 (B) demonstrates willful or continuing dis-
24 regard by such party for the condition of such
25 National Insurer or National Agency or the in-

1 terests of the National Insurer's policyholders
 2 or the policyholders serviced by the National
 3 Agency.

4 (b) TEMPORARY SUSPENSION ORDER.—

5 (1) SUSPENSION OR PROHIBITION AUTHOR-
 6 IZED.—If the Commissioner serves written notice
 7 under subsection (a) on any insurer-affiliated party
 8 of the Commissioner's intention to issue an order
 9 under such subsection, the Commissioner may issue
 10 a temporary order suspending such party from office
 11 or prohibiting such party from further participation
 12 in any manner in the conduct of the affairs of the
 13 National Insurer or National Agency, if the Commis-
 14 sioner—

15 (A) determines that such action is nec-
 16 essary for the protection of the National In-
 17 surer or its policyholders or the National Agen-
 18 cy or the policyholders serviced by such Agency;
 19 and

20 (B) serves such party with the temporary
 21 order of suspension or prohibition.

22 (2) EFFECTIVE PERIOD.—Any temporary order
 23 issued under paragraph (1)—

24 (A) shall become effective upon service;
 25 and

1 (B) unless a court issues a stay of such
2 order under subsection (e), shall remain in ef-
3 fect and enforceable until—

4 (i) the date the Commissioner dis-
5 misses the charges contained in the notice
6 served under subsection (a) with respect to
7 such party; or

8 (ii) the effective date of an order
9 issued by the Commissioner to such party
10 under subsection (a).

11 (3) COPY OF ORDER.—If the Commissioner
12 issues a temporary order under paragraph (1) to any
13 insurer-affiliated party, the Commissioner shall serve
14 a copy of such order on any National Insurer or Na-
15 tional Agency with which such party is affiliated at
16 the time such order is issued.

17 (c) PROCEDURES.—

18 (1) CONTENTS OF NOTICE.—A notice served
19 under subsection (a) shall include—

20 (A) a statement of the grounds for facts
21 underlying such notice; and

22 (B) the time and place of a hearing to be
23 held thereon.

24 (2) HEARING.—The hearing referred to in
25 paragraph (1)(B) shall take place not earlier than

1 30 days nor later than 60 days after the date of
2 service of notice under subsection (a), unless another
3 date is set by the Commissioner at the request of
4 such party.

5 (3) SUSPENSION OR REMOVAL.—

6 (A) FAILURE TO APPEAR.—If a duly au-
7 thorized representative of the party receiving
8 notice of a hearing under this subsection fails
9 to appear at such hearing, such party shall be
10 deemed to have consented to the issuance of an
11 order of such removal or prohibition.

12 (B) SUSPENSION OR REMOVAL.—In the
13 event of such consent, or if upon the record
14 made at any hearing under this subsection the
15 Commissioner finds that any of the grounds
16 specified in such notice have been established,
17 the Commissioner may issue such orders of sus-
18 pension or removal from office, or prohibition
19 from participation in the conduct of the affairs
20 of the National Insurer or National Agency, as
21 the Commissioner determines to be appropriate.

22 (C) EFFECTIVE DATE.—Any order issued
23 under subparagraph (B) shall become effective
24 on the expiration of 30 days after service upon
25 the National Insurer or National Agency and

1 such party (except in the case of an order
2 issued upon consent, which shall become effective
3 at the time specified in such order). Such
4 order shall remain effective and enforceable as
5 provided therein, except to such extent as it is
6 stayed, modified, terminated, or set aside by action
7 of the Commissioner or a reviewing court.

8 (d) INDUSTRYWIDE PROHIBITION.—

9 (1) IN GENERAL.—Except as provided under
10 paragraph (2), any person who, pursuant to any
11 order issued under this section or section 1146, has
12 been removed or suspended from office in a National
13 Insurer or National Agency or prohibited from participating
14 in the conduct of the affairs of a National
15 Insurer or National Agency may not, while such
16 order is in effect—

17 (A) continue or commence to hold any office
18 in, or participate in any manner in the conduct
19 of the affairs of any National Insurer or
20 National Agency;

21 (B) solicit, procure, transfer, attempt to
22 transfer, vote, or attempt to vote any proxy,
23 consent, or authorization with respect to any
24 voting rights in any National Insurer or National
25 Agency;

1 (C) act as an insurer-affiliated party; or

2 (D) act as a federally licensed insurance
3 producer.

4 (2) EXCEPTION.—If, on or after the date an
5 order is issued under this subsection, which removes
6 or suspends from office any insurer-affiliated party
7 or prohibits such party from participating in the
8 conduct of the affairs of a National Insurer or Na-
9 tional Agency, such party receives the written con-
10 sent of the Commissioner, paragraph (1) shall, to
11 the extent of such consent, cease to apply to such
12 party with respect to the National Insurer or Na-
13 tional Agency described in each written consent.

14 (3) VIOLATION OF ORDER.—Any violation of
15 paragraph (1) by any person who is subject to an
16 order described in such subparagraph shall be treat-
17 ed as a violation of the order.

18 (e) STAY OF SUSPENSION OR PROHIBITION.—Not
19 later than 10 days after any insurer-affiliated party has
20 been suspended from office or prohibited from participa-
21 tion in the conduct of the affairs of a National Insurer
22 or National Agency by a temporary order issued under
23 subsection (b), such party may apply to the United States
24 district court for the judicial district in which the main
25 office of the National Insurer or National Agency is lo-

1 cated, or the United States District Court for the District
 2 of Columbia, for a stay of such suspension or prohibition
 3 pending the completion of the administrative proceedings
 4 pursuant to the notice served upon such party under sub-
 5 section (a), and such court shall have jurisdiction to stay
 6 such suspension or prohibition.

7 **SEC. 1146. SUSPENSION OR PROHIBITION BASED ON CRIMI-**
 8 **NAL ACTIVITY.**

9 (a) SUSPENSION OR PROHIBITION.—

10 (1) IN GENERAL.—The Commissioner may sus-
 11 pend an insurer-affiliated party from office or pro-
 12 hibit such party from further participation in any
 13 manner in the conduct of the affairs of a National
 14 Insurer or National Agency, by written notice served
 15 upon such party and the National Insurer or Na-
 16 tional Agency, if—

17 (A) continued service or participation by
 18 such party may pose a threat to the National
 19 Insurer or National Agency or the interests of
 20 the National Insurer’s policyholders or the pol-
 21 icyholders serviced by the National Agency; and

22 (B) such party is charged in any informa-
 23 tion, indictment, or complaint, of participation
 24 in—

1 (i) a crime involving dishonesty or
2 breach of trust which is punishable by im-
3 prisonment for a term exceeding 1 year
4 under Federal or State law; or

5 (ii) a criminal violation of section
6 1956, 1957, or 1960 of title 18, United
7 States Code, or section 5322 or 5324 of
8 title 31, United States Code.

9 (2) EFFECTIVE PERIOD.—A suspension or pro-
10 hibition under paragraph (1) shall remain in effect
11 until the information, indictment, or complaint re-
12 ferred to in paragraph (1)(B) is resolved or other-
13 wise terminated by the Commissioner.

14 (b) REMOVAL OR PROHIBITION.—

15 (1) IN GENERAL.—If a judgment of conviction
16 or an agreement to enter a pretrial diversion or
17 other similar program is entered against an insurer-
18 affiliated party in connection with a crime described
19 in subsection (a)(1)(B)(i), the Commissioner may
20 issue and serve upon such party and the National
21 Insurer or National Agency an order removing such
22 party from office or prohibiting such party from fur-
23 ther participation in any manner in the conduct of
24 the affairs of the National Insurer or National

1 Agency without the prior written consent of the
2 Commissioner if—

3 (A) such judgment is not subject to further
4 appellate review; and

5 (B) continued service or participation by
6 such party may pose a threat to the National
7 Insurer or the interests of the policyholders of
8 the National Insurer or a National Agency or
9 the policyholders serviced by such Agency.

10 (2) REQUIRED FOR CERTAIN OFFENSES.—In
11 the case of a judgment of conviction or agreement
12 against an insurer-affiliated party in connection with
13 a violation described in subsection (a)(1)(B)(ii), the
14 Commissioner shall issue and serve upon such party
15 and the National Insurer or National Agency an
16 order removing such party from office or prohibiting
17 such party from further participation in any manner
18 in the conduct of the affairs of the National Insurer
19 or National Agency without the prior written con-
20 sent of the Commissioner.

21 (3) EFFECT ON DIRECTOR OR OFFICER.—An
22 insurer-affiliated party who is a director or officer
23 and who is subject to an order under this subsection,
24 shall cease to be a director or officer of a National
25 Insurer or National Agency.

1 (4) EFFECT OF ACQUITTAL.—A finding of not
2 guilty or other disposition of the charge shall not
3 preclude the Commissioner from instituting pro-
4 ceedings after such finding or disposition to remove
5 such party from office or to prohibit further partici-
6 pation in National Insurer or National Agency af-
7 fairs under subsection (a) or (b) of section 1145.

8 (5) EFFECTIVE PERIOD.—A notice of suspen-
9 sion or order of removal issued under this subsection
10 shall remain effective and outstanding until the com-
11 pletion of any hearing or appeal under subsection (c)
12 or unless the suspension or order of removal is oth-
13 erwise terminated by the Commissioner.

14 (c) ADMINISTRATIVE HEARING.—

15 (1) REQUEST.—Not later than 30 days after
16 the date on which a notice of suspension or order of
17 removal is received by an insurer-affiliated party
18 under this subsection, such party may submit a writ-
19 ten request to the Commissioner for an opportunity
20 to appear before the Commissioner to show that the
21 continued service to, or participation in, the conduct
22 of the affairs of the National Insurer or National
23 Agency by such party will not pose a threat to the
24 National Insurer or to the interests of its policy-

1 holders or to a National Agency or the policyholders
2 serviced by such Agency.

3 (2) TIME AND PLACE.—Upon receipt of a re-
4 quest under paragraph (1), the Commissioner shall
5 set a time and place at which the requesting party
6 may appear, personally or through counsel, before 1
7 or more designated employees of the Commissioner
8 to submit written materials or, at the discretion of
9 the Commissioner, oral testimony, and oral argu-
10 ment. A hearing under this subsection shall take
11 place not later than 30 days after the receipt of a
12 request under paragraph (1), unless extended at the
13 request of the party.

14 (3) NOTIFICATION OF DECISION.—Not later
15 than 60 days after a hearing under this subsection,
16 the Commissioner shall provide written notification
17 to the insurer-affiliated party that indicates—

18 (A) whether the suspension or prohibition
19 from participation in any manner in the con-
20 duct of the affairs of the National Insurer or
21 National Agency will be continued, terminated,
22 or otherwise modified;

23 (B) whether the order removing such party
24 from office or prohibiting such party from fur-
25 ther participation in any manner in the conduct

1 of the affairs of the National Insurer or Na-
 2 tional Agency will be rescinded or otherwise
 3 modified; and

4 (C) the basis for any decision by the Com-
 5 missioner that is adverse to such party.

6 **SEC. 1147. ANCILLARY PROVISIONS.**

7 (a) **POWERS RELATED TO HEARINGS.**—In the course
 8 of or in connection with any proceeding or other action
 9 under this subtitle, the Commissioner, and any person des-
 10 ignated to conduct any hearing under this section, may—

11 (1) administer oaths and affirmations;

12 (2) take depositions or cause depositions to be
 13 taken; and

14 (3) issue, revoke, quash, or modify subpoenas
 15 and subpoenas duces tecum.

16 (b) **SUBPOENA POWER.**—

17 (1) **IN GENERAL.**—The Commissioner, or des-
 18 ignee of the Commissioner, may require the attend-
 19 ance of witnesses and the production of documents
 20 provided for in this section from any place in any
 21 State or other place subject to the jurisdiction of the
 22 United States at any designated place where such
 23 proceeding or other action is being conducted.

24 (2) **ENFORCEMENT.**—The Commissioner or any
 25 party to proceedings under this section may apply

1 for the enforcement of any subpoena or subpoena
2 duces tecum issued under this section to—

3 (A) the United States District Court for
4 the District of Columbia; or

5 (B) the United States district court for the
6 judicial district in which—

7 (i) such proceeding or other action is
8 being conducted; or

9 (ii) the witness resides or carries on
10 business.

11 (3) JURISDICTION.—The courts described under
12 paragraph (2) shall have jurisdiction and power to
13 order and require compliance with any subpoena or
14 subpoena duces tecum issued under this section.

15 (4) FEES AND MILEAGE.—Any witness subpoe-
16 naed under this subsection shall be paid the same
17 fees and mileage that are paid witnesses in the dis-
18 trict courts of the United States.

19 (5) PENALTY FOR NONCOMPLIANCE.—Any per-
20 son who willfully fails or refuses to attend and tes-
21 tify or to answer any lawful inquiry or to produce
22 books, papers, correspondence, memoranda, con-
23 tracts, agreements, or other records, if in such per-
24 son's power so to do, in obedience to the subpoena
25 of the Commissioner, shall be guilty of a mis-

1 demeanor and, upon conviction, shall be subject to
2 a fine of not more than \$1,000 or to imprisonment
3 for a term of not more than 1 year or both.

4 (c) EXPENSES AND ATTORNEY FEES.—

5 (1) IN GENERAL.—Any court having jurisdic-
6 tion of any proceeding or other action instituted
7 under this section by a National Insurer or National
8 Agency, a federally licensed insurance producer, or
9 an insurer-affiliated party may allow any such party
10 to receive such reasonable expenses and attorneys'
11 fees as it determines to be just and proper.

12 (2) PAYMENT OF EXPENSES AND FEES.—Ex-
13 penses and fees awarded under paragraph (1) shall
14 be paid by the National Insurer or National Agency,
15 the federally licensed insurance producer, or the in-
16 surer-affiliated party from the assets of such in-
17 surer, agency, producer, or party.

18 (d) RULEMAKING.—The Commissioner may promul-
19 gate such regulations as may be necessary with respect
20 to any proceedings, claims, examinations, investigations,
21 or other actions authorized by this subtitle.

22 (e) EFFECT ON BOARD OF DIRECTORS.—

23 (1) LACK OF QUORUM.—If the suspension of 1
24 or more directors under this subtitle reduces the
25 board of directors of a National Insurer or National

1 Agency below a quorum, all powers and functions
 2 vested in or exercisable by such board shall vest in,
 3 and be exercisable by, the director or directors on
 4 the board not so suspended, until a quorum is rees-
 5 tablished.

6 (2) TEMPORARY APPOINTMENTS.—If all of the
 7 directors of a National Insurer or National Agency
 8 are suspended under this subtitle, the Commissioner
 9 shall appoint persons to serve temporarily as direc-
 10 tors in their place until the earlier of the date on
 11 which—

12 (A) the suspensions are terminated; or

13 (B) the suspended directors are replaced
 14 on the board of directors of the National In-
 15 surer or National Agency.

16 (f) NOTICE AFTER SEPARATION FROM SERVICE.—
 17 The resignation, termination of employment or participa-
 18 tion, or separation of an insurer-affiliated party (including
 19 a separation caused by the closing of a National Insurer
 20 or National Agency) shall not affect the jurisdiction and
 21 authority of the Commissioner to issue any notice against
 22 any such party under this subtitle if such notice is served
 23 before the end of the 6-year period beginning on the date
 24 on which such party ceased to be an insurer-affiliated

1 party with respect to such National Insurer or National
2 Agency.

3 **SEC. 1148. HEARINGS AND JUDICIAL REVIEW OF REMOVAL,**
4 **SUSPENSION, OR PROHIBITION ORDER.**

5 (a) JUDICIAL HEARING.—

6 (1) IN GENERAL.—A hearing under this subtitle
7 (except for a hearing under section 1146(c))—

8 (A) shall be conducted in accordance with
9 the provisions of chapter 5 of title 5, United
10 States Code; and

11 (B) shall be held in the Federal judicial
12 district in which the main office of the National
13 Insurer or National Agency is located or in
14 which the federally licensed insurance producer
15 or the insurer-affiliated party is located, unless
16 the party afforded the hearing consents to an-
17 other place.

18 (2) JUDGMENT.—After a hearing under this
19 subsection and not later than 90 days after the
20 Commissioner has notified the parties that the case
21 has been submitted to the Commissioner for final
22 decision, the Commissioner shall—

23 (A) render a decision;

1 (B) issue and serve upon each party to the
 2 proceeding an order or orders consistent with
 3 the provisions of this subtitle; and

4 (C) include findings of fact upon which the
 5 Commissioner's decision is predicated.

6 (b) JUDICIAL REVIEW.—

7 (1) IN GENERAL.—Judicial review of any order
 8 under this subtitle shall be limited to the provisions
 9 under this section.

10 (2) MODIFICATION OR TERMINATION OF ORDER
 11 BY COMMISSIONER.—

12 (A) BEFORE APPEAL.—Until a petition for
 13 review is timely filed in a court of appeals of
 14 the United States, in accordance with para-
 15 graph (3), the Commissioner may modify, ter-
 16minate, or set aside any order under this sec-
 17tion.

18 (B) AFTER APPEAL.—After an appeal de-
 19scribed under subparagraph (A) is filed, the
 20Commissioner may not modify, terminate, or
 21set aside any order under this section without
 22the permission of the court.

23 (3) FILING OF PETITION.—

24 (A) IN GENERAL.—Except as provided
 25under subparagraph (B), any party to a pro-

ceeding under this section may obtain judicial review of any order served under subsection (a) by filing a written petition in a court of appeals described in subparagraph (C) not later than 30 days after the date of service of such order, requesting that the order of the Commissioner be modified, terminated, or set aside.

(B) EXCEPTION.—Judicial review shall not be available for an order issued under subsection (d) with the consent of the National Insurer or National Agency, the federally licensed insurance producer, or the insurer-affiliated party.

(C) JURISDICTION.—After a petition is filed under this paragraph, the following courts shall have exclusive jurisdiction to modify, terminate, or set aside, in whole or in part, the order of the Commissioner:

(i) The court of appeals of the United States for the circuit in which—

(I) the main office of the National Insurer or National Agency is located; or

1 (II) the federally licensed insur-
2 ance producer or the insurer-affiliated
3 party is located.

4 (ii) The United States Court of Ap-
5 peals for the District of Columbia.

6 (4) FILING OF RECORD.—The clerk of the court
7 shall transmit a copy of the petition filed under
8 paragraph (3) to the Commissioner, who shall file in
9 the court the record in the proceeding, in accordance
10 with section 2112 of title 28, United States Code.

11 (5) EFFECT OF REVIEW PROCEEDINGS.—The
12 commencement of proceedings for judicial review
13 under this subsection shall not, unless specifically
14 ordered by the court, operate as a stay of any order
15 issued by the Commissioner.

16 (6) FINAL JUDGMENT.—Judicial review under
17 this section shall be subject to chapter 7 of title 5,
18 United States Code. The judgment and decree of the
19 court shall be final, except that the same shall be
20 subject to review by the Supreme Court upon certio-
21 rari, as provided in section 1254 of title 28, United
22 States Code.

23 (c) ENFORCEMENT OF COMMISSIONER ORDER.—

24 (1) APPLICATION.—The Commissioner may
25 submit an application, to enforce any effective and

1 outstanding notice or order issued under this sec-
 2 tion, to the United States district court for the judi-
 3 cial district in which—

4 (A) the main office of the National Insurer
 5 or National Agency is located;

6 (B) the federally licensed insurance pro-
 7 ducer is located; or

8 (C) the insurer-affiliated party is located.

9 (2) JURISDICTION.—The courts described in
 10 paragraph (1)—

11 (A) shall have jurisdiction and power to
 12 order and require compliance with an order of
 13 the Commissioner under this subtitle; and

14 (B) except as otherwise provided in this
 15 subtitle, shall not have jurisdiction to affect, by
 16 injunction or otherwise, the issuance or enforce-
 17 ment of any notice or order under this subtitle,
 18 or to review, modify, suspend, terminate, or set
 19 aside any such notice or order.

20 **SEC. 1149. CIVIL AND CRIMINAL PENALTIES.**

21 (a) CIVIL MONEY PENALTY.—

22 (1) FIRST TIER.—A National Insurer or Na-
 23 tional Agency, federally licensed insurance producer,
 24 or insurer-affiliated party shall pay a civil penalty of

1 not more than \$5,000 for each day during which
 2 such entity—

3 (A) violates any law or regulation;

4 (B) violates any final order or temporary
 5 order issued pursuant to section 1143, 1144,
 6 1145, or 1146;

7 (C) violates any condition imposed in writ-
 8 ing by the Commissioner in connection with the
 9 grant of any application or other request by
 10 such National Insurer or National Agency, pro-
 11 ducer or party; or

12 (D) violates any written agreement be-
 13 tween such National Insurer or National Agen-
 14 cy, producer, or party and the Commissioner.

15 (2) SECOND TIER.—Notwithstanding paragraph
 16 (1), a National Insurer, National Agency, federally
 17 licensed insurance producer, or insurer-affiliated
 18 party shall pay a civil penalty of not more than
 19 \$25,000 for each day—

20 (A) during which such entity—

21 (i) commits any violation described in
 22 any clause of paragraph (1);

23 (ii) recklessly engages in any conduct
 24 that is hazardous to a National Insurer,
 25 State insurer, United States branch of a

1 non-United States insurer, or National
 2 Agency and that involves an undue risk to
 3 the policyholders, as a whole, of such Na-
 4 tional Insurer, State insurer, or United
 5 States branch of a non-United States in-
 6 surer or the policyholders, as a whole, serv-
 7 iced by such National Agency; or

8 (iii) breaches any fiduciary duty; and

9 (B) for which such violation, conduct, or
 10 breach—

11 (i) is part of a pattern of misconduct;

12 (ii) causes or is likely to cause more
 13 than a minimal loss to such National In-
 14 surer, State insurer, or United States
 15 branch of a non-United States insurer; or

16 (iii) results in pecuniary gain or other
 17 benefit to such National Agency, producer
 18 or affiliated party.

19 (3) THIRD TIER.—Notwithstanding paragraphs
 20 (1) and (2), a National Insurer, National Agency,
 21 federally licensed insurance producer, or any in-
 22 surer-affiliated party shall pay a civil penalty in an
 23 amount not to exceed the applicable maximum
 24 amount determined under paragraph (4) for each
 25 day during which such entity—

1 (A) knowingly—

2 (i)(I) commits any violation described
3 in any clause of paragraph (1); or

4 (II) engages in any conduct that is
5 hazardous to a National Insurer, State in-
6 surer, United States branch of a non-
7 United States insurer, or National Agency
8 and that involves an undue risk to the pol-
9 icyholders, as a whole, of such National In-
10 surer, State insurer, or United States
11 branch of a non-United States insurer or
12 the policyholders, as a whole, serviced by
13 such National Agency; and

14 (ii) breaches any fiduciary duty; and

15 (B) knowingly or recklessly causes a sub-
16 stantial loss to such National Insurer, State in-
17 surer, United States branch of a non-United
18 States insurer, or National Agency or a sub-
19 stantial pecuniary gain or other benefit to such
20 producer or affiliated party by reason of such
21 violation, conduct, or breach.

22 (4) MAXIMUM AMOUNTS OF PENALTIES FOR
23 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—

24 The maximum daily amount of any civil penalty
25 which may be assessed under paragraph (3) for any

1 violation, practice, or breach described in such para-
2 graph is \$1,000,000.

3 (5) ASSESSMENT.—

4 (A) WRITTEN NOTICE.—Any penalty im-
5 posed under paragraph (1), (2), or (3) may be
6 assessed and collected by the Commissioner by
7 written notice, which shall contain a statement
8 of the facts constituting the basis for the as-
9 sessment of any penalty imposed under para-
10 graph (1), (2), or (3).

11 (B) FINALITY OF ASSESSMENT.—If, with
12 respect to any assessment under subparagraph
13 (A), a hearing is not requested under para-
14 graph (8) within the period of time allowed
15 under such paragraph, the assessment shall
16 constitute a final and unappealable order.

17 (6) AUTHORITY TO MODIFY OR REMIT PEN-
18 ALTY.—The Commissioner may compromise, modify,
19 or remit any penalty which the Commissioner may
20 assess or had already assessed under paragraph (1),
21 (2), or (3).

22 (7) MITIGATING FACTORS.—In determining the
23 amount of any penalty imposed under paragraph
24 (1), (2), or (3), the Commissioner shall take into ac-

1 count the appropriateness of the penalty in relation
2 to—

3 (A) the size of financial resources and good
4 faith of the National Insurer, National Agency,
5 or other person charged;

6 (B) the gravity of the violation;

7 (C) the history of previous violations; and

8 (D) such other matters as justice may re-
9 quire.

10 (8) HEARING.—The National Insurer, National
11 Agency, or other person against whom any penalty
12 is assessed under this paragraph shall be afforded a
13 hearing by the Commissioner if such National In-
14 surer, National Agency, or person submits a request
15 for such hearing within 20 days after the issuance
16 of the notice of assessment.

17 (9) COLLECTION.—

18 (A) REFERRAL.—If any National Insurer,
19 National Agency, or other person fails to pay
20 an assessment after any penalty assessed under
21 this paragraph has become final, the Commis-
22 sioner shall recover the amount assessed by ac-
23 tion in the appropriate United States district
24 court.

1 (B) APPROPRIATENESS OF PENALTY NOT
2 REVIEWABLE.—In any civil action under sub-
3 paragraph (A), the validity and appropriateness
4 of the penalty shall not be subject to review.

5 (10) DISBURSEMENT AND USE.—All penalties
6 collected under authority of this paragraph shall be
7 deposited into the Treasury, and shall not be used
8 to fund the compensation of the Commissioner or
9 employees of the Office or the expenses of the Of-
10 fice.

11 (b) PREJUDGMENT ATTACHMENT.—

12 (1) IN GENERAL.—In any action brought by the
13 Commissioner under this section, or in actions
14 brought in aid of, or to enforce an order in, any ad-
15 ministrative or other civil action for money damages,
16 restitution, or civil money penalties brought by the
17 Commissioner, the court may, upon application of
18 the Commissioner, issue a restraining order that—

19 (A) prohibits any person subject to the
20 proceeding from withdrawing, transferring, re-
21 moving, dissipating, or disposing of any funds,
22 assets, or other property; and

23 (B) appoints a temporary receiver to ad-
24 minister the restraining order.

25 (2) STANDARD.—

1 (A) SHOWING.—Rule 65 of the Federal
 2 Rules of Civil Procedure shall apply with re-
 3 spect to any proceeding under paragraph (1),
 4 without regard to the requirement of such rule
 5 that the applicant show that the injury, loss, or
 6 damage is irreparable and immediate.

7 (B) STATE PROCEEDING.—If, in the case
 8 of any proceeding in a State court, the court
 9 determines that rules of civil procedure avail-
 10 able under the laws of such State provide sub-
 11 stantially similar protections to a party’s right
 12 to due process as Rule 65, the relief sought
 13 under paragraph (1) may be requested under
 14 the laws of such State.

15 (c) CRIMINAL PENALTY.—

16 (1) IN GENERAL.—Chapter 21 of title 18,
 17 United States Code, is amended by adding at the
 18 end the following:

19 **“§ 404. Violation of order by Commissioner of Na-**
 20 **tional Insurance**

21 “Any person who, being subject to an order under
 22 section 1145 or 1146 of the National Insurance Act of
 23 2006, without the prior written approval of the Commis-
 24 sioner of National Insurance, knowingly participates, di-
 25 rectly or indirectly, in any manner (including by engaging

1 in an activity specifically prohibited in such an order) in
 2 the conduct of the affairs of any National Insurer or Na-
 3 tional Agency shall be fined not more than \$1,000,000,
 4 imprisoned for not more than 5 years, or both.”.

5 (2) CLERICAL AMENDMENT.—The table of sec-
 6 tions at the beginning of chapter 21 of title 18,
 7 United States Code, is amended by adding at the
 8 end the following:

“Sec. 404. Violation of order by Commissioner of National Insurance.”.

9 **SEC. 1150. PUBLIC DISCLOSURES OF FINAL ORDERS AND**
 10 **AGREEMENTS.**

11 (a) IN GENERAL.—Unless the Commissioner deter-
 12 mines that publication of any such agreement, statement,
 13 order, modification, or termination would be contrary to
 14 the public interest, the Commissioner shall, on a monthly
 15 basis, publish and make publicly available—

16 (1) any written agreement or other written
 17 statement for which a violation may be enforced by
 18 the Commissioner;

19 (2) any final order issued with respect to any
 20 administrative enforcement proceeding initiated by
 21 the Commissioner under this section or any other
 22 law; and

23 (3) any modification to or termination of any
 24 order or agreement made public pursuant to this
 25 paragraph.

1 (b) HEARINGS.—All hearings on the record with re-
2 spect to any notice of charges issued by the Commissioner
3 shall be open to the public, unless the Commissioner deter-
4 mines that holding an open hearing would be contrary to
5 the public interest.

6 (c) TRANSCRIPT OF HEARING.—A transcript con-
7 taining all testimony and other documentary evidence shall
8 be prepared for all hearings commenced pursuant to sec-
9 tion 1148. A transcript of public hearings shall be made
10 available to the public pursuant to section 552 of title 5,
11 United States Code.

12 (d) DOCUMENTS FILED UNDER SEAL.—

13 (1) IN GENERAL.—The Commissioner may file
14 any document or part of a document under seal in
15 any administrative hearing commenced by the Com-
16 missioner if the Commissioner determines that dis-
17 closure of all or part of the document would be con-
18 trary to the public interest.

19 (2) WRITTEN REPORT.—A written report shall
20 be made part of any determination to withhold any
21 part of a document from the transcript of the hear-
22 ing required under subsection (b).

23 (e) RETENTION OF DOCUMENTS.—The Commis-
24 sioner shall maintain a record for not less than 6 years
25 of—

1 (1) all the documents described in subsection
2 (a); and

3 (2) all informal enforcement agreements and
4 other supervisory actions and supporting documents
5 issued in connection with any administrative enforce-
6 ment proceeding initiated by the Commissioner.

7 (f) DISCLOSURES TO CONGRESS.—No provision of
8 this section may be construed to authorize the with-
9 holding, or to prohibit the disclosure, of any information
10 to Congress.

11 **SEC. 1151. FOREIGN INVESTIGATIONS.**

12 (a) REQUESTING ASSISTANCE FROM FOREIGN GOV-
13 ERNMENTS.—In conducting any investigation, examina-
14 tion, or enforcement action under this subtitle, the Com-
15 missioner may request the assistance of any foreign gov-
16 ernment.

17 (b) PROVIDING ASSISTANCE TO FOREIGN GOVERN-
18 MENTS.—

19 (1) IN GENERAL.—The Commissioner may as-
20 sist any foreign government that is conducting an
21 investigation to determine whether any person has
22 violated, is violating, or is about to violate any law
23 or regulation relating to insurance matters or cur-
24 rency transactions administered or enforced by such
25 foreign government.

1 (2) INVESTIGATION BY COMMISSIONER.—The
 2 Commissioner may investigate and collect informa-
 3 tion and evidence pertinent to a request for assist-
 4 ance under paragraph (1). Any such investigation
 5 shall comply with the laws of the United States and
 6 the policies and procedures of the Commissioner.

7 (3) FACTORS TO CONSIDER.—In deciding
 8 whether to provide assistance under this section, the
 9 Commissioner shall consider—

10 (A) whether the requesting authority has
 11 agreed to provide reciprocal assistance with re-
 12 spect to insurance matters within the jurisdic-
 13 tion of the Commissioner; and

14 (B) whether compliance with the request
 15 would prejudice the public interest of the
 16 United States.

17 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
 18 tion shall be construed to limit the authority of the Com-
 19 missioner or any other Federal agency to provide or re-
 20 ceive assistance or information to or from any foreign gov-
 21 ernmental authority with respect to any matter.

22 **SEC. 1152. ACTION OR PROCEEDING AGAINST NON-UNITED**
 23 **STATES INSURERS.**

24 (a) IN GENERAL.—The Commissioner may not take
 25 any action under this subtitle against a non-United States

1 insurer or any officer, director, employee, or agent of such
2 insurer unless the Commissioner believes that conduct or
3 practice of such insurer or individual has been, is, or is
4 likely to be, carried on in connection with an act or prac-
5 tice within 1 or more States, which constitutes an appro-
6 priate basis for action by the Commissioner under this
7 subtitle.

8 (b) REMOVAL OF OFFICER OR DIRECTOR.—If an of-
9 ficer, director, or other person associated with a non-
10 United States insurer fails to appear promptly as a party
11 in any case in which an action or proceeding is brought,
12 pursuant to an allegation under subsection (a), for the
13 suspension or removal of such officer, director, or other
14 person, or fails to comply with any effective order or judg-
15 ment therein, any failure by the non-United States insurer
16 to secure the removal of the officer, director, or other per-
17 son from any office such person holds in such insurer and
18 from any further participation in its affairs shall con-
19 stitute grounds for ordering the non-United States Insurer
20 to terminate all sale, solicitation, negotiation, and under-
21 writing of insurance and all other insurance operations in
22 the United States.

23 (c) VENUE.—

24 (1) IN GENERAL.—Except as provided under
25 paragraph (2), if the venue of any judicial or admin-

1 istrative proceeding under this section is to be deter-
 2 mined by reference to the location of the main office
 3 of a National Insurer, the venue of such a pro-
 4 ceeding shall be within the judicial district or other
 5 relevant jurisdiction in which the non-United States
 6 insurer has 1 or more offices.

7 (2) MULTIPLE JURISDICTIONS.—If a National
 8 Insurer has offices in more than 1 jurisdiction, the
 9 venue of a proceeding under this section—

10 (A) shall be in the jurisdiction within
 11 which the office or offices involved in the pro-
 12 ceeding are located; and

13 (B) if there is more than 1 jurisdiction
 14 under subparagraph (A), shall be proper in any
 15 such jurisdiction in which the proceeding is
 16 brought or to which it may appropriately be
 17 transferred.

18 (d) SERVICE OF PROCESS.—

19 (1) IN GENERAL.—Any service required or au-
 20 thorized to be made on a non-United States insurer
 21 may be made on any office located within any State.

22 (2) EXCEPTION.—If any service of process
 23 under paragraph (1) is in connection with an action
 24 or proceeding involving 1 or more offices located in

1 any State, service shall be made on at least 1 office
2 so involved.

3 **SEC. 1153. COOPERATION BETWEEN COMMISSIONER AND**
4 **STATE COMMISSIONERS.**

5 (a) NOTICE TO STATE COMMISSIONERS.—The Com-
6 missioner shall notify the State commissioner in each
7 State in which a National Insurer or National Agency is
8 doing business not later than 30 days after the date of
9 taking any of the following actions:

10 (1) Revocation, suspension, or restriction of the
11 National Insurer's or National Agency's authority to
12 transact insurance.

13 (2) The entry of a formal order that the Na-
14 tional Insurer restrict its premium writing, obtain
15 additional contributions to surplus, reinsure all or
16 any part of its business, or increase capital, surplus,
17 or any other account for the security of policyowners
18 or creditors.

19 (3) The placement of a National Insurer into
20 receivership.

21 **Subtitle D—Insurance Fraud**

22 **SEC. 1161. INVESTIGATION OF INSURANCE FRAUD.**

23 (a) INVESTIGATIVE AUTHORITY OF COMMIS-
24 SIONER.—The Commissioner may investigate suspected

1 fraudulent insurance acts by insurance persons engaged
2 in the business of insurance or by other persons.

3 (b) FRAUD WARNING REQUIRED.—The Commis-
4 sioner, by regulation, shall require each National Insurer
5 to place a fraud warning on claim forms and applications
6 for policies of insurance written, or to be written, by a
7 National Insurer, regardless of the form of transmission.

8 (c) MANDATORY REPORTING OF FRAUDULENT IN-
9 SURANCE ACTS.—A National Insurer, or an insurance
10 person engaged in the business of insurance, that knows
11 or reasonably believes that a fraudulent insurance act is
12 being, will be, or has been committed, shall submit such
13 information to the Commissioner in a form and manner
14 prescribed by the Commissioner.

15 (d) IMMUNITY FROM LIABILITY.—

16 (1) IN GENERAL.—Except as provided under
17 paragraphs (2) and (3), any person who furnishes
18 information concerning suspected, anticipated, or
19 completed fraudulent insurance acts shall not be lia-
20 ble to any person under any law or regulation of the
21 United States, any constitution, law, or regulation of
22 any State or political subdivision of any State, or
23 under any contract or other legally enforceable
24 agreement (including any arbitration agreement), for

1 such act, if the information is provided to or re-
2 ceived from—

3 (A) the Commissioner or any employee,
4 agent, or representative of the Commissioner;

5 (B) Federal, State, or local enforcement or
6 regulatory officials or their employees, agents,
7 or representatives;

8 (C) a self-regulatory organization or its
9 employees, agents, or representatives;

10 (D) a person involved in the prevention
11 and detection of fraudulent insurance acts or
12 that person's agents, employees, or representa-
13 tives; or

14 (E) the NAIC or its employees, agents, or
15 representatives.

16 (2) MALICE.—

17 (A) IN GENERAL.—Paragraph (1) shall not
18 apply to false statements made with actual mal-
19 ice.

20 (B) CONTENTS OF COMPLAINT.—In an ac-
21 tion brought against a person for filing a report
22 or furnishing other information concerning a
23 fraudulent insurance act, the party bringing the
24 action shall plead specifically any allegation
25 that paragraph (1) does not apply because the

1 person filed the report or furnished the infor-
2 mation with actual malice.

3 (3) PRESERVATION OF PRIVILEGE AND IMMUNI-
4 TIES.—This subsection does not abrogate or modify
5 common law or statutory privileges or immunities
6 enjoyed by a person described in paragraph (1).

7 **SEC. 1162. PENALTIES.**

8 If a person committing an offense under subsection
9 (a) or (c) of section 1037A of title 18, United States Code,
10 is a National Insurer, a National Agency, or other feder-
11 ally licensed insurance producer, or an insurer-affiliated
12 party, the Commissioner may, in addition to the punish-
13 ment set forth in such section 1037A—

14 (1) revoke, suspend, or restrict the Federal li-
15 cense of such National Insurer, National Agency, or
16 other federally licensed insurance producer, or in-
17 surer-affiliated party pursuant to subtitle C; and

18 (2) order such National Insurer, National
19 Agency, or other federally licensed insurance pro-
20 ducer, or insurer-affiliated party to make restitution
21 to persons aggrieved by such offenses.

1 **TITLE II—NATIONAL INSURANCE**
2 **COMPANIES AND NATIONAL**
3 **INSURANCE AGENCIES**

4 **Subtitle A—Organization,**
5 **Licensing, and Operations**

6 **SEC. 1201. ORGANIZATION, OPERATION, AND REGULATION**
7 **OF NATIONAL INSURANCE COMPANIES AND**
8 **NATIONAL INSURANCE AGENCIES.**

9 (a) AUTHORIZATION.—

10 (1) IN GENERAL.—The Commissioner may, in
11 accordance with the provisions of this Act, and
12 under regulations prescribed by the Commissioner
13 pursuant to paragraph (2)—

14 (A) provide for the organization, incorpora-
15 tion, operation, and regulation of National In-
16 surance Companies and National Insurance
17 Agencies; and

18 (B) issue charters therefore.

19 (2) RULEMAKING.—The Commissioner shall
20 issue regulations that permit the organization of Na-
21 tional Insurers in stock, mutual, reciprocal, or fra-
22 ternal form, and address such other matters related
23 to the chartering and licensing of National Insurers
24 and National Agencies, as the Commissioner deter-
25 mines appropriate.

1 (3) ORGANIZATION.—The Commissioner shall
2 require National Agencies to be organized in stock
3 form.

4 (b) CHARTERING CRITERIA.—

5 (1) FACTORS.—In determining whether to issue
6 a charter for a National Insurer or National Agency,
7 the Commissioner shall consider—

8 (A) the character and competency of the
9 parties seeking the charter; and

10 (B) the financial resources and future
11 prospects of the proposed National Insurer or
12 proposed National Agency.

13 (2) INFORMATION.—The Commissioner shall re-
14 quest such information from the applicant as the
15 Commissioner determines necessary to make the
16 evaluation required under paragraph (1).

17 (3) CORPORATE NAME.—

18 (A) NATIONAL INSURERS.—The corporate
19 name of each National Insurer shall include at
20 the end the words “National Insurer” or the
21 initials “N.I.”.

22 (B) NATIONAL AGENCIES.—The corporate
23 name of each National Agency shall include at
24 the end the words “National Insurance Agency”
25 or the initials “NIA”.

1 (C) SAVINGS PROVISION.—Nothing in this
2 Act shall preclude a State insurer or State in-
3 surance agency from using the word “national”
4 or “Federal” in its corporate name if such word
5 was included in the State insurer’s or agency’s
6 corporate name on or before the date of enact-
7 ment of this Act.

8 (c) ISSUANCE OR DENIAL OF CHARTER.—

9 (1) DETERMINATION.—Not later than 60 days
10 after the receipt of the articles of incorporation or
11 other organization document from a proposed Na-
12 tional Insurer or National Agency, and such other
13 information required under subsection (b)(2), the
14 Commissioner shall—

15 (A) issue a charter certificate to the appli-
16 cant; or

17 (B) provide the applicant with a written
18 explanation of the grounds for denying a char-
19 ter.

20 (2) FEDERAL PRODUCER LICENSE.—If the
21 Commissioner issues a charter certificate to a Na-
22 tional Agency, the Commissioner shall concurrently
23 issue a Federal producer license to the applicant
24 pursuant to section 1301. A National Agency may

1 not sell, solicit, or negotiate any line of insurance for
2 which it does not hold a Federal producer license.

3 (3) GROUNDS FOR DENIAL.—The Commissioner
4 shall not grant a charter to an applicant if—

5 (A) the applicant fails to—

6 (i) comply with all applicable forma-
7 tion requirements; and

8 (ii) provide any information requested
9 by the Commissioner under subsection
10 (b)(2);

11 (B) the applicant lacks—

12 (i) the financial resources necessary to
13 comply with the standards under this Act;
14 or

15 (ii) the character or competence to op-
16 erate the National Insurer or National
17 Agency in accordance with the standards
18 under this Act; or

19 (C) the Commissioner determines that the
20 National Insurer or National Agency is being
21 formed for an illegitimate purpose.

22 (d) AMENDMENT OF CHARTER.—The Commissioner
23 may, under such regulations as the Commissioner may
24 prescribe, provide for the amendment of charters issued
25 to National Insurers and National Agencies.

1 (e) NO DELEGATION PERMITTED.—The Commis-
2 sioner may not delegate to any insurance self-regulatory
3 organization any authority conferred under this section
4 with respect to—

5 (1) the organization, incorporation, and powers
6 of National Insurers or National Agencies; or

7 (2) the issuance and amendment of charters to
8 a National Insurer or National Agency.

9 (f) MAIN OFFICE.—

10 (1) DESIGNATION.—Subject to the approval of
11 the Commissioner, a National Insurer or National
12 Agency may designate any office at which it con-
13 ducts insurance operations as its main office.

14 (2) CHARTER TO SPECIFY MAIN OFFICE.—A
15 National Insurer or National Agency shall specify
16 the State in which its main office is located.

17 (3) CHANGE IN MAIN OFFICE.—With the ap-
18 proval of the Commissioner, a National Insurer or
19 National Agency may change the designation of its
20 main office, including to another existing office of
21 the National Insurer or National Agency.

22 (4) CITIZENSHIP.—For purposes of jurisdiction,
23 a National Insurer or National Agency shall be
24 deemed a citizen of the State in which its main of-

1 fice is located and of the State in which it has its
2 principal place of business.

3 **SEC. 1202. UNITED STATES BRANCHES OF NON-UNITED**
4 **STATES INSURERS.**

5 (a) AUTHORIZATION OF NON-UNITED STATES IN-
6 **SURER.**—A non-United States insurer may transact insur-
7 ance in the United States through a United States branch
8 by qualifying and licensing the United States branch to
9 do business as a National Insurer under this Act, under
10 such regulations as the Commissioner may prescribe.

11 (b) TRUST ACCOUNT.—

12 (1) IN GENERAL.—The Commissioner shall not
13 license a United States branch until the non-United
14 States insurer establishes a trust account, pursuant
15 to a deed of trust that meets the requirements of
16 this subsection.

17 (2) ASSETS.—The trustee assets of a United
18 States branch shall be held pursuant to a deed of
19 trust with a United States bank that meets such re-
20 quirements as the Commissioner may prescribe, in
21 trust for the exclusive benefit, security, and protec-
22 tion of the policyholders, or policyholders and credi-
23 tors, of the United States branch in the United
24 States maintained as long as there is outstanding

1 any liability of the United States branch arising out
 2 of its insurance transactions in the United States.

3 (3) SURPLUS.—The trustee surplus of a
 4 United States branch shall be subject to the same
 5 solvency standards required of National Insurers, in-
 6 cluding the risk-based capital standards described in
 7 section 1211.

8 (4) FILING.—The Commissioner may require a
 9 United States branch to file a statement, in such
 10 form as the Commissioner may prescribe, that has
 11 been certified by the trustee.

12 (c) SUBJECT TO APPLICABLE LAWS.—Except as oth-
 13 erwise provided under this section, a United States branch
 14 established under this section—

15 (1) shall be subject to all laws applicable to a
 16 National Insurer; and

17 (2) shall be treated as a National Insurer for
 18 all purposes of this Act.

19 **SEC. 1203. FEDERAL LICENSING OF NATIONAL INSURERS.**

20 (a) IN GENERAL.—A National Insurer may not sell,
 21 solicit, negotiate, or underwrite any line of insurance for
 22 which it does not hold a Federal license.

23 (b) ISSUANCE OF FEDERAL LICENSES.—

1 (1) IN GENERAL.—The Commissioner may,
2 under such regulations as the Commissioner may
3 prescribe, issue Federal licenses that—

4 (A) permit National Insurers to sell, so-
5 licit, negotiate, and underwrite lines of insur-
6 ance; and

7 (B) specify the lines of insurance that each
8 National Insurer may sell, solicit, negotiate,
9 and underwrite.

10 (2) RULEMAKING.—The regulations prescribed
11 by the Commissioner pursuant to paragraph (1)
12 shall provide that—

13 (A) a National Insurer may hold a license
14 to sell, solicit, negotiate, and underwrite prop-
15 erty/casualty insurance;

16 (B) a National Insurer that holds a license
17 to sell, solicit, negotiate, and underwrite life in-
18 surance may also sell, solicit, negotiate, and un-
19 derwrite disability income insurance, long-term
20 care insurance, annuities, and funding agree-
21 ments; and

22 (C) no National Insurer may obtain—

23 (i) a Federal license to engage in the
24 sale, solicitation, negotiation, and under-
25 writing of property/casualty insurance; and

1 (ii) a Federal license to engage in the
 2 sale, solicitation, negotiation, and under-
 3 writing of life insurance, annuities, or
 4 funding agreements.

5 (3) AUTHORITY TO LIMIT SCOPE OF INSUR-
 6 ANCE.—Subject to paragraph (2), the regulations
 7 prescribed by the Commissioner pursuant to para-
 8 graph (1) may provide that a National Insurer that
 9 holds a license to sell, solicit, negotiate, and under-
 10 write specified lines of insurance may not hold a li-
 11 cense to sell, solicit, negotiate, and underwrite other
 12 specified lines of insurance.

13 (4) DURATION.—A Federal license issued by
 14 the Commissioner pursuant to this subsection shall
 15 remain in effect until the license is—

16 (A) surrendered by the National Insurer;
 17 or

18 (B) revoked or suspended by the Commis-
 19 sioner in accordance with the provisions of this
 20 Act.

21 (c) REINSURANCE.—A National Insurer may—

22 (1) only reinsure the lines of insurance that the
 23 National Insurer is—

24 (A) licensed to sell, solicit, negotiate, and
 25 underwrite under its Federal license; or

1 (B) otherwise permitted to reinsure by the
 2 terms of its Federal license; and

3 (2) confine its business to reinsurance.

4 (d) NONDISCRIMINATION.—

5 (1) IN GENERAL.—Except as provided in para-
 6 graph (2) and section 1202, the Commissioner may
 7 not impose any condition for the granting of a Fed-
 8 eral license to a National Insurer under this section
 9 solely because the National Insurer is—

10 (A) a subsidiary of a non-United States
 11 person;

12 (B) partially owned by a non-United States
 13 person; or

14 (C) a United States branch of a non-
 15 United States insurer.

16 (2) EXCEPTION.—Notwithstanding paragraph
 17 (1), the Commissioner may impose conditions for the
 18 granting of a Federal license that are different from
 19 those imposed on other National Insurers—

20 (A) if the conditions attached are imposed
 21 on the legal form in which the National Insurer
 22 chooses to operate; or

23 (B) if the Commissioner makes a written
 24 finding that the conditions are related to the
 25 protection of policyholders and are the min-

1 imum conditions necessary to achieve the pur-
2 poses of this Act.

3 **SEC. 1204. CORPORATE GOVERNANCE.**

4 (a) COMPLIANCE WITH THIS ACT AND APPLICABLE
5 REGULATIONS.—The corporate governance procedures of
6 a National Insurer and a National Agency shall be con-
7 sistent with the provisions of this Act and all regulations
8 issued by the Commissioner under this Act.

9 (b) ADHERENCE TO STATE LAW.—

10 (1) IN GENERAL.—Except as provided under
11 paragraph (3), each National Insurer and National
12 Agency shall adhere to corporate governance proce-
13 dures of the relevant State law of the State in which
14 its main office is located or the State in which 1 of
15 its United States holding companies is organized or
16 incorporated.

17 (2) DESIGNATION.—Each National Insurer and
18 National Agency shall designate in its bylaws the
19 body of relevant State law selected for its corporate
20 governance procedures.

21 (3) DISCRIMINATORY PROVISION.—If the Com-
22 missioner determines that any provision of a State
23 corporate governance law is discriminatory as ap-
24 plied to National Insurers or National Agencies,
25 such Insurer or Agency—

1 (A) shall not be obligated to follow such a
 2 provision of the relevant State law; and

3 (B) may follow such other provision of law
 4 as the Commissioner determines to be appro-
 5 priate.

6 (c) INDEPENDENT AUDIT COMMITTEE FOR NA-
 7 TIONAL INSURERS.—

8 (1) ESTABLISHMENT.—Each National Insurer
 9 shall establish an audit committee of its board of di-
 10 rectors, which shall be composed entirely of outside
 11 directors who are independent of management of the
 12 National Insurer.

13 (2) SATISFACTION.—The requirement described
 14 in paragraph (1) will be satisfied if—

15 (A) any person that controls the National
 16 Insurer has established an audit committee of
 17 its board of directors entirely composed of out-
 18 side directors who are independent of manage-
 19 ment of such controlling person; and

20 (B) the role of the audit committee of the
 21 controlling person in subparagraph (A) includes
 22 review of financial statements of the National
 23 Insurer.

1 **SEC. 1205. CONVERSION OF STATE INSURER TO NATIONAL**
2 **INSURER OR STATE INSURANCE AGENCY TO**
3 **NATIONAL AGENCY.**

4 (a) **AUTHORIZATION TO CONVERT.—**

5 (1) **IN GENERAL.**—Notwithstanding any other
6 provision of law and subject to the approval of the
7 Commissioner, a State insurer may convert to a Na-
8 tional Insurer and a State insurance agency may
9 convert to a National Agency.

10 (2) **ORGANIZATIONAL FORM.**—A State insurer
11 that converts to a National Insurer under paragraph
12 (1) may—

13 (A) retain an organizational form per-
14 mitted under section 1201(a)(2); or

15 (B) change directly to another organiza-
16 tional form that is permitted under section
17 1201(a)(2).

18 (b) **CONVERSION PROCEDURES.—**

19 (1) **IN GENERAL.**—The Commissioner may,
20 under such regulations as the Commissioner may
21 prescribe, provide for—

22 (A) the conversion of State insurers into
23 National Insurers;

24 (B) the conversion of State insurance
25 agencies to National Agencies; and

1 (C) the issuance of charters to such con-
2 verted insurers and agencies.

3 (2) RULEMAKING.—The regulations issued by
4 the Commissioner under this section shall be con-
5 sistent with—

6 (A) the regulations issued by the Commis-
7 sioner under section 1201; and

8 (B) the provisions of section 1242 or 1243,
9 in the case of a change of form effected at the
10 time of a conversion of a State insurer into a
11 National Insurer.

12 (c) EFFECT OF CONVERSION.—

13 (1) IN GENERAL.—Except as provided under
14 paragraph (2), a State insurer or State insurance
15 agency that converts under this section—

16 (A) shall be subject to the provisions of
17 this Act and to examination and regulation as
18 provided under this Act to the same extent as
19 other National Insurers and National Agencies
20 organized under this Act;

21 (B) shall be deemed to be a continuation
22 of the corporate existence of the State insurer
23 or State insurance agency, as applicable; and

24 (C) shall, by operation of law and without
25 further action, hold and be subject to all rights,

1 privileges, liabilities, property interests, and
2 other interests and obligations that the State
3 insurer or State insurance agency held, or was
4 subject to, immediately before the conversion.

5 (2) EXCEPTIONS.—Notwithstanding paragraph
6 (1), a State insurer or State insurance agency that
7 converts under this section—

8 (A) shall not be subject to any requirement
9 to maintain deposits with State insurance regu-
10 latory authorities;

11 (B) shall not hold any State license to sell,
12 solicit, negotiate, and underwrite insurance that
13 was held by the State insurer or State insur-
14 ance agency; and

15 (C) shall obtain, in accordance with section
16 1203 or 1301, as applicable, a Federal license
17 for all lines of insurance that it sells, solicits,
18 negotiates, or underwrites.

19 (d) SPECIAL AUTHORITY.—The Commissioner may,
20 subject to such conditions as the Commissioner may pre-
21 scribe by regulation, permit a National Insurer or Na-
22 tional Agency resulting from the conversion of a State in-
23 surer or State insurance agency, as applicable, to retain,
24 hold, or exercise assets, liabilities, powers, and authorities
25 that do not conform to the legal requirements otherwise

1 applicable to National Insurers or National Agencies to
 2 the extent the Commissioner determines is appropriate.

3 (e) MUTUAL HOLDING COMPANY CONTROLLING
 4 STATE INSURERS IN STOCK FORM.—

5 (1) IN GENERAL.—If a State insurer converting
 6 under this section is an insurer in stock form that
 7 is controlled by a mutual holding company as a re-
 8 sult of a previous conversion under State law from
 9 an insurer in mutual form to an insurer in stock
 10 form, and, after the conversion under this section,
 11 the mutual holding company would not control any
 12 other State insurers having policies in force that give
 13 rise to membership in the mutual holding company,
 14 then, notwithstanding any other provision of law, in
 15 accordance with this section and regulations issued
 16 by the Commissioner—

17 (A) upon the conversion under this section,
 18 the mutual holding company may remain a cor-
 19 poration organized under the law of the State
 20 under which it was incorporated or may merge
 21 into a mutual holding company incorporated
 22 under the law of another State; and

23 (B) upon and after the conversion under
 24 this section, the mutual holding company—

1 (i) shall, to the extent provided in reg-
 2 ulations issued by the Commissioner, be
 3 subject to—

4 (I) title V; and

5 (II) examination, reporting, regu-
 6 lation, and other supervision under
 7 this Act; and

8 (ii) shall not be subject to any form of
 9 licensing, examination, reporting, regula-
 10 tion, or other supervision by reason of
 11 being a mutual holding company or relat-
 12 ing to the rights of members, the sale, so-
 13 licitation, negotiation, or underwriting of
 14 insurance (including all products of Na-
 15 tional Insurers) or any other insurance op-
 16 erations except as authorized under Fed-
 17 eral law and except as provided in section
 18 1125(b), as if the mutual holding company
 19 were a National Insurer under this Act.

20 (2) CONVERSION TO A CORPORATION IN STOCK
 21 FORM.—Notwithstanding any other provision of law
 22 and in accordance with this subsection and regula-
 23 tions issued by the Commissioner, a mutual holding
 24 company described in paragraph (1) may convert to
 25 a corporation in stock form in a manner that—

1 (A) is found by the Commissioner to be
 2 fair and equitable to the mutual holding com-
 3 pany and its members; and

4 (B) is generally similar to conversion of an
 5 insurer in mutual form to a National Insurer in
 6 stock form pursuant to section 1243.

7 (f) NO DELEGATION PERMITTED.—The Commis-
 8 sioner may not delegate any authority under this section
 9 involving the conversion of a State insurer into a National
 10 Insurer or a State insurance agency into a National Agen-
 11 cy to any insurance self-regulatory organization.

12 **SEC. 1206. CONVERSION OF NATIONAL INSURER TO STATE**
 13 **INSURER OR NATIONAL AGENCY TO STATE**
 14 **AGENCY.**

15 (a) IN GENERAL.—Subject to such notification proce-
 16 dures as the Commissioner may prescribe by regulation,
 17 a National Insurer may convert into a State insurer and
 18 a National Agency may convert into a State insurance
 19 agency, in accordance with applicable State law.

20 (b) SAVINGS PROVISION.—Nothing in this section or
 21 in the conversion of a National Insurer into a State in-
 22 surer or a National Agency into a State insurance Agency
 23 shall operate to abrogate any rights, privileges, liabilities,
 24 property interests, or other interests or obligations that

1 a National Insurer or National Agency held or was subject
2 to immediately before the conversion.

3 **SEC. 1207. POWERS.**

4 (a) IN GENERAL.—Upon issuance of its charter, a
5 National Insurer or National Agency shall have the power,
6 subject to such regulations as the Commissioner may pre-
7 scribe, to—

8 (1) have, alter, use, and reproduce a corporate
9 seal, or a facsimile of it;

10 (2) have perpetual succession until such time as
11 it is liquidated, dissolved, merged, or otherwise
12 wound up in accordance with applicable law;

13 (3) adopt, amend, and repeal by-laws;

14 (4) sue or be sued, complain and defend, and
15 otherwise litigate in any court and participate, as a
16 party or otherwise, in any judicial, administrative,
17 arbitral, or other proceeding, in its corporate name;

18 (5) make contracts and guarantees, incur liabil-
19 ities, borrow money, issue notes, bonds, and other
20 obligations (which may be convertible into or include
21 the option to purchase other securities of the Na-
22 tional Insurer or National Agency), and secure any
23 of its obligations by mortgage or pledge of any of its
24 property, franchises, or income;

1 (6) purchase, receive, subscribe for, or other-
2 wise acquire, own, hold, vote, improve, employ, use,
3 and otherwise deal in and with real and personal
4 property or other assets, or any interest therein, and
5 sell, convey, mortgage, lease, exchange, transfer, or
6 otherwise dispose of, or mortgage or pledge, all or
7 any of its property and assets, or any interest there-
8 in;

9 (7) lend money, invest, and reinvest its funds
10 and receive and hold real and personal property as
11 security for repayment;

12 (8) participate with others in any corporation,
13 partnership, limited partnership, joint venture, or
14 other association, or in any transaction, under-
15 taking, or arrangement, which the National Insurer
16 or National Agency would have power to conduct by
17 itself, whether or not such participation involves
18 sharing or delegating control with or to others;

19 (9) elect or appoint directors, officers, employ-
20 ees, and agents of the National Insurer or National
21 Agency, define their duties, fix their compensation,
22 and lend them money and credit;

23 (10) pay pensions and establish pension plans,
24 pension trusts, profit-sharing plans, share bonus
25 plans, share option plans, and other benefit or incen-

1 tive plans for any or all current or former directors,
2 officers, employees, and agents of the National In-
3 surer or National Agency, its subsidiaries or its af-
4 filiates;

5 (11) provide insurance for its benefit on the life
6 of any of its directors, officers, or employees, or on
7 the life of any shareholder for the purpose of acquir-
8 ing at such shareholder's death shares of its stock
9 owned by such shareholder;

10 (12) in the case of a National Life Insurer—

11 (A) establish and maintain 1 or more sepa-
12 rate accounts and allocate amounts to such ac-
13 counts (including any proceeds applied under
14 optional modes of settlement or under dividend
15 options);

16 (B) provide life insurance, annuities, dis-
17 ability income insurance, long-term care insur-
18 ance, or funding agreements (and incidental
19 benefits), payable in fixed or variable amounts
20 from the accounts described in subparagraph
21 (A) or from the general account;

22 (C) hold and accumulate funds pursuant to
23 funding agreements; and

24 (D) provide investment advice and invest-
25 ment management services;

1 (13) in the case of a National Insurer—

2 (A) engage in the sale, solicitation, nego-
3 tiation, and underwriting of insurance;

4 (B) establish and maintain 1 or more pro-
5 tected cells in connection with an insurance
6 securitization and attribute to such cells insur-
7 ance and reinsurance obligations with respect to
8 its general account, obligations relating to the
9 insurance securitization and assets to fund such
10 obligations; and

11 (C) engage in all other insurance oper-
12 ations and exercise all such incidental powers as
13 shall be necessary to carry on insurance oper-
14 ations;

15 (14) in the case of a National Agency, engage
16 in the sale, solicitation, and negotiation of policies of
17 insurance issued by any National Insurer, State in-
18 surer, or United States branch of a non-United
19 States insurer, and exercise all such incidental pow-
20 ers as shall be necessary to carry out such activities,
21 including claims adjustment and settlement, risk
22 management, employee benefits advice, and retire-
23 ment planning;

24 (15) provide benefits or payments to its direc-
25 tors, officers, and employees, subsidiaries or affili-

1 ates, and to their estates, families, dependents, or
2 beneficiaries, in recognition of the past services of
3 the directors, officers, and employees to the National
4 Insurer or National Agency or its subsidiaries or af-
5 filiates;

6 (16) make donations and otherwise devote its
7 resources for the public welfare or for charitable, sci-
8 entific, educational, humanitarian, philanthropic, or
9 religious purposes;

10 (17) serve as a promoter, partner, member, as-
11 sociate, or manager of any business entity;

12 (18) provide loss control, advice, exposure iden-
13 tification, and reduction strategies, and recommend
14 and expedite risk financing alternatives;

15 (19) engage in any other lawful activity that is
16 necessary or convenient to further its activities and
17 affairs; and

18 (20) exercise the powers granted by this Act in
19 any State and in any foreign jurisdiction.

20 (b) EFFECT ON STATE LAW.—No State may, by stat-
21 ute, regulation, order, interpretation, or other action, pre-
22 vent or restrict a National Insurer or National Agency
23 from exercising any power conferred by this section or by
24 any regulation authorized by this section.

25 (c) SUBSIDIARIES.—

1 (1) NATIONAL INSURERS.—

2 (A) AUTHORIZATION.—

3 (i) IN GENERAL.—A National Insurer
4 may establish, invest in, or otherwise ac-
5 quire 1 or more subsidiaries engaged or or-
6 ganized to engage in any business lawful
7 under the laws of the jurisdictions in which
8 the subsidiaries are organized.

9 (ii) RESTRICTION.—Without the prior
10 written approval of the Commissioner, not
11 more than 20 percent of the National In-
12 surer's assets may be invested in any 1
13 subsidiary described in clause (i) and not
14 more than 40 percent of a National Insur-
15 er's assets may be invested in 2 or more
16 subsidiaries engaged in such other activi-
17 ties.

18 (B) CALCULATION.—In calculating the
19 amount invested by a National Insurer in a
20 subsidiary under subparagraph (A), there shall
21 be included only the following:

22 (i) Total net monies or other consider-
23 ation expended and obligations assumed by
24 the National Insurer in the acquisition or
25 formation of the subsidiary, including all

1 organizational expenses and contributions
2 to capital and surplus of the subsidiary
3 whether or not represented by the pur-
4 chase of capital stock or issuance of other
5 securities.

6 (ii) All amounts expended by the Na-
7 tional Insurer in acquiring additional com-
8 mon stock, preferred stock, debt obliga-
9 tions, and other securities of the sub-
10 sidiary.

11 (iii) All contributions by the National
12 Insurer to the capital or surplus of the
13 subsidiary subsequent to its acquisition or
14 formation.

15 (C) QUALIFICATION OF INVESTMENT;
16 WHEN DETERMINED.—Whether any investment
17 made pursuant to subparagraph (A) meets the
18 applicable requirements of such subparagraph
19 shall be determined before the investment is
20 made by calculating the applicable investment
21 limitations as though the investment had al-
22 ready been made, taking into account the then
23 outstanding principal balance on all previous in-
24 vestments in debt obligations, and the value of
25 all previous investments in equity securities as

1 of the day they were made, net of any return
 2 of capital invested, not including dividends.

3 (D) EXCEPTION.—The limitations provided
 4 for in subparagraph (A) shall not apply to in-
 5 vestments by a National Insurer in—

6 (i) any subsidiary engaged primarily
 7 in the sale, solicitation, negotiation, and
 8 underwriting of any line of insurance that
 9 the National Insurer is authorized to sell,
 10 solicit, negotiate, and underwrite; or

11 (ii) any subsidiary whose sole business
 12 function is to own assets (including other
 13 subsidiaries) that the National Insurer
 14 itself is authorized to own.

15 (E) NOTICE.—A National Insurer shall no-
 16 tify the Commissioner, in writing, not later
 17 than 20 calendar days after establishing, invest-
 18 ing in, or acquiring a subsidiary, unless the
 19 transaction requires the prior written approval
 20 of the Commissioner under subparagraph (A).

21 (2) NATIONAL AGENCIES.—

22 (A) AUTHORIZATION.—A National Agency
 23 may establish, invest in, or otherwise acquire 1
 24 or more subsidiaries engaged or organized to

1 engage in any business activity that is lawful
 2 for a National Agency under this Act.

3 (B) NOTICE.—A National Agency shall no-
 4 tify the Commissioner, in writing, not later
 5 than 30 calendar days after establishing, invest-
 6 ing in, or acquiring a subsidiary.

7 (d) DIVIDENDS AND DISTRIBUTIONS TO SHARE-
 8 HOLDERS.—

9 (1) SHAREHOLDER DIVIDENDS AND DISTRIBUTI-
 10 TIONS PERMITTED.—A National Insurer may de-
 11 clare and pay dividends or make other distributions
 12 in cash, bonds, or property on its outstanding
 13 shares, unless—

14 (A) the National Insurer is insolvent or
 15 would be made insolvent by such payment; or

16 (B) the declaration, payment, or distribu-
 17 tion would be contrary to any restrictions con-
 18 tained in the charter of the National Insurer.

19 (2) SOURCE OF SHAREHOLDER DIVIDENDS AND
 20 DISTRIBUTIONS.—A National Insurer may only de-
 21 clare and pay dividends or make other distributions
 22 out of surplus if the assets of the National Insurer
 23 after such declaration, payment, or distribution is
 24 not less than the amount of its capital.

1 (3) OTHER PROVISIONS.—Shareholder divi-
2 dends and distributions made pursuant to this sub-
3 section shall be subject to—

4 (A) the standards set forth in section
5 1403(a)(1)(E); and

6 (B) the notice requirements of section
7 1403(b).

8 **SEC. 1208. SEPARATE ACCOUNTS OF NATIONAL LIFE IN-**
9 **SURER.**

10 (a) OWNERSHIP.—Any amount allocated by a Na-
11 tional Life Insurer to a separate account shall be owned
12 and controlled by the National Life Insurer and no Na-
13 tional Life Insurer by reason of such account shall be or
14 hold itself out to be a trustee.

15 (b) LIABILITIES.—Assets allocated by a National
16 Life Insurer to a separate account shall not be chargeable
17 with liabilities arising out of any other business of the Na-
18 tional Life Insurer to the extent so provided in the applica-
19 ble agreements.

20 (c) SECURITY INTERESTS PERMITTED.—A National
21 Life Insurer may allow for a security interest to attach
22 to assets allocated to a separate account if the security
23 interest is in favor of a creditor of the separate account
24 and otherwise allowed under applicable law.

1 **SEC. 1209. PROTECTED CELLS.**

2 (a) ESTABLISHMENT.—A National Insurer may es-
3 tablish 1 or more protected cells with the approval of the
4 Commissioner.

5 (b) PROTECTED CELL ASSETS.—

6 (1) OWNERSHIP.—All amounts attributed to a
7 protected cell established under this section, includ-
8 ing assets transferred to a protected cell account,
9 shall be owned by the National Insurer.

10 (2) TRUSTEE.—The National Insurer may not
11 be, nor hold itself out to be, a trustee with respect
12 to the protected cell assets of the protected cell ac-
13 count described in paragraph (1).

14 (3) LIABILITIES.—The assets of a protected cell
15 established under this section shall not be chargeable
16 with liabilities arising out of any other business of
17 the National Insurer.

18 (c) SECURITY INTERESTS PERMITTED.—A National
19 Insurer may allow for a security interest to attach to pro-
20 tected cell assets or a protected cell account if the security
21 interest is in favor of a creditor of the protected cell and
22 otherwise allowed under applicable law.

23 (d) REACH OF CREDITORS AND OTHER CLAIM-
24 ANTS.—

25 (1) AVAILABILITY.—Protected cell assets shall
26 only be available to the creditors of a National In-

1 surer that are creditors in respect to that protected
2 cell.

3 (2) RECOURSE.—Creditors with respect to a
4 protected cell shall have no recourse against the pro-
5 tected cell assets of other protected cells or the gen-
6 eral account assets of the National Insurer.

7 (3) FRAUD.—The establishment of a protected
8 cell shall not, in and of itself, constitute a fraudulent
9 conveyance, an intent by a National Insurer to de-
10 fraud creditors, or the carrying out of business by
11 a National Insurer for any other fraudulent purpose.

12 (e) RULEMAKING.—The Commissioner shall promul-
13 gate regulations that establish standards for protected
14 cells established by National Insurers.

15 (f) EFFECT ON STATE LAW.—No State may, by stat-
16 ute, regulation, order, interpretation, or otherwise, require
17 licensing or otherwise regulate in any manner—

18 (1) an investor in an insurance securitization,
19 solely by reason of its investment, as an insurer, re-
20 insurer, or other person transacting insurance; or

21 (2) an underwriter or selling agent (or its part-
22 ners, directors, officers, members, managers, em-
23 ployees, agents, representatives, or advisors) in an
24 insurance securitization as an insurance or reinsur-
25 ance agent, broker, producer, intermediary, advisor,

1 consultant, or similar insurance professional by vir-
2 tue of its activities in connection with the insurance
3 securitization.

4 **SEC. 1210. CHARTERING AND LICENSING COMMENCEMENT**
5 **DATE.**

6 (a) NATIONAL INSURER.—The Commissioner may
7 charter or license a National Insurer when the following
8 regulations have been published in interim final form:

9 (1) The fee and assessment regulations author-
10 ized by section 1122.

11 (2) The reporting regulations authorized by sec-
12 tion 1124.

13 (3) The organizational regulations authorized
14 by section 1201.

15 (4) The licensing regulations authorized by sec-
16 tion 1203.

17 (5) The charter conversion regulations author-
18 ized by section 1205.

19 (6) The transitional financial regulations au-
20 thorized by section 1211.

21 (7) The product regulations authorized by sec-
22 tion 1213.

23 (8) The market conduct regulations authorized
24 by section 1215.

1 (9) The control regulations authorized by sec-
2 tion 1231.

3 (10) The merger, consolidation, and acquisition
4 regulations authorized by section 1232.

5 (11) The bulk transfer regulations authorized
6 by section 1233.

7 (12) The conversion regulations authorized by
8 sections 1242 and 1243.

9 (13) The holding company regulations author-
10 ized by sections 1402 and 1403.

11 (14) The receivership regulations authorized by
12 section 1504.

13 (15) The insolvency protection regulations au-
14 thorized by section 1609.

15 (b) NATIONAL AGENCIES.—The Commissioner may
16 charter or license a National Agency when the following
17 regulations have been published in interim final form:

18 (1) The fee and assessment regulations author-
19 ized by section 1122.

20 (2) The reporting regulations authorized by sec-
21 tion 1124.

22 (3) The organizational regulations authorized
23 by section 1201.

24 (4) The charter conversion regulations author-
25 ized by section 1205.

1 (5) The market conduct regulations authorized
2 by section 1215.

3 (6) The control regulations authorized by sec-
4 tion 1231.

5 (7) The merger, consolidation, and acquisition
6 regulations authorized by section 1232.

7 (8) The producer licensing regulations author-
8 ized by section 1301.

9 (9) The holding company regulations authorized
10 by sections 1402 and 1403.

11 (c) TIMING AND NOTICE.—

12 (1) TIMING.—The regulations described in sub-
13 sections (a) and (b) shall be published in interim
14 final form not later than 2 years after the initial ap-
15 pointment and confirmation of the Commissioner.

16 (2) NOTICE.—At such time as the regulations
17 described in subsections (a) or (b) have been issued
18 in interim final form, the Commissioner shall publish
19 a notice in the Federal Register announcing that the
20 Office is prepared to act on chartering and licensing
21 applications.

22 (3) CONSIDERING AND ACTING UPON APPLICA-
23 TIONS.—Notwithstanding any challenge to the regu-
24 lations described in subsections (a) and (b), the
25 Commissioner shall have the authority to consider,

1 and act upon, chartering and licensing applications
 2 immediately upon publication of the notice described
 3 in paragraph (2).

4 **Subtitle B—Financial, Product, and** 5 **Market Regulation**

6 **SEC. 1211. TRANSITIONAL FINANCIAL REGULATIONS.**

7 (a) PROMULGATION OF INITIAL FINANCIAL REGULA-
 8 TIONS THAT ARE CONSISTENT WITH NAIC STANDARDS
 9 AND MODELS.—The Commissioner shall establish, by reg-
 10 ulation, the following:

11 (1) Accounting principles for a National In-
 12 surer, which are consistent with the statutory ac-
 13 counting practices promulgated by the NAIC in its
 14 “Accounting Practices and Procedures Manual”.

15 (2) Auditing standards for a National Insurer,
 16 which are consistent with the guidance prescribed by
 17 the NAIC in its “Model Regulation Requiring An-
 18 nual Audited Financial Reports”.

19 (3) Investment standards for a National In-
 20 surer, which are consistent with the NAIC’s “Invest-
 21 ment of Insurers Model Act (Defined Standards
 22 Version)”.

23 (4) Risk-based capital standards for a National
 24 Insurer, which are consistent with NAIC’s “Risk-

1 Based Capital (RBC) for Insurers Model Act” and
2 the related “RBC Instructions”.

3 (5) Valuation standards for the obligations and
4 liabilities of a National Life Insurer, which are con-
5 sistent with the NAIC’s “Standard Valuation Law,
6 Valuation of Life Insurance Policies Regulation,
7 Universal Life Insurance Model Regulation, and
8 Variable Life Insurance Model Regulation”.

9 (6) Continuing and alternative (nonforfeiture)
10 benefits standards applicable to National Life Insur-
11 ers, which are consistent with the NAIC’s “Standard
12 Nonforfeiture Law for Life Insurance, Variable Life
13 Insurance Model Regulation, Standard Nonforfeiture
14 Law for Individual Deferred Annuities, Long-Term
15 Care Insurance Model Act, and Long-Term Care In-
16 surance Model Regulation”.

17 (7) Standards for the preparation and filing of
18 an annual actuarial opinion on the adequacy of a
19 National Life Insurer’s assets to meet its reasonably
20 expected obligations and liabilities, which are con-
21 sistent with the NAIC’s “Actuarial Opinion and
22 Memorandum Regulation”.

23 (8) Standards for the preparation and filing of
24 an annual actuarial opinion on the loss and loss ad-
25 justment expense reserves of a National Property/

1 Casualty Insurer, which are consistent with the
2 NAIC's "Property and Casualty Actuarial Opinion
3 Model Law" and applicable "NAIC Property and
4 Casualty Annual Statement Instructions".

5 (b) NAIC STANDARDS AND MODELS.—The NAIC
6 standards and models cited in subsection (a) shall be the
7 standards and models adopted by the NAIC as of the date
8 of introduction of the National Insurance Act of 2006 as
9 a bill in Congress.

10 (c) EFFECTIVE DATE AND FIVE-YEAR TRANSI-
11 TIONAL PERIOD FOR INITIAL FINANCIAL REGULA-
12 TIONS.—The financial regulations specified in subsection
13 (a) shall be issued in final form no later than 2 years fol-
14 lowing the initial appointment and confirmation of the
15 Commissioner, and each regulation shall remain in effect
16 for 5 years following the date upon which it becomes effec-
17 tive.

18 (d) NAIC AMENDMENTS.—If, after the date of intro-
19 duction of the National Insurance Act of 2006 as a bill
20 in Congress, the NAIC amends any standard or model
21 upon which the initial financial regulations are based, the
22 Commissioner shall determine, by regulation, whether
23 such amendment shall apply to a National Insurer. If the
24 Commissioner determines that an NAIC amendment to a
25 standard or model should apply to a National Insurer, the

1 Commissioner may specify, by regulation, whether the
2 amendment applies in whole or in part.

3 (e) REVISIONS OR MODIFICATIONS TO INITIAL REGU-
4 LATIONS BY COMMISSIONER.—

5 (1) IN GENERAL.—Subject to paragraph (2),
6 after an initial financial regulation specified in sub-
7 section (a) has been in effect for 5 years, the Com-
8 missioner may, by regulation, revise or modify the
9 regulation.

10 (2) SPECIAL CIRCUMSTANCE.—The Commis-
11 sioner may, by regulation, revise or modify an initial
12 financial regulation at any time if the Commissioner
13 determines that any such revision or modification is
14 necessary to protect policyholders or prevent haz-
15 ardous conduct by a National Insurer.

16 **SEC. 1212. OTHER FINANCIAL REGULATIONS.**

17 In addition to the financial regulations specified in
18 section 1211, the Commissioner may issue other financial
19 regulations as the Commissioner determines necessary.

20 **SEC. 1213. PRODUCT REGULATION FOR NATIONAL LIFE IN-**
21 **SURERS.**

22 (a) APPLICABILITY.—This section shall apply to the
23 insurance business of National Life Insurers.

24 (b) UNDERWRITING STANDARDS.—A National In-
25 surer may classify or underwrite risks if any decision to

1 refuse to insure, to continue to insure, to limit the amount,
 2 extent, or kind of coverage, or to charge a different rate
 3 for the same coverage is—

4 (1) based on sound actuarial principles; or

5 (2) related to actual or reasonably anticipated
 6 experience.

7 (c) LAW APPLICABLE TO INSURANCE POLICIES OR
 8 OTHER PRODUCTS OF NATIONAL INSURERS.—

9 (1) LAW SPECIFIED BY PARTIES.—Subject to
 10 any applicable Federal law, the provisions of any in-
 11 surance policy or other product of a National In-
 12 surer shall be interpreted in accordance with the law
 13 of the jurisdiction specified by the parties to the in-
 14 surance policy or other product if the parties have
 15 specified the law of—

16 (A) the jurisdiction in which the main of-
 17 fice of the National Insurer is located;

18 (B) the jurisdiction in which the principal
 19 place of business of the National Insurer is lo-
 20 cated; or

21 (C) the jurisdiction in which the insurance
 22 policy or other product is delivered.

23 (2) DEFAULT LAW.—If the parties to an insur-
 24 ance policy or other product of a National Insurer
 25 have not specified the jurisdiction whose law shall

1 govern the provisions of the insurance policy or
 2 other product, such provisions shall be interpreted in
 3 accordance with the law of the jurisdiction in which
 4 the insurance policy or other product is delivered.

5 (3) RULEMAKING.—The Commissioner shall es-
 6 tablish, by regulation, choice of law rules and stand-
 7 ards under this subsection.

8 (d) STANDARDS FOR POLICIES.—

9 (1) POLICY.—In this subsection, the term “pol-
 10 icy”—

11 (A) means—

12 (i) a policy, contract, certificate, or
 13 other evidence of life insurance, disability
 14 income insurance, or long-term care insur-
 15 ance; or

16 (ii) an annuity contract or a rider or
 17 endorsement to such contract; and

18 (B) does not include—

19 (i) a funding agreement;

20 (ii) a reinsurance contract; or

21 (iii) an agreement, special rider, or
 22 endorsement relating only to the manner of
 23 distributing benefits or to the reservation
 24 of rights and benefits used at the request
 25 of the individual policyholder.

1 (2) RULEMAKING.—The Commissioner shall es-
2 tablish, by regulation, standards for policies issued
3 by a National Insurer.

4 (3) TYPES OF POLICY REQUIREMENTS.—The
5 standards established under paragraph (1) may in-
6 clude general policy requirements and requirements
7 regarding particular classes of policies.

8 (e) PRODUCT FILINGS.—

9 (1) FORM APPROVAL.—A National Insurer shall
10 not issue a policy until the form of the policy has
11 been received by the Commissioner.

12 (2) EXEMPTIONS.—The Commissioner may, by
13 regulation, exempt particular categories of policies
14 from the filing requirement.

15 (3) COMPLIANCE CERTIFICATE.—In accordance
16 with regulations promulgated by the Commissioner,
17 any filing of a policy form shall be accompanied by
18 written certification by an officer of the National In-
19 surer that the policy form complies with the stand-
20 ards applicable to such form.

21 (f) INTERPRETIVE RULINGS.—

22 (1) PROCEDURES.—The Commissioner shall es-
23 tablish procedures by which National Insurers may
24 obtain interpretive rulings from the Office regarding

1 the interpretation and application of the standards
 2 established under this section.

3 (2) PUBLIC AVAILABILITY.—Except as provided
 4 under paragraph (3), requests by National Insurers
 5 for interpretive rulings from the Office and the com-
 6 plete text of such interpretive rulings shall not be
 7 made available to the public.

8 (3) PUBLICATION OF SUMMARIES.—Notwith-
 9 standing paragraph (2), the Commissioner shall pub-
 10 lish a summary of each interpretive opinion, exclud-
 11 ing the name of the National Insurer and any other
 12 identifying information, either promptly after the
 13 issuance of such opinion or, upon the request of the
 14 National Insurer, after such delay as the Commis-
 15 sioner determines appropriate.

16 (g) GROUP, BLANKET, AND FRANCHISE INSUR-
 17 ANCE.—

18 (1) AUTHORIZATION.—A National Insurer
 19 may—

20 (A) sell, solicit, negotiate, and underwrite
 21 group, blanket, and franchise insurance policies;
 22 and

23 (B) extend group, blanket, or franchise in-
 24 surance policies to insure the dependents of em-

1 ployees or members, or any class of employees
 2 or members.

3 (2) RULEMAKING.—The Commissioner shall, by
 4 regulation, establish standards for kinds and quali-
 5 fications of permissible groups for group, blanket,
 6 and franchise insurance policies.

7 (h) INSURABLE INTEREST.—The Commissioner shall
 8 define, by regulation, the term “insurable interest.”

9 (i) CRITERIA UNDER WHICH NEW LIFE INSURANCE
 10 MAY EXCEED THE INSURANCE BEING REPLACED.—Any
 11 new life insurance may exceed the insurance being re-
 12 placed—

13 (1) if a business entity or a trust entity has an
 14 insurable interest and the authority to purchase life
 15 insurance;

16 (2) to the extent the application of the cash
 17 surrender value of the insurance being replaced as a
 18 premium under the new life insurance policy re-
 19 quires a larger amount of insurance—

20 (A) to qualify as life insurance; or

21 (B) to not be treated as a modified endow-
 22 ment contract for Federal income tax purposes;

23 (3) to otherwise comply with applicable Federal
 24 law; and

1 (4) if, upon cessation of premium payments, a
 2 former employee or trustee elects under the insur-
 3 ance policy to use the cash value available under the
 4 insurance policy to restructure the term, face
 5 amount, or investment options under the insurance
 6 policy.

7 (j) EFFECT OF STATE LAW.—No State may impose
 8 any standard, relating to any matter addressed in this sec-
 9 tion, on National Insurers or persons who purchase insur-
 10 ance from National Insurers.

11 **SEC. 1214. PRODUCT REGULATION FOR NATIONAL PROP-**
 12 **ERTY/CASUALTY INSURERS.**

13 (a) APPLICATION.—This section shall apply to the
 14 business of National Property/Casualty Insurers.

15 (b) MAINTENANCE OF COPIES OF POLICIES.—A Na-
 16 tional Insurer shall maintain for inspection a copy of every
 17 insurance policy form that it uses to insure risks.

18 (c) ANNUAL POLICY FORM LISTING.—A National In-
 19 surer shall annually provide the Commissioner with a list
 20 of all standard policy forms it uses to insure risks.

21 (d) RATES, RATING ELEMENTS, PRICE, AND
 22 FORMS.—The Act does not authorize the Commissioner
 23 to require a National Insurer to use any particular rate,
 24 rating element, price, or form.

1 **SEC. 1215. REGULATION OF SALES AND MARKETING.**

2 (a) PURPOSE.—The purpose of this section is to en-
 3 sure appropriate Federal regulation of the sales and mar-
 4 keting practices of National Insurers, National Agencies,
 5 and federally licensed insurance producers to prevent un-
 6 fair methods of competition and unfair and deceptive acts
 7 and practices in the advertising, sale, issuance, distribu-
 8 tion, and administration of insurance policies and other
 9 products of National Insurers and claims under insurance
 10 policies and other products of National Insurers.

11 (b) RULEMAKING.—The Commissioner shall promul-
 12 gate such regulations, applicable to National Insurers, Na-
 13 tional Agencies, and federally licensed insurance pro-
 14 ducers, as the Commissioner determines to be necessary
 15 to carry out the purpose of this section, including rules
 16 governing the advertising, sale, issuance, distribution, and
 17 administration of insurance policies and other products of
 18 National Insurers and claims under insurance policies and
 19 other products of National Insurers.

20 **Subtitle C—Reinsurance**

21 **SEC. 1221. FEDERAL LICENSING OF REINSURERS.**

22 (a) AUTHORITY TO LICENSE.—

23 (1) IN GENERAL.—The Commissioner may—

24 (A) license insurers that are not National
 25 Insurers to provide reinsurance; and

1 (B) prescribe, by regulation, the standards
2 and procedures for granting such licenses.

3 (2) CRITERIA.—The standards prescribed under
4 paragraph (1)(B) shall give due consideration to—

5 (A) the public interest in providing secure
6 and sufficient reinsurance capacity in the
7 United States; and

8 (B) the need for promoting fair and effec-
9 tive competition.

10 (b) DETERMINATION AND FINDING; ISSUANCE OF LI-
11 CENSE.—

12 (1) EXAMINATION AND INVESTIGATION.—Upon
13 the receipt of an application for a license under this
14 section, the Commissioner shall examine the infor-
15 mation submitted by the applicant and may conduct
16 further examinations and investigations, as nec-
17 essary, to determine whether the applicant satisfies
18 the standards for a license under this section.

19 (2) PUBLICATION OF FINDINGS.—The Commis-
20 sioner shall publish the Commissioner's findings and
21 determination under paragraph (1).

22 (3) ISSUANCE OF FEDERAL LICENSE.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph (B), if the Commissioner deter-
25 mines that the applicant has satisfied the appli-

1 cable requirements of this section, the Commis-
2 sioner shall issue a Federal license to provide
3 reinsurance.

4 (B) RESTRICTION.—The Commissioner
5 shall not issue a Federal license for reinsurance
6 until after the Commissioner is authorized to
7 charter and license a National Insurer pursuant
8 to section 1210.

9 (c) MINIMUM STANDARDS FOR LICENSING OF NON-
10 UNITED STATES INSURERS.—The Commissioner shall not
11 issue a license under this section to any insurer that is
12 not a State insurer or a United States branch of a non-
13 United States insurer unless the insurer agrees to—

14 (1) report its financial statements to the Com-
15 missioner on a basis that the Commissioner deter-
16 mines to be substantially similar to that required of
17 National Insurers under section 1124;

18 (2) submit to the jurisdiction of Federal, State,
19 and local courts in the United States; and

20 (3) demonstrate that all judgments of all
21 United States courts would be enforceable and col-
22 lectible by—

23 (A) being organized or incorporated in a
24 jurisdiction with which the United States has
25 entered into a treaty on the recognition and en-

1 enforcement of judgments rendered by Federal,
 2 State, and local courts in the United States; or
 3 (B) agreeing to post prejudgment security
 4 in the United States upon the commencement
 5 of any litigation or arbitration in the United
 6 States, subject to such regulations as the Com-
 7 missioner may prescribe.

8 (d) REVOCATION OF LICENSE.—

9 (1) IN GENERAL.—The Commissioner may re-
 10 voke, suspend, or restrict a Federal reinsurer's li-
 11 cense in accordance with subtitle C of title I.

12 (2) STATUS OF FEDERALLY LICENSED REIN-
 13 SURER.—For purposes of this subsection, a federally
 14 licensed reinsurer shall be deemed to be a National
 15 Insurer under subtitle C of title I.

16 (e) ANNUAL REPORTS.—The Commissioner shall re-
 17 quire each reinsurer licensed under this section to submit
 18 an annual report of its financial condition and an annual
 19 report on the condition of any trust fund regulated under
 20 this subtitle in such form as may be prescribed by the
 21 Commissioner.

22 **SEC. 1222. CREDIT FOR REINSURANCE.**

23 (a) CREDIT FOR REINSURANCE CEDED TO A NA-
 24 TIONAL INSURER OR A FEDERALLY LICENSED REIN-
 25 SURER.—A National Insurer may establish an asset or re-

1 duce its liabilities, to the extent of such liabilities, for rein-
 2 surance ceded to another National Insurer or a federally
 3 licensed reinsurer.

4 (b) OTHER ASSET OR REDUCTION FROM LIABILITY
 5 FOR REINSURANCE CEDED.—A National Insurer may es-
 6 tablish an asset or reduce its liabilities, to the extent of
 7 such liabilities, for reinsurance—

8 (1) that is ceded to—

9 (A) a State insurer;

10 (B) a United States branch entered
 11 through a State; or

12 (C) a non-United States insurer; and

13 (2) if such reinsurance is secured consistent
 14 with the regulation issued by the Commissioner pur-
 15 suant to subsection (c).

16 (c) REGULATION.—The Commissioner shall establish,
 17 by regulation, security standards governing the ceding of
 18 insurance by a National Insurer to any of the entities list-
 19 ed in subsection (b)(1) in order to protect the policy-
 20 holders of a National Insurer.

21 **SEC. 1223. RELATIONSHIP TO STATE LAW.**

22 No State may prevent a State insurer from—

23 (1) ceding insurance to a National Insurer or a
 24 federally licensed reinsurer; or

1 (2) establishing an asset or reducing its liabil-
 2 ities as a result of such reinsurance to the same ex-
 3 tent as the State would allow such insurer if the in-
 4 surance were ceded to another State insurer.

5 **Subtitle D—Acquisitions of Con-**
 6 **trol; Mergers; Bulk Transfers;**
 7 **Domestication**

8 **SEC. 1231. ACQUISITION OF CONTROL OF NATIONAL INSUR-**
 9 **ERS AND NATIONAL AGENCIES.**

10 (a) DEFINITIONS.—For purposes of this section—

11 (1) the terms “National Insurer” and “Na-
 12 tional Agency” include any person controlling a Na-
 13 tional Insurer or National Agency; and

14 (2) the term “person” does not include any se-
 15 curities broker holding, in the usual and customary
 16 broker’s function, less than 20 percent of the voting
 17 securities of a National Insurer or National Agency
 18 or of any person which controls a National Insurer
 19 or National Agency.

20 (b) COMMISSIONER APPROVAL REQUIRED.—

21 (1) IN GENERAL.—No person other than the
 22 issuer shall make a tender offer for, make a request
 23 or invitation for tenders of, or enter into any agree-
 24 ment to exchange securities for, or acquire, in the
 25 open market or otherwise, any voting security of a

1 National Insurer or National Agency if, after the
2 consummation of such transaction, such person
3 would, directly or indirectly (or by conversion or by
4 exercise of any right to acquire) be in control of the
5 National Insurer or National Agency. No person
6 shall enter into an agreement to merge with or oth-
7 erwise acquire control of a National Insurer or Na-
8 tional Agency or any person controlling a National
9 Insurer or National Agency unless, at the time the
10 offer, request, or invitation is made or the agree-
11 ment is entered into, or before the acquisition of the
12 securities if no offer or agreement is involved—

13 (A) such person has filed with the Com-
14 missioner and has sent to the National Insurer
15 or National Agency, a statement that complies
16 with the regulations prescribed under para-
17 graph (3); and

18 (B) the offer, request, invitation, agree-
19 ment, or acquisition has been approved by the
20 Commissioner.

21 (2) SAVINGS PROVISION.—Nothing in this sub-
22 section shall be construed to prohibit a person from
23 making an offer, request, or invitation or entering
24 into an agreement to acquire control of a National
25 Insurer or National Agency, if such transaction is

1 conditioned upon obtaining the approval of the Com-
2 missioner in accordance with paragraph (1).

3 (3) FORM AND CONTENT OF STATEMENT.—The
4 Commissioner shall, by regulation, prescribe the
5 form and content of the statement to be filed under
6 paragraph (1)(A).

7 (4) APPROVAL BY COMMISSIONER.—The Com-
8 missioner shall approve any merger or other acquisi-
9 tion of control referred to in this subsection unless
10 the Commissioner finds that—

11 (A) after the acquisition of control, the
12 National Insurer or National Agency would not
13 be able to satisfy the requirements for the
14 issuance of a Federal license to write the line
15 or lines of insurance for which the National In-
16 surer or National Agency was previously li-
17 censed;

18 (B) the financial condition of any acquir-
19 ing person may jeopardize the financial stability
20 of the National Insurer or National Agency or
21 be hazardous to the policyholders of the Na-
22 tional Insurer;

23 (C) the plans or proposals of the acquiring
24 person to liquidate the National Insurer or Na-
25 tional Agency, sell its assets, consolidate or

1 merge it with any person, or make any other
2 material change in its business or corporate
3 structure or management, are unfair and un-
4 reasonable to policyholders of the National In-
5 surer and not in the public interest;

6 (D) those persons who would control the
7 operation of the National Insurer or National
8 Agency lack the competence, experience, or in-
9 tegrity required to protect the interests of pol-
10 icyholders of the National Insurer or National
11 Agency; or

12 (E) the acquisition is likely to be haz-
13 ardous to the insurance-buying public.

14 (c) HEARING.—

15 (1) IN GENERAL.—The Commissioner may, in
16 his sole discretion, hold a hearing on a merger or
17 other acquisition of control that is subject to this
18 section and for which a statement has been filed
19 under subsection (b)(1)(A).

20 (2) PROCEDURES.—A hearing under this sub-
21 section shall be subject to the procedures under sec-
22 tion 1148, except that the Commissioner may deter-
23 mine the location of such hearing.

24 (d) EXEMPTIONS.—The provisions of this section
25 shall not apply to—

1 (1) any offer, request, invitation, agreement, or
2 acquisition exempted by the Commissioner for not
3 having been made or entered into for the purpose,
4 and not having the effect, of changing or influencing
5 the control of a National Insurer or National Agen-
6 cy, or as otherwise not comprehended within the
7 purposes of this section; or

8 (2) a merger, consolidation, or acquisition sub-
9 ject to section 1232.

10 (e) VOTING OF SECURITIES.—

11 (1) PROHIBITION.—No security which is the
12 subject of any agreement or arrangement regarding
13 acquisition, or which is acquired or to be acquired,
14 in contravention of the provisions of this section may
15 be voted at any shareholder's meeting, or may be
16 counted for quorum purposes.

17 (2) EFFECT ON SHARES.—Any action of share-
18 holders requiring the affirmative vote of a percent-
19 age of shares may be taken as though the securities
20 described under paragraph (1) were not issued and
21 outstanding.

22 (3) INVALIDATION OF ACTION.—No action
23 taken at any meeting described under paragraph (1)
24 shall be invalidated by the voting of the securities,
25 unless—

1 (A) the action would affect control of the
2 National Insurer or National Agency; or

3 (B) such invalidation is ordered by a court.

4 (4) ACQUISITION IN CONTRAVENTION OF THIS
5 ACT.—If a National Insurer or the Commissioner
6 has reason to believe that any security of the Na-
7 tional Insurer or National Agency has been or is
8 about to be acquired in contravention of the provi-
9 sions of this section, the National Insurer or Na-
10 tional Agency or the Commissioner may apply to the
11 United States district court for the judicial district
12 in which the main office of the National Insurer or
13 National Agency is located or the United States Dis-
14 trict Court for the District of Columbia—

15 (A) to enjoin any offer, request, invitation,
16 agreement, or acquisition made in contravention
17 of this section;

18 (B) to enjoin the voting of any security so
19 acquired;

20 (C) to void any vote of the security already
21 cast at any meeting of shareholders; and

22 (D) for such other equitable relief as the
23 nature of the case and the interest of the Na-
24 tional Insurer's policyholders, the creditors and

1 shareholders of the National Insurer or Na-
2 tional Agency or the public may require.

3 (f) SEQUESTRATION OF VOTING SECURITIES.—

4 (1) IN GENERAL.—If a person has acquired or
5 is proposing to acquire any voting securities in viola-
6 tion of this section, the National Insurer ,National
7 Agency or the Commissioner may request the United
8 States district court for the judicial district in which
9 the main office of the National Insurer is located or
10 the United States District Court for the District of
11 Columbia to—

12 (A) seize or sequester any voting securities
13 of the National Insurer or National Agency
14 owned directly or indirectly by the person; and

15 (B) issue such order as may be appropriate
16 to carry out the provisions of this section.

17 (2) SITUS OF OWNERSHIP.—Notwithstanding
18 any other provision of law, for the purposes of this
19 section, the situs of ownership of the securities of
20 National Insurers and National Agencies shall be
21 deemed to be the State in which the main office of
22 the National Insurer or National Agency is located.

23 (g) CONFLICT WITH OTHER FEDERAL LAWS.—This
24 section shall be interpreted and applied so as not to con-
25 flict with or supersede the provisions of any other Federal

1 law or regulation governing the regulation of holding com-
 2 panies, including financial holding companies (as defined
 3 in section 2(p) of the Bank Holding Company Act of 1956
 4 (12 U.S.C. 1841(p)).

5 (h) NO DELEGATION PERMITTED.—The Commis-
 6 sioner may not delegate to any insurance self-regulatory
 7 organization any authority conferred under this section
 8 with respect to any merger or other acquisition of control
 9 of a National Insurer.

10 **SEC. 1232. MERGERS, CONSOLIDATIONS, AND ACQUISI-**
 11 **TIONS OF NATIONAL INSURERS.**

12 (a) NATIONAL INSURER AS RESULTING INSURER.—

13 (1) IN GENERAL.—Except as provided under
 14 subsection (e), a National Insurer may, with the ap-
 15 proval of the Commissioner, merge, consolidate with,
 16 acquire all or substantially all the assets of, or as-
 17 sume all or substantially all the liabilities of, another
 18 National Insurer or a State insurer in a transaction
 19 in which a National Insurer is the resulting insurer,
 20 the acquiring insurer, or the assuming insurer, re-
 21 gardless of whether the insurers involved in the
 22 transaction are in stock form, mutual form, or fra-
 23 ternal form.

1 (2) MERGER, CONSOLIDATION, AND ACQUISITION PROCEDURES.—The Commissioner shall establish, by regulation, procedures for—

4 (A) the merger or consolidation of a National Insurer with another National Insurer or a State insurer in a transaction in which a National Insurer is the resulting insurer; and

8 (B) the acquisition or assumption by a National Insurer of all or substantially all the assets or liabilities of another National Insurer or a State insurer in a transaction in which the National Insurer is the acquiring insurer or assuming insurer.

14 (3) EFFECT OF MERGER OR CONSOLIDATION.—Upon the merger or consolidation of a National Insurer with another National Insurer or a State insurer under this section—

18 (A) the corporate existence of each of the merging or consolidating insurers shall be merged or consolidated into the resulting insurer, and the resulting insurer shall be deemed to be the same corporation as each insurer participating in the merger or consolidation;

24 (B) except as provided under subparagraph (D), the resulting insurer shall hold and

1 be subject to all rights, privileges, liabilities,
2 property interests, and other interests and obli-
3 gations that each insurer participating in the
4 merger or consolidation held or was subject to
5 immediately prior to the merger or consolida-
6 tion;

7 (C) the resulting insurer shall obtain, in
8 accordance with section 1203, a Federal license
9 for all lines of insurance that it sells, solicits,
10 negotiates, or underwrites, except for those
11 lines of insurance for which a National Insurer
12 participating in the merger or consolidation
13 held a Federal license immediately before the
14 merger or consolidation; and

15 (D) the resulting insurer shall not hold any
16 State license to sell, solicit, negotiate, or under-
17 write insurance that was held by a State in-
18 surer participating in the merger or consolida-
19 tion.

20 (4) SPECIAL AUTHORITY.—The Commissioner
21 may, subject to such conditions as the Commissioner
22 may prescribe, permit a National Insurer resulting
23 from a merger or consolidation under this section to
24 retain, hold, or exercise such assets, liabilities, pow-
25 ers, and authorities that do not conform to the legal

1 requirements applicable to National Insurers as the
2 Commissioner determines appropriate.

3 (b) STATE INSURER AS RESULTING INSURER.—

4 (1) IN GENERAL.—Subject to applicable State
5 law and such notification procedures as the Commis-
6 sioner may prescribe by regulation, a State insurer
7 may merge with, consolidate with, acquire assets of,
8 or assume liabilities of, a National Insurer in a
9 transaction in which a State insurer is the resulting
10 insurer.

11 (2) SAVINGS PROVISION.—Nothing in this sub-
12 section or in a transaction under this subsection
13 shall abrogate any rights, privileges, liabilities, prop-
14 erty interests, or other interests or obligations that
15 the National Insurer held or was subject to imme-
16 diately before the transaction.

17 (c) EFFECT OF ASSUMPTION OF LIABILITIES.—If the
18 liabilities of a National Insurer are assumed by another
19 National Insurer or a State insurer in accordance with
20 this Act, the National Insurer shall be released from all
21 such liabilities upon their assumption by the other Na-
22 tional Insurer or a State insurer.

23 (d) NO DELEGATION PERMITTED.—The Commis-
24 sioner may not delegate to any insurance self-regulatory
25 organization any authority conferred under this section

1 with respect to any merger, consolidation, acquisition of
 2 assets, or assumption of liabilities involving a National In-
 3 surer.

4 (e) COORDINATION.—This section shall not apply to
 5 any bulk transfer (as defined in section 1233(a)(2)) that
 6 is subject to approval of the Commissioner in accordance
 7 with section 1233(b).

8 **SEC. 1233. BULK TRANSFERS.**

9 (a) DEFINITIONS.—In this section:

10 (1) BLOCK OF BUSINESS.—The term “block of
 11 business” means all those insurance policies of an
 12 insurer under a particular policy form.

13 (2) BULK TRANSFER.—The term “bulk trans-
 14 fer”—

15 (A) means the transfer by an insurer to
 16 another insurer of existing insurance policies
 17 constituting all or substantially all of 1 or more
 18 of its lines of business or blocks of business;
 19 and

20 (B) does not include—

21 (i) any sale in which the transferring
 22 insurer retains direct or indirect control of
 23 the assets supporting the transferred in-
 24 surance policies;

1 (ii) any transaction effected by an
 2 agreement under which the transferring in-
 3 surer continues to remain directly liable to
 4 the policyholders under the insurance poli-
 5 cies;

6 (iii) the substitution of 1 insurer for
 7 another upon the expiration of insurance
 8 coverage pursuant to statutory or contrac-
 9 tual requirements and the issuance of a
 10 new policy of insurance by that insurer;

11 (iv) the transfer of policies of insur-
 12 ance pursuant to merger or consolidation
 13 of 2 or more insurers to the extent that
 14 those transactions are regulated by statute;

15 (v) any transaction effected by an in-
 16 surer subject to a judicial order of receiver-
 17 ship, liquidation, or rehabilitation; or

18 (vi) any transfer of liabilities from 1
 19 insurer to another under a single group in-
 20 surance policy upon the request of the
 21 group policyholder.

22 (3) PERMITTED NATIONAL INSURER.—The
 23 term “permitted National Insurer” means—

24 (A) a State insurer that is converting to a
 25 National Insurer under section 1205; or

1 (B) a National Insurer that is being newly
2 chartered under section 1201 and licensed
3 under section 1203.

4 (4) TRANSFERRED INSURANCE POLICIES.—The
5 term “transferred insurance policies” means the in-
6 surance policies that are subject to the bulk transfer.

7 (5) TRANSFERRING INSURER.—The term
8 “transferring insurer” means the insurer in privity
9 of contract with the policyholders under the existing
10 insurance policies that are subject to the bulk trans-
11 fer.

12 (b) BULK TRANSFERS AUTHORIZED.—The following
13 bulk transfers are authorized:

14 (1) A State insurer as the transferring insurer
15 and a permitted National Insurer as the assuming
16 insurer.

17 (2) A permitted National Insurer as the trans-
18 ferring insurer and a State insurer as the assuming
19 insurer.

20 (3) A National Insurer as the transferring in-
21 surer and a National Insurer as the assuming in-
22 surer.

23 (4) A State insurer as the transferring insurer
24 and a National Insurer that is not a permitted Na-
25 tional Insurer as the assuming insurer.

1 (5) A National Insurer that is not a permitted
2 National Insurer as the transferring insurer and a
3 State insurer as the assuming insurer.

4 (c) COMMISSIONER APPROVAL.—

5 (1) IN GENERAL.—A National Insurer shall not
6 effect a bulk transfer as either the transferring in-
7 surer or the assuming insurer as authorized under
8 paragraph (1), (2), (3), or (5) of subsection (b)
9 without the prior approval of the Commissioner in
10 accordance with such regulations as the Commis-
11 sioner may prescribe.

12 (2) STANDARD OF APPROVAL.—The Commis-
13 sioner shall approve a bulk transfer under paragraph
14 (1), after notice and a hearing, unless the Commis-
15 sioner determines that the bulk transfer is likely to
16 be hazardous to policyholders of transferred insur-
17 ance policies, policyholders of the transferring in-
18 surer, or policyholders of the assuming insurer.

19 (d) POLICYHOLDER CONSENT.—

20 (1) NO CONSENT REQUIRED.—Notwithstanding
21 any other provision of law, a National Insurer may,
22 upon the approval of the Commissioner, effect a bulk
23 transfer under paragraph (1) or (2) of subsection
24 (b) as either the transferring insurer or the assum-
25 ing insurer without obtaining policyholder consent.

1 (2) BETWEEN NATIONAL INSURERS.—Notwith-
2 standing any other provision of law, a National In-
3 surer may, upon the approval of the Commissioner,
4 effect a bulk transfer under subsection (b)(3) as ei-
5 ther the transferring insurer or the assuming in-
6 surer in accordance with the requirements prescribed
7 by the Commissioner. Such requirements shall speci-
8 fy whether policyholder consent to such a bulk trans-
9 fer is required and, if policyholder consent is re-
10 quired, the form in which such consent is required
11 to be given.

12 (3) ADDITIONAL PROVISIONS.—In addition to
13 any policyholder consent required by any other appli-
14 cable provision of law, the Commissioner may by
15 regulation prescribe whether policyholder consent is
16 required for a bulk transfer authorized under sub-
17 section (b)(5) and, if policyholder consent is re-
18 quired, the form in which such consent is required
19 to be given.

20 (e) RELEASE FROM LIABILITY.—Upon the comple-
21 tion of a bulk transfer under this section, the transferring
22 insurer shall be released from its obligations under the
23 transferred insurance policies.

24 (f) STATE LAW.—

1 (1) PROHIBITION.—Except as provided in para-
2 graph (2), a State may not—

3 (A) require a National Insurer, a per-
4 mitted National Insurer, or a State insurer
5 to—

6 (i) obtain policyholder consent to a
7 bulk transfer; or

8 (ii) submit the bulk transfer to State
9 review or action (including approval and
10 disapproval); or

11 (B) prevent or significantly interfere with
12 a bulk transfer effected pursuant to this sec-
13 tion.

14 (2) CONSTRUCTION.—Paragraph (1) shall not
15 be construed to prohibit any State from—

16 (A) collecting, reviewing, and taking action
17 (including approval or disapproval) on applica-
18 tions and other documents or reports con-
19 cerning a proposed bulk transfer permitted
20 under—

21 (i) paragraph (2), (4), or (5) of sub-
22 section (b) to which a State insurer (other
23 than a permitted National Insurer) domi-
24 ciled in that State is a party; or

1 (ii) paragraph (4) or (5) of subsection
 2 (b) to which a State insurer (other than a
 3 permitted National Insurer), other than a
 4 State insurer domiciled in that State, is a
 5 party, if the review or action meets the
 6 standards set forth in paragraph (3); or

7 (B) requiring policyholder consent of a
 8 proposed bulk transfer permitted under para-
 9 graph (4) or (5) of subsection (b).

10 (3) STANDARDS.—A review or action meets the
 11 standards under this paragraph if it—

12 (A) is based on standards that are not
 13 more onerous than those imposed by the Com-
 14 missioner;

15 (B) occurs within a reasonable timeframe
 16 that advances the purposes of this section;

17 (C) is made in close consultation and co-
 18 operation with the Commissioner;

19 (D) is without bias or discrimination to-
 20 ward either the transferring insurer or the as-
 21 suming insurer;

22 (E) serves a legitimate State interest; and

23 (F) does not frustrate the proposed bulk
 24 transfer.

1 (4) NOTICE OF FAILURE.—If the Commissioner
 2 finds that any State review or action under para-
 3 graph (2)(A) fails to meet any of the standards set
 4 forth in paragraph (3), the Commissioner may pro-
 5 vide the applicable State with notice of such failure
 6 and the reasons for such failure.

7 (g) DIFFERENTIAL TREATMENT PROHIBITED.—A
 8 State may not treat a National Insurer, a permitted Na-
 9 tional Insurer, or a State insurer entering into a bulk
 10 transfer agreement with a National Insurer, a permitted
 11 National Insurer, a State insurer, or any affiliate or sub-
 12 sidiary of such insurer, differently than any other insurer
 13 operating in that State.

14 (h) NO DELEGATION PERMITTED.—The Commis-
 15 sioner may not delegate to any insurance self-regulatory
 16 organization any authority conferred under this section
 17 with respect to any bulk transfer involving a National In-
 18 surer.

19 **SEC. 1234. DOMESTICATION OF UNITED STATES BRANCH**
 20 **OF A NON-UNITED STATES INSURER.**

21 (a) DOMESTICATION PERMITTED.—Any non-United
 22 States insurer having its United States branch entered
 23 through a State or established pursuant to section 1202
 24 and owning beneficially, directly or indirectly, all out-
 25 standing shares of a National Insurer may, upon the writ-

1 ten approval by the Commissioner, domesticate its United
 2 States branch by agreeing in writing with such National
 3 Insurer to the acquisition of the business and assets, and
 4 the assumption of all liabilities, of the United States
 5 branch, by the National Insurer for no consideration ex-
 6 cept such assumption.

7 (b) APPROVAL BY COMMISSIONER.—If the Commis-
 8 sioner determines that the domestication of a United
 9 States branch of a non-United States insurer complies
 10 with the provisions of this section and that the interests
 11 of policyholders and creditors of the United States branch
 12 are not materially affected in an adverse manner by such
 13 domestication, the Commissioner may approve the domes-
 14 tication in accordance with this section.

15 (c) EFFECTIVE DATE OF DOMESTICATION.—

16 (1) IN GENERAL.—The domestication of the
 17 United States branch shall be effective on the date
 18 on which a certified copy of the instrument of trans-
 19 fer and assumption is filed with the Commissioner.

20 (2) EFFECT OF DOMESTICATION.—On the date
 21 described in paragraph (1)—

22 (A) all rights, franchises, and interests of
 23 such United States branch in and to every spe-
 24 cies of property, real, personal, and mixed, and
 25 things in action belonging to such branch, shall

1 be deemed transferred to and vested in the ac-
2 quiring National Insurer;

3 (B) the acquiring National Insurer shall be
4 deemed to have assumed all liabilities of the
5 United States branch;

6 (C) all deposits of the United States
7 branch held by State officers or other State
8 regulatory agencies under State law shall be re-
9 leased; and

10 (D) the non-United States insurer and the
11 United States branch shall be released from all
12 liabilities so assumed.

13 (d) RELEASE OF DEPOSITS.—At the time of the do-
14 mestication of a United States branch under this section,
15 the Commissioner shall—

16 (1) transfer to the account of the acquiring Na-
17 tional Insurer the securities deposited by such
18 United States branch in compliance with the provi-
19 sions of this Act; and

20 (2) consent that the trustee of the trustee as-
21 sets deposited by such United States branch in com-
22 pliance with the provisions of this Act shall with-
23 draw from the trust and transfer and deliver to the
24 acquiring National Insurer all assets held by such
25 trustee.

1 (e) WITHDRAWAL AND TRANSFER OF TRUSTEED AS-
 2 SETS.—

3 (1) IN GENERAL.—At the time of the domes-
 4 tication of a United States branch established under
 5 State law, the trustee of any trusted assets depos-
 6 ited by such United States branch in compliance
 7 with applicable State law shall, with the consent of
 8 the Commissioner—

9 (A) withdraw the trusted assets from the
 10 trust; and

11 (B) transfer and deliver to the acquiring
 12 National Insurer all assets held by such trustee.

13 (2) LIMITATION.—No State may prevent, sig-
 14 nificantly interfere with, review, approve, or dis-
 15 approve the withdrawal of trusted assets or other
 16 deposits of a United States branch established under
 17 State law that is domesticating pursuant to this sec-
 18 tion, if such withdrawal is made contemporaneously
 19 with or subsequent to the consummation of a domes-
 20 tication of the United States branch under this sec-
 21 tion.

22 (f) NO DELEGATION PERMITTED.—The Commis-
 23 sioner may not delegate to any insurance self-regulatory
 24 organization any authority under this section with respect

1 to the domestication of a United States branch of a non-
2 United States insurer.

3 **SEC. 1235. MERGERS, CONSOLIDATIONS, AND ACQUISI-**
4 **TIONS OF NATIONAL AGENCIES.**

5 (a) NATIONAL AGENCY RESULTING.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of law, a National Agency may, with the
8 approval of the Commissioner, merge, consolidate
9 with, acquire all or substantially all the assets of, or
10 assume all or substantially all the liabilities of, an-
11 other National Agency or a State insurance agency
12 in a transaction in which a National Agency is the
13 resulting agency, the acquiring agency, or the as-
14 suming agency.

15 (2) MERGER, CONSOLIDATION, AND ACQUISI-
16 TION PROCEDURES.—The Commissioner is author-
17 ized, under such regulations as the Commissioner
18 may prescribe, to provide for—

19 (A) the merger or consolidation of a Na-
20 tional Agency with another National Agency or
21 a State insurance agency in a transaction in
22 which a National Agency is the resulting agen-
23 cy; and

24 (B) the acquisition or assumption by a Na-
25 tional Agency of all or substantially all the as-

1 sets or all or substantially all the liabilities of
2 another National Agency or a State insurance
3 agency in a transaction in which the National
4 Agency is the acquiring or assuming agency.

5 (3) EFFECT OF MERGER OR CONSOLIDATION.—

6 Upon the merger or consolidation of a National
7 Agency with another National Agency or a State in-
8 surance agency under this section—

9 (A) the corporate existence of each of the
10 merging or consolidating agencies shall be
11 merged or consolidated into the resulting agen-
12 cy, and the resulting agency shall be deemed to
13 be the same corporation as each agency partici-
14 pating in the merger or consolidation; and

15 (B) except as provided under paragraph
16 (4), the resulting agency shall have all the
17 rights, privileges, liabilities, property interests,
18 and other interests and obligations that each
19 agency participating in the merger or consolida-
20 tion had immediately before the merger or con-
21 solidation.

22 (4) LIMITATION.—Upon a merger or consolida-
23 tion under this subsection, the resulting agency—

24 (A) shall not hold any State license to sell,
25 solicit, or negotiate insurance that was held by

1 a State agency participating in the merger or
2 consolidation; and

3 (B) shall obtain, in accordance with section
4 1301, appropriate licenses for all lines of insur-
5 ance that it sells, solicits, or negotiates except
6 for those lines of insurance for which a Na-
7 tional Agency participating in the merger or
8 consolidation held a Federal producer's license
9 immediately before the merger or consolidation.

10 (5) SPECIAL AUTHORITY.—The Commissioner
11 may, subject to such regulations as the Commis-
12 sioner may prescribe, permit a National Agency re-
13 sulting from a merger or consolidation under this
14 subsection to retain, hold, or exercise such assets, li-
15 abilities, powers, and authorities that do not con-
16 form to the legal requirements applicable to National
17 Agencies as the Commissioner determines to be ap-
18 propriate.

19 (b) STATE INSURANCE AGENCY RESULTING.—

20 (1) IN GENERAL.—Subject to such notification
21 procedures as the Commissioner may prescribe by
22 regulation, a State insurance agency may merge,
23 consolidate with, acquire assets of, or assume liabil-
24 ities of, a National Agency in a transaction in which

1 a State insurance agency is the resulting agency, in
 2 accordance with applicable State law.

3 (2) SAVINGS PROVISION.—Nothing in this sub-
 4 section or in a transaction pursuant to this sub-
 5 section shall abrogate any rights, privileges, liabil-
 6 ities, property interests, other interests, or obliga-
 7 tions that the National Agency had immediately be-
 8 fore the transaction.

9 (c) EFFECT OF ASSUMPTION OF LIABILITIES.—If the
 10 liabilities of a National Agency are assumed by another
 11 National Agency or a State insurance agency in accord-
 12 ance with the provisions of this Act, such National Agency
 13 from whom the liabilities are assumed shall be released
 14 from all liabilities so assumed upon their assumption by
 15 the other National Agency or a State insurance agency.

16 (d) NO DELEGATION PERMITTED.—The Commis-
 17 sioner may not delegate to any insurance self-regulatory
 18 organization any authority conferred under this section
 19 with respect to any merger, consolidation, or acquisition
 20 of assets or assumption of liabilities involving a National
 21 Agency.

22 **Subtitle E—Conversions**

23 **SEC. 1241. DEFINITIONS.**

24 In this subtitle:

1 (1) ADOPTION DATE.—The term “adoption
2 date” means the date on which the board of direc-
3 tors of the converting mutual insurer or converting
4 stock insurer adopts the plan of conversion.

5 (2) CONVERTED MUTUAL INSURER.—The term
6 “converted mutual insurer” means the National Life
7 Insurer in mutual form into which a stock life in-
8 surer has been converted in accordance with the pro-
9 visions of section 1242.

10 (3) CONVERTED STOCK INSURER.—The term
11 “converted stock insurer” means the National In-
12 surer in stock form into which a mutual insurer has
13 been converted in accordance with the provisions of
14 section 1243.

15 (4) CONVERTING MUTUAL INSURER.—The term
16 “converting mutual insurer” means the mutual in-
17 surer that is converting under a plan of conversion
18 under section 1243.

19 (5) CONVERTING STOCK INSURER.—The term
20 “converting stock insurer” means the stock life in-
21 surer that is converting under a plan of conversion
22 under section 1242.

23 (6) MEMBERSHIP INTERESTS.—The term
24 “membership interests”—

1 (A) means the interests of members and
 2 policyholders of the mutual insurer arising
 3 under the charter and bylaws of the mutual in-
 4 surer or otherwise by applicable law;

5 (B) includes the right to vote for directors
 6 of the mutual insurer and the right to vote on
 7 any plan of merger or consolidation of the mu-
 8 tual insurer; and

9 (C) does not include rights in surplus, if
 10 any.

11 (7) MUTUAL INSURER.—The term “mutual in-
 12 surer” means the State insurer in mutual form or
 13 National Insurer in mutual form that is converting
 14 to a National Insurer in stock form pursuant to a
 15 plan of conversion adopted in accordance with sec-
 16 tion 1243.

17 (8) PLAN OF CONVERSION OR PLAN.—The
 18 terms “plan of conversion” and “plan” mean a plan
 19 of conversion adopted by a stock life insurer or a
 20 mutual insurer in accordance with this subtitle.

21 (9) RIGHTS IN SURPLUS.—The term “rights in
 22 surplus”—

23 (A) means rights, if any, of members or
 24 policyholders of the mutual insurer to a return
 25 of that portion of the surplus that has not been

1 apportioned or declared by the board of direc-
2 tors for policyholder dividends;

3 (B) includes rights of members or policy-
4 holders of the mutual insurer to a distribution
5 of surplus in liquidation or conservation of the
6 insurer under applicable law, or in a dissolution
7 or winding up; and

8 (C) does not include any right expressly
9 conferred solely by the terms of an insurance
10 policy.

11 (10) STOCK LIFE INSURER.—The term “stock
12 life insurer” means the State life insurer in stock
13 form or National Life Insurer in stock form that is
14 converting to a National Life Insurer in mutual
15 form pursuant to a plan of conversion adopted in ac-
16 cordance with section 1242.

17 **SEC. 1242. CONVERSION OF STOCK LIFE INSURER TO NA-**
18 **TIONAL LIFE INSURER IN MUTUAL FORM.**

19 (a) AUTHORITY TO CONVERT.—Notwithstanding any
20 other provision of law, a stock life insurer may convert
21 to a National Insurer in mutual form by complying with
22 the requirements of this section and such regulations as
23 the Commissioner may promulgate pursuant to this Act.

24 (b) PLAN OF CONVERSION.—

25 (1) IN GENERAL.—The plan of conversion—

1 (A) shall be adopted by the board of direc-
 2 tors of the converting stock insurer; and

3 (B) shall provide for the conversion of the
 4 converting stock insurer into a National Life
 5 Insurer in mutual form.

6 (2) ISSUANCE OF STOCK AFTER ADOPTION
 7 DATE.—No additional shares of capital stock shall
 8 be issued after the adoption date, except that—

9 (A) stock options to purchase capital stock
 10 may continue to be issued under existing con-
 11 tracts; and

12 (B) outstanding options may continue to
 13 be exercised until the effective date of the plan
 14 of conversion.

15 (3) CONTENTS.—The plan of conversion shall
 16 provide for—

17 (A) the purchase by the converting stock
 18 insurer of all of its outstanding capital stock, at
 19 a price either specified in the plan or to be de-
 20 termined under a formula specified in the plan,
 21 for cash or other consideration as set forth in
 22 the plan; and

23 (B) the termination, upon terms specified
 24 in the plan, of any contractual obligation incon-
 25 sistent with the nature of a mutual insurer, in-

1 cluding any obligation to issue stock options or
2 issue capital stock upon exercise of options.

3 (c) APPROVAL OF PLAN BY COMMISSIONER.—The
4 Commissioner shall approve the plan of conversion if the
5 Commissioner finds, after a hearing, that—

6 (1) the plan is fair and equitable to the policy-
7 holders, shareholders, and holders of options to ac-
8 quire capital stock of the converting stock insurer;

9 (2) the plan does not violate the law; and

10 (3) the converted mutual insurer will, after the
11 conversion, satisfy the requirements for the issuance
12 of a license to write the lines of insurance for which
13 it is licensed.

14 (d) VOTE ON APPROVAL OF PLAN.—

15 (1) STOCKHOLDERS.—The plan of conversion
16 shall be submitted to the holders of record on the
17 adoption date of the converting stock insurer's
18 shares entitled to vote thereon and shall be subject
19 to approval of the holders of a majority of such
20 shares.

21 (2) POLICYHOLDERS.—

22 (A) SUBMISSION.—The plan shall be sub-
23 mitted to policyholders of the converting stock
24 insurer—

1 (i) who are insured for at least
2 \$1,000; and

3 (ii) whose policy of insurance is in
4 force—

5 (I) for a period of at least 1 year
6 before the adoption date;

7 (II) on the adoption date; and

8 (III) on the date of the meeting
9 of policyholders called for the purpose
10 of approving the plan.

11 (B) APPROVAL.—The plan shall be subject
12 to the approval of a majority of the votes cast
13 by the policyholders described in subparagraph
14 (A).

15 (e) EFFECT OF CONVERSION ON CONVERTED MU-
16 TUAL INSURERS.—

17 (1) IN GENERAL.—On the effective date of the
18 plan of conversion, the stock insurer shall become a
19 National Life Insurer in mutual form and share-
20 holders eligible to receive consideration under the
21 plan of conversion are entitled to receive the consid-
22 eration specified in the plan in exchange for their
23 shares of capital stock of the converting stock in-
24 surer.

1 (2) NO EFFECT ON EXISTING RIGHTS AND LI-
2 ABILITIES.—The converted mutual insurer is a con-
3 tinuation of the original stock life insurer, and the
4 conversion shall not annul, modify, or change any of
5 the original stock life insurer's existing suits, rights,
6 contracts, or liabilities, except as provided in the
7 plan of conversion.

8 (3) RIGHTS AFTER CONVERSION.—After con-
9 version, the converted mutual insurer shall—

10 (A) exercise all the rights and powers and
11 perform all the duties conferred or imposed by
12 law upon insurers writing the classes of insur-
13 ance written by the converted mutual insurer;
14 and

15 (B) retain the rights and contracts existing
16 prior to conversion, subject to the effect of the
17 plan.

18 (f) TIME LIMITS FOR PLAN ACTIONS.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law, actions concerning any plan of con-
21 version or proposed plan of conversion under this
22 section or any acts taken or proposed to be taken
23 under this section shall be commenced not later than
24 30 days after the date on which the plan of conver-

1 sion is approved by the Commissioner under sub-
2 section (c).

3 (2) PLAN WITHDRAWN.—If the plan of conver-
4 sion is withdrawn, the actions described in para-
5 graph (1) shall be commenced not later than 30
6 days after the date on which the board of directors
7 approves a resolution to withdraw the plan.

8 (g) EFFECT ON STATE LAW.—No State may prevent
9 or interfere with a conversion under this section or impede
10 the activities of, take any action against, or apply any pro-
11 vision of law or regulation to, any such stock life insurer
12 because the stock life insurer plans to convert, or has con-
13 verted, to a National Life Insurer in mutual form under
14 this section.

15 (h) NO DELEGATION PERMITTED.—The Commis-
16 sioner may not delegate to any insurance self-regulatory
17 organization any authority under this section with respect
18 to the conversion of a stock life insurer.

19 **SEC. 1243. CONVERSION OF MUTUAL INSURER TO NA-**
20 **TIONAL INSURER IN STOCK FORM.**

21 (a) AUTHORITY TO CONVERT.—Notwithstanding any
22 other provision of law, a mutual insurer may convert to
23 a National Insurer in stock form by complying with the
24 requirements of this section and such regulations as the
25 Commissioner may promulgate pursuant to this Act.

1 (b) PLAN OF CONVERSION.—

2 (1) IN GENERAL.—The plan of conversion—

3 (A) shall be adopted by the board of direc-
4 tors of the converting mutual insurer;

5 (B) shall provide for the conversion of the
6 converting mutual insurer into a National In-
7 surer in stock form; and

8 (C) may provide for effecting the conver-
9 sion by merger of the mutual insurer with an-
10 other company.

11 (2) CONTENTS.—The plan of conversion shall
12 provide that—

13 (A) all membership interests and rights in
14 surplus are extinguished;

15 (B) each eligible person will receive, with-
16 out payment by the person, consideration that
17 is allocated among the eligible persons using a
18 fair and equitable formula; and

19 (C) eligible persons may receive 1 or more
20 kinds of consideration, including—

21 (i) cash;

22 (ii) shares of capital stock of the con-
23 verting mutual insurer;

24 (iii) shares of capital stock (or inter-
25 ests in shares of capital stock) of a cor-

poration that, after the conversion, directly or indirectly, controls the converted stock insurer;

(iv) premium credits;

(v) enhanced insurance benefits; or

(vi) in the case of a converting mutual insurer that is a life insurer, credits to insurance policy account values, as set forth in the plan.

(c) APPROVAL OF PLAN BY COMMISSIONER.—The Commissioner shall approve the plan of conversion if the Commissioner finds, after a hearing, that—

(1) the plan is fair and equitable to the insurer and its policyholders;

(2) the plan does not violate the law; and

(3) the converted stock insurer will, after the conversion, satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is licensed.

(d) VOTE ON APPROVAL OF PLAN.—The plan of conversion shall be submitted to those persons who are eligible to vote on the plan and shall be subject to approval of a majority of the votes cast by such persons.

(e) EMPLOYEE STOCK PURCHASES; STOCK OPTIONS.—Subject to regulations prescribed by the Commis-

1 sioner, the converted insurer or a corporation that, after
 2 the conversion, directly or indirectly, controls the con-
 3 verted insurer, may establish stock option, incentive, and
 4 share ownership plans customary for publicly traded com-
 5 panies in the same and similar industries.

6 (f) EFFECT OF CONVERSION ON CONVERTED STOCK
 7 INSURERS.—

8 (1) IN GENERAL.—On the effective date of the
 9 plan of conversion—

10 (A) the mutual insurer shall become a Na-
 11 tional Insurer in stock form;

12 (B) all membership interests and rights in
 13 surplus shall be extinguished; and

14 (C) persons eligible to receive consideration
 15 under the plan of conversion shall be entitled to
 16 receive the consideration specified in the plan in
 17 exchange for membership interests and liquida-
 18 tion of rights in surplus.

19 (2) NO EFFECT ON EXISTING RIGHTS AND LI-
 20 ABILITIES.—The converted stock insurer is a con-
 21 tinuation of the original mutual insurer, and the
 22 conversion shall not annul, modify, or change any of
 23 the original mutual insurer's existing suits, rights,
 24 contracts, or liabilities, except as provided in the
 25 plan of conversion.

1 (3) RIGHTS AFTER CONVERSION.—After con-
2 version, the converted stock insurer shall—

3 (A) exercise all the rights and powers and
4 perform all the duties conferred or imposed by
5 law upon insurers writing the classes of insur-
6 ance written by the converted stock insurer;
7 and

8 (B) retain the rights and contracts existing
9 prior to conversion, subject to the effect of the
10 plan.

11 (g) LIMITATIONS ON ACQUIRING CONVERTED STOCK
12 INSURER.—

13 (1) IN GENERAL.—Beginning on the date of en-
14 actment of this Act and continuing for a period of
15 5 years following the effective date of the plan of
16 conversion, no person or group of persons acting in
17 concert shall directly or indirectly offer to acquire,
18 or acquire in any manner the beneficial ownership
19 of, 5 percent or more of any class of voting securi-
20 ties of a converted insurer or of a person that con-
21 trols the converted insurer, without the prior consent
22 of the Commissioner.

23 (2) EFFECT OF VIOLATION.—Upon the viola-
24 tion of paragraph (1), or any action that, if con-
25 summated, would constitute such a violation, all vot-

1 ing securities of the converted insurer or of the per-
2 son acquired by any person in excess of the max-
3 imum amount permitted to be acquired by the per-
4 son under paragraph (1) shall be deemed to be non-
5 voting securities of the converted stock insurer or of
6 that person.

7 (3) ENFORCEMENT.—

8 (A) COMMENCEMENT.—A violation or ac-
9 tion described in paragraph (1) may be en-
10 forced or enjoined by appropriate proceeding
11 commenced by the converted stock insurer or
12 the Commissioner in—

13 (i) the United States district court for
14 the judicial district in which the main of-
15 fice of the converted stock insurer is lo-
16 cated;

17 (ii) the United States District Court
18 for the District of Columbia; or

19 (iii) any other court having jurisdic-
20 tion.

21 (B) ORDER.—The court may issue any
22 order it finds necessary to cure the violation or
23 to prevent the proposed action.

24 (h) TIME LIMITS FOR PLAN ACTIONS.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law, actions concerning any plan of con-
3 version or proposed plan of conversion under this
4 section or any acts taken or proposed to be taken
5 under this section shall be commenced not later than
6 30 days after the date on which the plan of conver-
7 sion is approved by the Commissioner under sub-
8 section (c).

9 (2) PLAN WITHDRAWN.—If the plan of conver-
10 sion is withdrawn, the actions shall be commenced
11 not later than 30 days after the date on which the
12 board of directors approves a resolution to withdraw
13 the plan.

14 (i) EFFECT ON STATE LAW.—No State may prevent
15 or interfere with a conversion under this section or impede
16 the activities of, take any action against, or apply any pro-
17 vision of law or regulation to, any such mutual insurer
18 because that mutual insurer plans to convert, or has con-
19 verted, to a National Insurer in stock form under this sec-
20 tion.

21 (j) NO DELEGATION PERMITTED.—The Commis-
22 sioner may not delegate to any insurance self-regulatory
23 organization any authority under this section with respect
24 to the conversion of a mutual insurer.

1 **Subtitle F—State Taxation**

2 **SEC. 1251. STATE TAXATION OF NATIONAL INSURERS.**

3 (a) STATE TAXATION RULE.—Except as provided in
4 subsection (b), a National Insurer doing business in any
5 State shall be subject to all State and local taxes, includ-
6 ing insurance retaliatory taxes or other similar taxes, and
7 shall be entitled to all tax credits, deductions, and offsets
8 provided under State law to the same extent and in the
9 same manner as an insurer licensed to do business in such
10 State and chartered in the State where the National In-
11 surer is considered domiciled under subsection (c) or (d),
12 but shall not be subject to any additional taxes imposed
13 by such State by reason of the National Insurer's failure
14 to be licensed or otherwise authorized to conduct business
15 or write or sell insurance policies, by such State.

16 (b) EXCEPTION.—No State shall have power to im-
17 pose an insurance retaliatory tax on any National Insurer
18 unless—

19 (1) for any tax purpose for which State of
20 domicile is relevant, every National Insurer is treat-
21 ed by such State as domiciled in the State des-
22 ignated by each National Insurer under subsection
23 (c); and

24 (2) the insurance retaliatory tax is imposed by
25 such State on every National Insurer to the same

1 extent and in the same manner as it is imposed on
 2 every insurer chartered in the State where the Na-
 3 tional Insurer is considered domiciled under sub-
 4 section (c).

5 (c) DESIGNATION OF DOMICILE.—

6 (1) IN GENERAL.—A National Insurer may des-
 7 ignate, as its State of domicile, by filing such des-
 8 ignation in writing with the Commissioner—

9 (A) the State in which the National Insur-
 10 er's principal place of business in the United
 11 States is located; or

12 (B) in the case of an insurer that has con-
 13 verted from a State insurer to a National In-
 14 surer under this Act, the State in which such
 15 insurer was domiciled immediately before such
 16 conversion.

17 (2) NO DESIGNATION BY NATIONAL INSURER.—

18 If a National Insurer does not make a designation
 19 of a State of domicile under this subsection, the Na-
 20 tional Insurer shall be deemed to have designated as
 21 its State of domicile the State in which its principal
 22 place of business in the United States is located.

23 (d) CHANGE IN DOMICILE.—A National Insurer may
 24 change its State of domicile, with the approval of the Com-

1 missioner, to any other State meeting the requirements
2 under subsection (c).

3 (e) STATUS OF NATIONAL INSURER.—For purposes
4 of State taxation, a National Insurer—

5 (1) shall not be considered a department, agen-
6 cy, or instrumentality of the Federal Government;
7 and

8 (2) except as provided in this section, a Na-
9 tional Insurer shall not be exempt from any State
10 tax or subject to a lesser burden of any State tax,
11 solely by reason of its status as a National Insurer
12 under this Act.

13 **SEC. 1252. STATE TAXATION OF NATIONAL AGENCIES.**

14 (a) STATE TAXATION RULE.—A National Agency
15 shall be subject to all taxes imposed under the authority
16 of any State legislation to the same extent and in the same
17 manner as an agency chartered in the State where the
18 National Agency is considered domiciled pursuant to sub-
19 section (b).

20 (b) STATE OF DOMICILE.—For purposes of this sec-
21 tion, the State of domicile of a National Agency shall be
22 deemed to be the State in which the Agency's principal
23 place of business in the United States is located.

24 (c) STATUS OF NATIONAL AGENCY.—For purposes
25 of State taxation, a National Agency shall not—

1 (1) be considered to be a department, agency,
2 or instrumentality of the Federal Government; and

3 (2) except as provided in this section, be ex-
4 empt from any State tax or subject to a lesser bur-
5 den of any State tax, solely by reason of its status
6 as a National Agency under this Act.

7 **TITLE III—INSURANCE PRO-**
8 **DUCERS AND OTHER INSUR-**
9 **ANCE SERVICING PERSONS**

10 **SEC. 1301. FEDERAL LICENSING OF INSURANCE PRO-**
11 **DUCERS.**

12 (a) COMMISSIONER'S AUTHORITY.—The Commis-
13 sioner—

14 (1) shall have authority to issue Federal pro-
15 ducer licenses; and

16 (2) shall, by regulation—

17 (A) define the line or lines of insurance
18 (which shall include health insurance as a line
19 of insurance) for which a person may obtain a
20 Federal producer license; and

21 (B) specify educational and examination
22 requirements for persons seeking a Federal pro-
23 ducer license, other than National Agencies that
24 are subject to chartering criteria under section
25 1201.

1 (b) NATIONAL AGENCIES.—The Commissioner shall
2 issue a Federal producer license to a National Agency
3 upon the issuance of a charter certificate to such Agency
4 pursuant to section 1201.

5 (c) AUTHORITY OF PERSON HOLDING A FEDERAL
6 PRODUCER LICENSE.—A Federal producer license author-
7 izes the person to sell, solicit, or negotiate insurance in
8 any State for any line or lines of insurance specified in
9 such license.

10 (d) EXAMINATIONS AND REPORTS.—In addition to
11 the examination and reporting requirements applicable to
12 National Agencies pursuant to sections 1124 and 1125,
13 the Commissioner may—

14 (1) provide for the examination of federally li-
15 censed insurance producers that are not National
16 Agencies only in response to a complaint or any
17 other evidence that the federally licensed insurance
18 producer has violated or is about to violate—

19 (A) a law, rule, or regulation;

20 (B) any condition imposed in writing by
21 the Commissioner in connection with issuing a
22 Federal producer's license; or

23 (C) any written agreement entered into
24 with the Commissioner; and

1 (2) require federally licensed insurance pro-
2 ducers that are not National Agencies to make such
3 reports, containing such information and in such
4 form, as the Commissioner may prescribe by regula-
5 tion to the extent necessary to require compliance
6 with this Act.

7 (e) INFORMATION PRACTICES.—The Commissioner
8 may, by regulation, provide that there shall be no civil li-
9 ability imposed on and no cause of action shall arise from
10 a National Insurer or National Agency, an insurer-affili-
11 ated party, or a federally licensed insurance producer sub-
12 mitting any statement or information required under this
13 Act or any regulation thereunder or requested in writing
14 by the Commissioner relating to the conduct of a federally
15 licensed insurance producer, provided that—

16 (1) this protection may not apply to false state-
17 ments made with actual malice; and

18 (2) such regulation shall not abrogate or modify
19 any existing common law or statutory privileges or
20 immunities.

21 **SEC. 1302. PRODUCER DATABASE.**

22 (a) IN GENERAL.—The Commissioner shall adopt
23 regulations for the development of an electronic database
24 consisting of information relating to federally licensed in-
25 surance producers and an electronic communication net-

1 work that links the Commissioner with State insurance
2 regulators and insurers for an electronic exchange of such
3 information.

4 (b) MAINTENANCE.—The Commissioner, by rule or
5 order, may delegate authority over the maintenance of
6 each database described in subsection (a) to an insurance
7 self-regulatory organization. In making any such rule or
8 entering any such order, the Commissioner shall take into
9 consideration the regulatory capabilities and procedures of
10 the insurance self-regulatory organization, availability of
11 staff, convenience of location, avoidance of unnecessary
12 regulatory duplication, and any other factors the Commis-
13 sioner may consider appropriate to the protection of pol-
14 icyholders, the efficiency of the producer licensing system,
15 and the cooperation and coordination among regulatory
16 organizations.

17 **SEC. 1303. SUPERVISION AND OVERSIGHT OF FEDERALLY**
18 **LICENSED INSURANCE PRODUCERS.**

19 (a) PURPOSE.—The purpose of this section is to es-
20 tablish when a National Insurer, National Agency, or fed-
21 erally licensed insurance producer has a duty to supervise
22 a federally licensed insurance producer. The duty to super-
23 vise as required in this section shall be in addition to the
24 authority of the Commissioner to supervise federally li-
25 censed insurance producers under section 1102(b).

1 (b) DUTY TO SUPERVISE.—

2 (1) NATIONAL INSURERS.—A National Insurer
3 shall have a duty to supervise the sales and mar-
4 keting practices of a federally licensed insurance
5 producer with respect to the sale, solicitation, or ne-
6 gotiation of insurance policies of such National In-
7 surer, if such producer—

8 (A) is an employee of the National Insurer;

9 or

10 (B) is an agent of the National Insurer—

11 (i) who is an individual; and

12 (ii) whose entire or principal business
13 activity is devoted to the sale, solicitation,
14 or negotiation of insurance policies for
15 such Insurer, the recruitment, training, or
16 supervision of the agents, or both.

17 (2) NATIONAL AGENCIES.—A National Agency
18 or other federally licensed insurance producer that is
19 an entity has a duty to supervise the sales and mar-
20 keting practices of its employees and agents with re-
21 spect to the sale, solicitation, or negotiation of insur-
22 ance policies if—

23 (A) in the case of an employee, the insur-
24 ance policy sold, solicited, or negotiated is with-
25 in the scope of such person's employment; and

1 (B) in the case of an agent, the insurance
2 policy is sold, solicited, or negotiated pursuant
3 to the terms of the agreement between the
4 agent and such National Agency or other entity
5 that is a federally licensed insurance producer.

6 (3) STANDARDS FOR SUPERVISION.—The Com-
7 missioner shall, by regulation, establish standards
8 for the supervision of the sales and marketing prac-
9 tices of federally licensed insurance producers re-
10 quired in paragraphs (1) and (2).

11 (4) NO DUTY.—A National Insurer, National
12 Agency, or other federally licensed insurance pro-
13 ducer that is an entity shall not have a duty to su-
14 pervise the sales and marketing practices of persons
15 not listed in paragraphs (1) and (2).

16 (5) OVERSIGHT OF INDIVIDUAL INDEPENDENT
17 FEDERALLY LICENSED INSURANCE PRODUCERS.—

18 (A) IN GENERAL.—The sales and mar-
19 keting practices of a federally licensed insur-
20 ance producer with respect to the sale, solicita-
21 tion, or negotiation of insurance policies shall
22 be subject to the direct oversight of the Com-
23 missioner if such producer is not—

24 (i) an individual who is an employee
25 or agent of a National Insurer, National

1 Agency, or other federally licensed insur-
2 ance producer that is an entity; or

3 (ii) an individual whose entire or prin-
4 cipal business activity is devoted to the
5 sale, solicitation, or negotiation of insur-
6 ance policies for a National Insurer or re-
7 cumbent, training, or supervision of the
8 agents.

9 (B) STANDARDS AND PROCEDURES.—The
10 Commissioner shall, by regulation, establish
11 standards and procedures for the direct over-
12 sight of the sales and marketing practices of
13 federally licensed insurance producers provided
14 in subparagraph (A).

15 **SEC. 1304. RELATIONSHIP TO STATE LAW.**

16 (a) NO STATE RESTRICTIONS.—No State may, by
17 statute, regulation, order, interpretation, or otherwise,
18 prevent or restrict a National Insurer from engaging in
19 the acts described in subsection (b) for any person, or
20 from engaging the services of a person who engages in
21 such acts for the National Insurer, nor shall any State
22 require that a person be licensed by reason of engaging
23 in such acts for a National Insurer.

1 (b) ACTS PROTECTED FROM STATE RESTRIC-
2 TIONS.—The acts referred to in subsection (a) are the fol-
3 lowing:

4 (1) Investigating, evaluating, ascertaining, or
5 determining the amount of or negotiating, settling,
6 or adjusting or otherwise participating in the dis-
7 posal of claims, losses, or damages arising under in-
8 surance policies written by a National Insurer,
9 whether the person performing the act is called an
10 adjuster, independent adjuster, or another name.

11 (2) Soliciting, negotiating, or placing reinsur-
12 ance cessions or retrocessions on behalf of a ceding
13 National Insurer without the authority or power to
14 bind reinsurance on behalf of such National Insurer,
15 whether the person performing the act is called a re-
16 insurance intermediary or another name.

17 (3) Having authority to bind or manage all or
18 part of the assumed reinsurance business of a Na-
19 tional Insurer that is a reinsurer (including the
20 management of a separate division, department, or
21 underwriting office) and acting as an agent for such
22 reinsurer whether the person performing the act is
23 called a reinsurance intermediary-manager, man-
24 ager, or another name.

1 (4) Directly or indirectly underwriting, col-
2 lecting charges or premiums, or adjusting or settling
3 claims, in connection with policies of insurance writ-
4 ten by a National Insurer.

5 (c) ACTIVITIES OF FEDERALLY LICENSED INSUR-
6 ANCE PRODUCERS.—No State may—

7 (1) by statute, regulation, order, interpretation,
8 or otherwise, prevent or restrict a federally licensed
9 insurance producer from selling, soliciting, or negoti-
10 ating insurance in such State on behalf of a Na-
11 tional Insurer, State insurer, or United States
12 branch of a non-United States Insurer; or

13 (2) require such producer to be licensed by rea-
14 son of engaging in such acts on behalf of a National
15 Insurer, State insurer, or a United States branch of
16 a non-United States Insurer.

17 (d) ACTIVITIES OF STATE PRODUCERS.—No State
18 may, by statute, regulation, order, interpretation, or other-
19 wise, prevent or restrict an insurance producer licensed
20 by such State from selling, soliciting, or negotiating insur-
21 ance in such State on behalf of a National Insurer.

22 **SEC. 1305. LICENSING COMMENCEMENT DATE.**

23 (a) FEDERALLY LICENSED INSURANCE PRO-
24 DUCERS.—The Commissioner shall not license a Federal

1 insurance producer until after the following regulations
2 have been published in final form:

3 (1) The fee and assessment regulations author-
4 ized by section 1122.

5 (2) The reporting regulations authorized by sec-
6 tion 1124.

7 (3) The market conduct regulations authorized
8 by section 1215.

9 (4) The producer licensing regulations author-
10 ized by section 1301.

11 (5) Such other regulations that the Commis-
12 sioner determines, at the Commissioner's discretion,
13 to be necessary prior to the initial licensing of Fed-
14 eral insurance producers.

15 (b) TIMING AND NOTICE.—

16 (1) TIMING.—The regulations described in sub-
17 section (a) shall be published in final form not later
18 than 2 years after the initial appointment and con-
19 firmation of the Commissioner.

20 (2) NOTICE.—At such time as the regulations
21 described in subsection (a) have been issued in final
22 form, the Commissioner shall publish a notice in the
23 Federal Register announcing that the Office is pre-
24 pared to act on licensing applications.

1 **TITLE IV—HOLDING COMPANIES**

2 **SEC. 1401. DEFINITIONS.**

3 In this title:

4 (1) EXTRAORDINARY DIVIDEND OR DISTRIBUTION.—Except as may otherwise be specified by the
5 Commissioner by regulation, the term “extraor-
6 dinary dividend or distribution” means a dividend or
7 distribution of cash or other property on its out-
8 standing shares (excluding pro rata distributions of
9 any class of the National Insurer’s own shares),
10 whose fair market value together with that of other
11 dividends or distributions made within the prior 12
12 months exceeds the greater of—

14 (A) 10 percent of the National Insurer’s
15 policyholder surplus as of the prior December
16 31; or

17 (B) the net income of the National Insurer
18 for the 12-month period ending the prior De-
19 cember 31.

20 (2) INSURANCE HOLDING COMPANY SYSTEM.—
21 The term “insurance holding company system”
22 means 2 or more affiliated persons, 1 or more of
23 which is a National Insurer.

1 **SEC. 1402. REGISTRATION.**

2 (a) REGISTRATION.—Each National Insurer that is
3 a member of an insurance holding company system shall
4 register with the Commissioner.

5 (b) REGISTRATION STATEMENT.—The Commissioner
6 shall, by regulation, prescribe—

7 (1) the form and content of the registration
8 statement to be filed pursuant to subsection (a); and

9 (2) the time and place where the registration
10 statement is required to be filed with the Commis-
11 sioner.

12 (c) TERMINATION OF REGISTRATION.—The Commis-
13 sioner shall terminate the registration of any National In-
14 surer which demonstrates that it no longer is a member
15 of an insurance holding company system.

16 (d) CONSOLIDATED REGISTRATION STATEMENT.—
17 The Commissioner may require or allow 2 or more affili-
18 ated National Insurers to file a consolidated registration
19 statement.

20 (e) EXEMPTIONS.—The provisions of this section
21 shall not apply to any National Insurer, information, or
22 transaction if, and to the extent that, the Commissioner
23 by regulation or order, exempts such Insurer, information,
24 or transaction from the provisions of this section.

25 (f) DISCLAIMER.—Any person may file with the Com-
26 missioner a disclaimer of affiliation with any National In-

1 surer or a disclaimer may be filed by the National Insurer
2 or any member of an insurance holding company system.
3 The disclaimer shall fully disclose all material relation-
4 ships and bases for affiliation between the person and the
5 National Insurer as well as the basis for disclaiming the
6 affiliation. After a disclaimer has been filed, the National
7 Insurer shall be relieved of any duty to register or report
8 under this section which may arise out of the National
9 Insurer's relationship with the person unless and until the
10 Commissioner disallows the disclaimer. The Commissioner
11 shall disallow a disclaimer only after furnishing all parties
12 in interest with notice and opportunity to be heard and
13 after making specific findings of fact to support the dis-
14 allowance.

15 **SEC. 1403. STANDARDS AND MANAGEMENT OF A NATIONAL**
16 **INSURER WITHIN AN INSURANCE HOLDING**
17 **COMPANY SYSTEM.**

18 (a) TRANSACTIONS WITHIN AN INSURANCE HOLDING
19 COMPANY SYSTEM.—

20 (1) STANDARDS.—Transactions within an in-
21 surance holding company system to which a Na-
22 tional Insurer subject to registration under section
23 1402 is a party shall be subject to the following
24 standards:

1 (A) The terms shall be fair, reasonable,
2 and at least as favorable to the National In-
3 surer as those that would be offered to, or
4 would apply to, a nonaffiliate.

5 (B) Charges or fees for services performed
6 shall be reasonable and at least as favorable to
7 the National Insurer as those that would be of-
8 fered to, or would apply to, a nonaffiliate.

9 (C) Expenses incurred and payment re-
10 ceived shall be allocated to the National Insurer
11 in conformity with customary insurance ac-
12 counting practices consistently applied.

13 (D) The books, accounts, and records of
14 each party to all such transactions shall be so
15 maintained as to clearly and accurately disclose
16 the nature and details of the transactions in-
17 cluding such accounting information as is nec-
18 essary to support the reasonableness of the
19 charges or fees to the respective parties.

20 (E) The National Insurer's surplus as re-
21 gards policyholders following any dividends or
22 distributions to shareholders shall be reasonable
23 in relation to the National Insurer's out-
24 standing liabilities and adequate to meet its fi-
25 nancial needs.

1 (2) APPROVAL OF CERTAIN TRANSACTIONS.—

2 The Commissioner may, by regulation, specify cer-
3 tain transactions involving a National Insurer and
4 any person in its insurance holding company system
5 that are not permissible for a National Insurer un-
6 less the National Insurer has notified the Commis-
7 sioner in writing of its intention to enter into the
8 transaction and the Commissioner either has ap-
9 proved or not disapproved the transaction within a
10 specified time period.

11 (3) COMPLIANCE WITH STANDARDS.—The
12 Commissioner, in reviewing any transaction for
13 which notice is required pursuant to paragraph (2),
14 shall consider whether the transaction complies with
15 the standards set forth in paragraph (1) and wheth-
16 er the transaction may adversely affect the interests
17 of policyholders.

18 (b) EXTRAORDINARY DIVIDENDS.—

19 (1) IN GENERAL.—No National Insurer that is
20 a member of an insurance holding company system
21 shall pay any extraordinary dividend or distribution
22 to its shareholders until 30 days after the Commis-
23 sioner has received notice of the declaration in a
24 form prescribed by the Commissioner.

1 (2) CONDITIONAL DIVIDEND OR DISTRIBUTION.—A National Insurer that is a member of an
2 insurance holding company system may declare an
3 extraordinary dividend or distribution which is con-
4 ditional upon the Commissioner’s approval, and the
5 declaration shall confer no rights upon shareholders
6 unless—
7

8 (A) the Commissioner has approved the
9 payment of the dividend or distribution; or

10 (B) the Commissioner has not disapproved
11 payment within the 30-day period referred to in
12 paragraph (1).

13 **SEC. 1404. RELATIONSHIP TO STATE LAW.**

14 (a) PERMITTED AFFILIATION.—A National Insurer
15 that is part of an insurance holding company system may
16 be affiliated with an insurer or agency that is not char-
17 tered or licensed under this Act.

18 (b) REINSURANCE POOLING AGREEMENTS.—The
19 Commissioner shall have exclusive jurisdiction over rein-
20 surance pooling agreements to which 1 or more National
21 Property/Casualty Insurers and affiliated State property/
22 casualty insurers, or agency are parties under which poli-
23 cies of insurance sold, solicited, negotiated, and under-
24 written by and reinsurance assumed by affiliated National

1 Property/Casualty Insurers and State property/casualty
2 insurers are pooled.

3 **SEC. 1405. CONFLICT WITH OTHER FEDERAL LAWS.**

4 This title shall be interpreted and applied so as not
5 to conflict with or supersede the provisions of any other
6 Federal law or regulation governing the regulation of hold-
7 ing companies, including financial holding companies as
8 defined in section 2 of the Bank Holding Company Act
9 of 1956 (12 U.S.C. 1841).

10 **SEC. 1406. NO DELEGATION PERMITTED.**

11 The Commissioner may not delegate to any insurance
12 self-regulatory organization any authority conferred under
13 this title with respect to regulation of a National Insurer
14 that is a member of an insurance holding company system.

15 **TITLE V—RECEIVERSHIP**

16 **SEC. 1501. APPOINTMENT OF OFFICE AS RECEIVER.**

17 (a) IN GENERAL.—Notwithstanding any other provi-
18 sion of Federal or State law, if any of the grounds under
19 subsection (c) exist, at the discretion of the Commissioner,
20 the Commissioner may establish a receivership for a Na-
21 tional Insurer for the purpose of rehabilitation or liquida-
22 tion, as appropriate.

23 (b) APPOINTMENT.—In any receivership established
24 under this title, the Commissioner shall appoint the Office
25 as receiver.

1 (c) GROUNDS FOR APPOINTMENT.—The grounds for
2 appointing receivership for the purpose of rehabilitating
3 or liquidating a National Insurer are as follows:

4 (1) INSOLVENCY.—The National Insurer is in-
5 solvent.

6 (2) SUBSTANTIAL DISSIPATION.—The National
7 Insurer has substantial dissipation of assets or earn-
8 ings due to—

9 (A) any violation of any provision of Fed-
10 eral or State law; or

11 (B) any hazardous practice.

12 (3) HAZARDOUS CONDITION.—The National In-
13 surer is in such condition that the further trans-
14 action of business would be hazardous, financially or
15 otherwise, to policyholders, creditors, or the public.

16 (4) CEASE-AND-DESIST ORDERS.—The National
17 Insurer has willfully violated a cease-and-desist
18 order that has become final.

19 (5) CONCEALMENT.—The National Insurer has
20 concealed the books, papers, records, or assets of the
21 National Insurer, or has refused to submit the
22 books, papers, records, or affairs of the National In-
23 surer, for inspection to any examiner or to any law-
24 ful agent of the Commissioner.

1 (6) INABILITY TO MEET OBLIGATIONS.—The
2 National Insurer is likely to be unable to pay its ob-
3 ligations or meet the demands of its creditors in the
4 normal course of business.

5 (7) LOSSES.—The National Insurer has in-
6 curred or is likely to incur losses that will deplete all
7 or substantially all of its capital, and there is no rea-
8 sonable prospect for the National Insurer to replen-
9 ish its capital.

10 (8) VIOLATIONS OF LAW.—The National In-
11 surer has violated any law or regulation, or com-
12 mitted any hazardous practice or condition, that is
13 likely to—

14 (A) cause insolvency or substantial dissipa-
15 tion of assets or earnings; or

16 (B) weaken the condition of the National
17 Insurer.

18 (9) CONSENT.—The National Insurer, by reso-
19 lution of its board of directors or its shareholders or
20 members, consents to the appointment.

21 (10) MONEY LAUNDERING.—The Attorney
22 General notifies the Commissioner in writing that
23 the National Insurer has been found guilty of a
24 criminal offense under section 1956 or 1957 of title

1 18, United States Code, or section 5322 or 5324 of
2 title 31, United States Code.

3 (d) DIRECTORS NOT LIABLE.—The members of the
4 board of directors of a National Insurer shall not be liable
5 to the shareholders, members, policyholders, or creditors
6 of the insurer for acquiescing in, or consenting in good
7 faith to, the appointment of the Office as a receiver.

8 (e) OFFICE NOT SUBJECT TO ANY OTHER FEDERAL
9 AGENCY.—When acting as receiver, the Office shall not
10 be subject to the direction or supervision of any other
11 agency of the United States or any State in the exercise
12 of the rights, powers, and privileges of the Office.

13 **SEC. 1502. AUTOMATIC STAY.**

14 (a) AUTOMATIC STAY.—Except as provided in sub-
15 section (c) or as otherwise provided in this title, the com-
16 mencement of a receivership proceeding under this title
17 operates as a stay, applicable to all entities, of—

18 (1) the commencement or continuation, includ-
19 ing the issuance or employment of process, of a judi-
20 cial, administrative, or other action or proceeding
21 against the National Insurer, including an arbitra-
22 tion proceeding, that was or could have been com-
23 menced before the commencement of the receivership
24 proceeding under this title, or to recover a claim
25 against the National Insurer that arose before the

1 commencement of the receivership proceeding under
2 this title;

3 (2) the enforcement, against the National In-
4 surer or against property of the National Insurer, of
5 a judgment obtained before the commencement of
6 the receivership proceeding under this title;

7 (3) any act to obtain possession of property of
8 the National Insurer or of property from the Na-
9 tional Insurer or to exercise control over property or
10 records of the National Insurer;

11 (4) any act to create, perfect, or enforce any
12 lien against property of the National Insurer;

13 (5) any act to collect, assess, or recover a claim
14 against the National Insurer that arose before the
15 commencement of a receivership proceeding under
16 this title; and

17 (6) the commencement or continuation of an
18 action or proceeding against a reinsurer of the Na-
19 tional Insurer, by the holder of a claim against the
20 National Insurer, seeking reinsurance recoveries that
21 are contractually due to the National Insurer.

22 (b) OTHER STAY.—Except as provided in subsections
23 (c) and (d) or as otherwise provided in this title, the com-
24 mencement of a receivership proceeding under this title
25 operates as a stay, applicable to all entities, of the com-

1 mencement or continuation, including the issuance or em-
 2 ployment of process, of a judicial, administrative, or other
 3 action or proceeding, including the enforcement of any
 4 judgment against any insured that was or could have been
 5 commenced before the commencement of the receivership
 6 proceeding under this title or to recover a claim against
 7 any insured that arose before or after the commencement
 8 of the receivership proceedings under this title and for
 9 which the insurer is or may be liable under an insurance
 10 policy or is obligated to defend a party. The stay provided
 11 by this subsection shall terminate 90 days after appoint-
 12 ment of the receiver unless extended by order of the Com-
 13 missioner, for good cause shown, after notice to any af-
 14 fected parties and such hearing as the Commissioner de-
 15 termines is appropriate, provided that any applicable stat-
 16 ute of limitation with respect to any claim against an in-
 17 sured shall be tolled during the period of the stay provided
 18 by this subsection and any extensions.

19 (c) EXCEPTIONS.—The commencement of a receiver-
 20 ship proceeding under this title does not operate as a stay
 21 of—

22 (1) criminal actions;

23 (2) any act to perfect, or to maintain or con-
 24 tinue the perfection of, an interest in property to the

1 extent such act is accomplished within any relation
2 back period under applicable law;

3 (3) setoff as permitted by regulations issued by
4 the Commissioner;

5 (4) termination of reinsurance contracts cov-
6 ering insurance policies;

7 (5) pursuit and enforcement of nonmonetary
8 governmental claims, judgments, and proceedings;

9 (6) enforcement of a lessor's rights under a
10 lease that expired prior to the filing of the receiver-
11 ship proceeding;

12 (7) presentment of a negotiable instrument and
13 the giving of notice of and protesting dishonor of
14 such an instrument;

15 (8) enforcement of rights against single bene-
16 ficiary trusts;

17 (9) termination, liquidation, and netting of obli-
18 gations under qualified financial contracts as such
19 contracts are defined by regulations issued by the
20 Commissioner;

21 (10) discharge by a guaranty association of
22 statutory responsibilities or the pursuit of claims
23 against a guaranty association to the extent per-
24 mitted by law other than this title; or

25 (11) an action that is—

1 (A) an audit by a governmental unit to de-
2 termine tax liability;

3 (B) the issuance to the insurer by a gov-
4 ernmental unit of a notice of tax deficiency;

5 (C) a demand for tax returns; or

6 (D) the making of an assessment for any
7 tax and issuance of a notice and demand for
8 payment of such an assessment.

9 (d) LENGTH OF STAY.—Except as provided in sub-
10 section (f)—

11 (1) the stay of an act against property of the
12 insurer under subsection (a) continues until such
13 property is no longer property of the receivership;
14 and

15 (2) the stay of any other act under subsection
16 (a) continues until the receivership is terminated.

17 (e) OTHER EXCEPTIONS.—Notwithstanding the pro-
18 visions of subsection (a)—

19 (1) claims against the National Insurer that
20 arose before the commencement of the receivership
21 proceeding under this title may be asserted as a
22 counterclaim in any judicial, administrative, or other
23 action or proceeding initiated by or on behalf of the
24 receiver against the holder of such claims; and

1 (2) a party against whom a judicial, adminis-
2 trative, or other action or proceeding is initiated by
3 or on behalf of the receiver may assert and enforce
4 any contractual right the party may have to require
5 arbitration of any dispute under any law.

6 (f) RELIEF FROM STAY.—On request of a party in
7 interest and after notice and such hearing as the Commis-
8 sioner determines appropriate, the Commissioner may
9 grant relief from the stay in effect pursuant to subsection
10 (a), such as by terminating, annulling, modifying, or con-
11 ditioning such stay—

12 (1) for cause; or

13 (2) with respect to a stay of an action against
14 property under subsection (a) if—

15 (A) the National Insurer does not have an
16 equity in such property; and

17 (B) such property is not necessary to an
18 effective plan.

19 (g) BURDEN OF PROOF.—In any hearing under sub-
20 section (a), the party seeking relief from the stay shall
21 have the burden of proof on each issue that must be estab-
22 lished by clear and convincing evidence.

23 (h) DAMAGES FOR WILLFUL VIOLATION OF STAY.—
24 The estate of a National Insurer that is injured by any
25 willful violation of a stay provided by this section shall

1 be entitled to actual damages, including costs and attor-
 2 neys' fees, and, in appropriate circumstances, the Court
 3 may impose additional sanctions.

4 **SEC. 1503. POWERS AND DUTIES.**

5 (a) IN GENERAL.—The receiver shall have all the
 6 powers of the directors, officers, and managers of the in-
 7 surer, whose authority shall be suspended, except as they
 8 are redelegated by the receiver or liquidator.

9 (b) SPECIFIC POWERS.—In addition to those powers
 10 otherwise provided by this title, the receiver or liquidator
 11 shall have the power to—

12 (1) use, sell, or lease property of the insurer;

13 (2) after notice and a hearing, borrow money
 14 on the security of the National Insurer's assets, bor-
 15 row money without security, and execute and deliver
 16 all documents necessary to such transaction for the
 17 purpose of facilitating the receiver;

18 (3) collect all debts and money due and claims
 19 belonging to the National Insurer, wherever located;

20 (4) institute and pursue legal actions and to
 21 continue any pending action, in any jurisdiction;

22 (5) suspend, limit, or permit insurance policy
 23 withdrawals in connection with insurance policies;

24 (6) do other acts as are necessary or expedient
 25 to collect, marshal, or protect the assets or property,

1 including the power to sell, compound, compromise,
2 or assign debts for purposes of collection upon such
3 terms and conditions as the receiver considers best
4 and that are consistent with this title;

5 (7) enter into contracts necessary to carry out
6 the order of rehabilitation or liquidation;

7 (8) hold hearings, subpoena witnesses to compel
8 their attendance, administer oaths, examine a person
9 under oath, and compel a person to subscribe to the
10 person's testimony after it has been correctly re-
11 duced to writing and, in connection with these pow-
12 ers, require the production of books, papers, records,
13 or other documents that the receiver considers rel-
14 evant to the inquiry; and

15 (9) exercise all powers held or conferred upon
16 receivers by the laws of the United States that are
17 not inconsistent with the provisions of this title.

18 **SEC. 1504. RULEMAKING.**

19 (a) IN GENERAL.—The Commissioner shall establish,
20 by regulation, standards and procedures for receivership
21 proceedings commenced under this title, including proce-
22 dures and priorities for the allowance or disallowance of
23 claims, standards for the treatment of reinsurance, and
24 such other matters as the Commissioner determines ap-
25 propriate.

1 (b) MODEL.—The regulations issued by the Commis-
 2 sioner under subsection (a) shall be based upon the Uni-
 3 form Receivership Law adopted by the Interstate Insur-
 4 ance Receivership Compact Commission in September
 5 1998.

6 **SEC. 1505. JUDICIAL REVIEW.**

7 (a) NATIONAL INSURERS.—

8 (1) IN GENERAL.—Whenever the Office is ap-
 9 pointed as a receiver for a National Insurer, the Na-
 10 tional Insurer may, within 30 days of such appoint-
 11 ment, bring an action in the United States District
 12 Court for the judicial district in which the principal
 13 place of business of such insurer is located, or in the
 14 United States District Court for the District of Co-
 15 lumbia, for an order requiring the Office to remove
 16 itself as receiver.

17 (2) REVIEW.—Upon the filing of an action
 18 under paragraph (1), the court shall, upon the mer-
 19 its dismiss such action or direct the Office to remove
 20 itself as such receiver.

21 (b) CLAIMANTS.—If the Office, acting as a receiver,
 22 disallows a claim against the receivership, a claimant may,
 23 within 60 days of the notice of disallowance, bring an ac-
 24 tion in the United States District Court for the judicial
 25 district in which the principal place of business of the Na-

1 tional Insurer is located, or in the United States District
 2 Court for the District of Columbia, to challenge the dis-
 3 allowance.

4 **TITLE VI—INSOLVENCY** 5 **PROTECTION**

6 **SEC. 1601. PARTICIPATION IN GUARANTY ASSOCIATIONS.**

7 (a) PARTICIPATION IN STATE GUARANTY ASSOCIA-
 8 TIONS.—

9 (1) NATIONAL LIFE INSURERS.—A National
 10 Life Insurer shall become and continue as a member
 11 of the life and health guaranty association in each
 12 qualified State in which the National Insurer is
 13 doing business.

14 (2) NATIONAL PROPERTY/CASUALTY INSUR-
 15 ERS.—A National Property/Casualty Insurer shall
 16 become and continue as a member of the property/
 17 casualty guaranty association in each qualified State
 18 in which the National Insurer is doing business.

19 (3) ASSESSMENTS.—Associations in qualified
 20 States shall be authorized to levy assessments on
 21 National Insurers doing business in such States. Na-
 22 tional Insurers shall be obligated to pay such assess-
 23 ments to the extent that they are levied on the same
 24 terms that State insurers are obligated to pay as-

1 sessments to the association under applicable State
2 law.

3 (b) PARTICIPATION IN NATIONAL INSURANCE GUAR-
4 ANTY ASSOCIATION.—A National Insurer that does busi-
5 ness in 1 or more nonqualified States shall become and
6 continue to be a member of the National Insurance Guar-
7 anty Corporation.

8 **SEC. 1602. QUALIFIED AND NONQUALIFIED STATE.**

9 (a) QUALIFIED STATE DEFINED.—In this title, the
10 term “qualified State” means a State in which the Com-
11 missioner has determined that, pursuant to State law—

12 (1) the State has established—

13 (A) an association that admits as members
14 both State life insurers and National Life In-
15 surers, and that, in the event a member is
16 placed into receivership for purposes of rehabili-
17 tation or liquidation, may provide benefits to
18 the policyholders of such National Life Insurers
19 that are not less than the benefits provided to
20 policyholders of State life insurers; and

21 (B) an association that admits as members
22 both State property/casualty insurers and Na-
23 tional Property/Casualty Insurers, and that, in
24 the event a member is placed into receivership
25 for purposes of liquidation, may provide cov-

1 erage to policyholders of such National Prop-
2 erty/Casualty Insurers that is not less than the
3 coverage provided to policyholders of State
4 property/casualty insurers;

5 (2) the boards of directors of the associations
6 described in paragraph (1) are required to—

7 (A) be representative of insurers on a basis
8 that does not unfairly discriminate against Na-
9 tional Insurers; and

10 (B) be fairly representative of insurers of
11 different sizes and lines of insurance written;
12 and

13 (3) the bylaws of the associations described in
14 paragraph (1) provide that if either such association
15 fails to act within a reasonable period of time with
16 respect to a National Insurer, the Commissioner
17 shall have the powers and the duties of the associa-
18 tion under the laws of the State that established the
19 association with respect to the National Insurer.

20 (b) DETERMINATION.—

21 (1) IN GENERAL.—The Commissioner shall es-
22 tablish, by regulation, a procedure for determining
23 whether a State is a qualified State.

1 (2) CERTIFICATION.—The Commissioner shall
2 determine that a State is a qualified State upon re-
3 ceipt of a—

4 (A) written request that is jointly filed by
5 the life and health guaranty association and the
6 property/casualty guaranty association estab-
7 lished by a State; and

8 (B) certification by the State’s insurance
9 regulator that such State and such associations
10 satisfy the terms of the definition of a qualified
11 State, as set forth in subsection (a).

12 (c) REVOCATION.—The Commissioner shall revoke a
13 determination that a State is a qualified State if the Com-
14 missioner determines that a State is a nonqualified State.
15 In such event, the Commissioner shall provide a written
16 notice of the revocation to the affected associations and
17 the relevant State insurance regulator, and the associa-
18 tions or the State insurance regulator may seek a review
19 of the revocation under terms of section 1706.

20 (d) LIST OF QUALIFIED AND NONQUALIFIED
21 STATES.—Not later than 6 months after the initial ap-
22 pointment and confirmation of the Commissioner, the
23 Commissioner shall publish, in the Federal Register, a list
24 of qualified and nonqualified States.

1 (e) TEMPORARY STATUS.—In the event that a State
 2 ceases to satisfy the conditions set forth in subparagraph
 3 (A) or (B) of subsection (a)(1) because the Commissioner
 4 increases the benefits or coverage provided by the Cor-
 5 poration pursuant to section 1604 or 1605, such State
 6 shall continue to be classified as a qualified State for a
 7 period of 24 months following the date of the Commis-
 8 sioner’s action to increase the benefits or coverage.

9 (f) NONQUALIFIED STATE.—For purposes of this
 10 title, any State that is not a qualified State is a “non-
 11 qualified State.”

12 **SEC. 1603. ESTABLISHMENT OF THE NATIONAL INSURANCE**
 13 **GUARANTY CORPORATION.**

14 (a) ESTABLISHMENT OF THE CORPORATION.—

15 (1) IN GENERAL.—There is established the Na-
 16 tional Insurance Guaranty Corporation.

17 (2) NONPROFIT AND SUCCESSION.—The Cor-
 18 poration shall be a nonprofit corporation and shall
 19 have succession until dissolved by an Act of Con-
 20 gress.

21 (3) APPLICATION OF DISTRICT OF COLUMBIA
 22 NONPROFIT CORPORATION ACT.—The Corporation
 23 shall, except as otherwise provided in this title, be
 24 subject to, and have all the powers conferred upon
 25 a nonprofit corporation by the District of Columbia

1 Nonprofit Corporation Act (D.C. Code, section 29–
2 301.01 et seq.).

3 (b) MEMBERSHIP IN THE CORPORATION.—The mem-
4 bership of the Corporation shall consist of all National In-
5 surers and State insurers doing business in 1 or more non-
6 qualified State.

7 (c) CORPORATE GOVERNANCE.—

8 (1) GOVERNING BODY.—The board of directors
9 of the Corporation shall be the governing body of the
10 Corporation and shall be vested with all powers nec-
11 essary for the management and administration of
12 the affairs of the Corporation and the promotion of
13 the Corporation’s purposes as authorized by this
14 Act. The board of directors’ authority shall be speci-
15 fied in the bylaws of the Corporation.

16 (2) ELECTION OR APPOINTMENT.—The initial
17 board of directors of the Corporation shall be elected
18 by the membership of the Corporation, provided that
19 if the membership fails to elect the initial board of
20 the Corporation on or before the chartering and li-
21 censing commencement date for National Insurers
22 that is described in section 1210, then the initial
23 board shall be appointed by the Commissioner.
24 Membership on the board of directors shall be fairly

1 representative of members of differing size and lines
2 of business written.

3 (3) INITIAL BYLAWS AND RULES.—The Com-
4 missioner shall prescribe the initial bylaws and rules
5 governing the Corporation, which shall set forth the
6 composition of the board of directors, the term of
7 board members, filling of board vacancies, board
8 compensation, election of officers and procedures to
9 call board meetings, and all matters necessary for
10 the governance of the Corporation not addressed by
11 the District of Columbia Nonprofit Corporation Act
12 (D.C. Code, section 29–301.01 et seq.).

13 (4) AMENDMENTS TO BYLAWS AND RULES.—
14 An amendment to the bylaws and rules of the Cor-
15 poration following the establishment of the initial by-
16 laws and rules as provided in paragraph (3) shall be
17 adopted by the board of directors of the Corporation
18 following the approval of the amendment by the
19 Commissioner.

20 (d) RELATIONSHIP OF CORPORATION TO THE FED-
21 ERAL GOVERNMENT.—

22 (1) SUPERVISION AND OVERSIGHT.—The Cor-
23 poration shall be subject to supervision and over-
24 sight by the Commissioner.

1 (2) NOT AN AGENCY OR INSTRUMENTALITY OF
2 THE FEDERAL GOVERNMENT.—The Corporation
3 shall not be an agency or instrumentality of the
4 United States Government.

5 (3) FULL FAITH AND CREDIT.—The obligations
6 of the Corporation shall not be backed, directly or
7 indirectly, by the full faith and credit of the United
8 States. The Corporation shall receive no financial as-
9 sistance from or have any authority to borrow from
10 the United States.

11 (4) FUNDS NOT INCLUDED IN THE FEDERAL
12 BUDGET.—Funds held by or due to the Corporation
13 shall not be included in the budget of the United
14 States, nor may the United States borrow or pledge
15 such funds.

16 (e) CONTRACTING WITH PERSON TO ADMINISTER
17 BENEFITS.—The Corporation may contract, with the ap-
18 proval of the Commissioner, with another person to ad-
19 minister the benefits to be provided by the Corporation
20 under this title.

21 (f) ACCOUNTS FOR ADMINISTRATION AND ASSESS-
22 MENTS.—For purposes of administration and assess-
23 ments, the Corporation shall establish and separately
24 maintain 5 accounts as follows:

25 (1) A life insurance account.

1 (2) An annuity account.

2 (3) A workers' compensation account.

3 (4) An automobile insurance account.

4 (5) An account for all other lines of property/
5 casualty insurance to which this title applies.

6 **SEC. 1604. BENEFITS FOR POLICY HOLDERS OF NATIONAL**
7 **LIFE INSURERS.**

8 (a) IN GENERAL.—Subject to the provisions of this
9 title, the Corporation shall provide benefits to the policy-
10 holders of a National Life Insurer that is doing business
11 in a nonqualified State and is placed into receivership by
12 the Commissioner for purposes of rehabilitation or liquida-
13 tion.

14 (b) COVERED PERSONS.—Benefits shall be made
15 available as follows:

16 (1) To persons who, regardless of where the
17 persons reside, are the beneficiaries, assignees, or
18 payees of the persons covered under paragraph (2).

19 (2) To persons who are owners of or certificate
20 holders under the insurance policies (other than
21 unallocated annuity contracts, and structured settle-
22 ment annuities) and in each case who are residents
23 of a nonqualified State.

24 (3) This title shall not provide coverage to a
25 person who is a payee (or beneficiary) of a

1 policyowner resident of a nonqualified State, if the
2 payee (or beneficiary) is afforded any coverage by a
3 qualified State's association.

4 (4) This title is intended to provide coverage to
5 persons who are residents of a nonqualified State
6 and, in special circumstances, to persons who are
7 not a resident in a nonqualified State. In order to
8 avoid duplicate coverage, if a person who would oth-
9 erwise receive coverage under this title is provided
10 coverage under the laws of any State other than the
11 non-qualified State, the person shall not be provided
12 coverage under this title. In determining the applica-
13 tion of the provisions of this paragraph in situations
14 where a person could be covered by the association
15 of more than 1 qualifying or nonqualifying State,
16 whether as a policyowner, payee, beneficiary, or as-
17 signee, this title shall be construed in conjunction
18 with the laws of such States to result in coverage by
19 only 1 association.

20 (c) INSURANCE POLICIES COVERED AND COVERAGE
21 LIMITS.—

22 (1) REGULATION.—The Commissioner shall es-
23 tablish, by regulation, the lines of insurance covered,
24 the scope of coverage, defenses, exclusions, and the
25 coverage limits on benefits for policyholders.

1 (2) NAIC MODEL.—The regulations described
2 in paragraph (1) shall be based on the NAIC’s “Life
3 and Health Insurance Guaranty Association Model
4 Act” in effect on the date of enactment of this Act.

5 (3) NAIC AMENDMENTS.—The Commissioner
6 may, by regulation, specify that any amendment
7 made by the NAIC to the lines of insurance covered
8 in its “Life and Health Insurance Guaranty Associa-
9 tion Model Act” or the limits on the coverage for
10 such policies shall apply, in whole or in part, to the
11 Corporation.

12 (4) ADJUSTMENTS BY THE COMMISSIONER.—
13 The Commissioner may, by regulation, modify the
14 lines of insurance covered by this section or increase
15 the coverage limits for such insurance, as the Com-
16 missioner determines appropriate.

17 (5) PAYMENT OF BENEFITS.—Payments for
18 benefits under this section shall be made from the
19 life insurance account or the annuity account, as ap-
20 propriate.

21 **SEC. 1605. CLAIMS COVERED FOR POLICYHOLDERS OF NA-**
22 **TIONAL PROPERTY/CASUALTY INSURERS.**

23 (a) IN GENERAL.—Subject to the provisions of this
24 title, the Corporation shall provide coverage for claims by
25 policyholders of a National Property/Casualty Insurer that

1 is doing business in a non-qualified State and is placed
2 into receivership by the Commissioner for purposes of liq-
3 uidation.

4 (b) INSURANCE POLICIES COVERED AND COVERAGE
5 LIMITS.—

6 (1) IN GENERAL.—The Commissioner shall
7 specify, by regulation, the lines of property/casualty
8 insurance covered, the scope of coverage, defenses,
9 exclusions, and the limits on covered claims.

10 (2) NAIC MODEL.—The regulation described in
11 paragraph (1) shall be based upon the NAIC’s
12 “Property/Casualty Guaranty Association Model
13 Act” in effect on the date of enactment of this Act.

14 (3) NAIC AMENDMENTS.—The Commissioner
15 may, by regulation, specify that any amendment
16 made by the NAIC to the lines of insurance covered
17 or the coverage limits in the NAIC’s “Property/Cas-
18 ualty Guaranty Association Model Act” shall apply,
19 in whole or in part, to coverage provided by the Cor-
20 poration.

21 (4) ADJUSTMENTS BY THE COMMISSIONER.—
22 The Commissioner may, by regulation, modify the
23 lines of insurance covered or increase the coverage
24 levels described in this subsection, as the Commis-
25 sioner determines appropriate.

1 (c) PAYMENT OF BENEFITS.—Payments for claims
2 under this section shall be made from the property and
3 casualty account established pursuant to section 1603.

4 **SEC. 1606. POWERS AND DUTIES OF THE CORPORATION.**

5 (a) POWERS AND DUTIES RELATED TO NATIONAL
6 LIFE INSURERS.—

7 (1) NATIONAL INSURERS SUBJECT TO REHA-
8 BILITATION.—Subject to the provisions of this title,
9 if a National Life Insurer is placed into receivership
10 for purposes of rehabilitation, the Corporation may,
11 in its discretion, and subject to any conditions im-
12 posed by the Corporation that do not impair the
13 contractual obligations of the National Life Insurer,
14 and that are approved by the Commissioner, do one
15 of the following:

16 (A) Guarantee, assume, or reinsure, or
17 cause to be guaranteed, assumed or reinsured,
18 any or all of the insurance policies of the Na-
19 tional Life Insurer.

20 (B) Provide such monies, pledges, loans,
21 notes, guarantees or other means as are proper
22 to effectuate subparagraph (A) and assure pay-
23 ment of the contractual obligations of the Na-
24 tional Life Insurer pending action under sub-
25 paragraph (A).

1 (2) NATIONAL LIFE INSURERS SUBJECT TO
2 LIQUIDATION.—Subject to the provisions of this
3 title, if a National Life Insurer is placed into receiv-
4 ership for purposes of liquidation, the Corporation
5 shall, in its discretion, take either the actions speci-
6 fied in subparagraph (A) or the actions specified in
7 subparagraph (B).

8 (A) ASSUMPTION OF THE OBLIGATIONS OF
9 THE NATIONAL LIFE INSURER.—The Corpora-
10 tion shall—

11 (i)(I) guarantee, assume or reinsure,
12 or cause to be guaranteed, assumed or re-
13 insured, the insurance policies of the Na-
14 tional Life Insurer; or

15 (II) assure payment of the contractual
16 obligations of the National Life Insurer;
17 and

18 (ii) provide monies, pledges, loans,
19 notes, guarantees, or other means reason-
20 ably necessary to discharge the duties im-
21 posed by this section.

22 (B) PROVISION OF BENEFITS TO POLICY-
23 HOLDERS.—The Corporation shall provide ben-
24 efits in accordance with the following provi-
25 sions:

1 (i) ASSURE PAYMENT OF BENEFITS.—

2 With respect to life insurance policies and
3 annuities, the Corporation shall assure
4 payment of benefits for premiums identical
5 to the premiums and benefits (except for
6 terms of conversion and renewability) that
7 would have been payable under the insur-
8 ance policies of the National Life Insurer,
9 for claims incurred—

10 (I) with respect to group insur-
11 ance policies, not later than the ear-
12 lier of the next renewal date under
13 those insurance policies or 45 days,
14 but in no event less than 30 days,
15 after the date on which the Corpora-
16 tion becomes obligated under this sec-
17 tion with respect to such policies; and

18 (II) with respect to nongroup in-
19 surance policies, not later than the
20 earlier of the next renewal date (if
21 any) under the insurance policies or 1
22 year, but in no event less than 30
23 days, from the date on which the Cor-
24 poration becomes obligated under this
25 section with respect to such policies.

1 (ii) NOTICE.—The Corporation shall
2 make diligent efforts to provide all known
3 insured or annuitants (for non-group in-
4 surance policies), or group policyholders
5 with respect to group insurance policies, 30
6 days notice of the termination (pursuant to
7 clause (i)) of the benefits provided.

8 (iii) SUBSTITUTE COVERAGE.—With
9 respect to nongroup insurance policies cov-
10 ered by this title, the Corporation shall
11 make available to each known insured or
12 annuitant and to each individual formerly
13 insured or formerly an annuitant under a
14 group policy who is not eligible for replace-
15 ment group coverage, substitute coverage
16 on an individual basis in accordance with
17 the provisions of clause (iv), if the insured
18 or annuitants had a right under law or the
19 terminated policy or annuity to convert
20 coverage to individual coverage or to con-
21 tinue an individual policy or annuity in
22 force until a specified age or for a specified
23 time, during which the National Life In-
24 surer had no right unilaterally to make
25 changes in any provision of the policy or

1 had a right only to make changes in pre-
2 mium by class.

3 (iv) ALTERNATIVE OR REISSUED
4 POLICIES.—In providing the substitute
5 coverage required under clause (iii), the
6 Corporation may offer either to reissue the
7 terminated coverage or to issue an alter-
8 native policy. Alternative or reissued insur-
9 ance policies shall be offered without re-
10 quiring evidence of insurability, and shall
11 not provide for any waiting period or ex-
12 clusion that would not have applied under
13 the terminated policy. The Corporation
14 may reinsure any alternative or reissued
15 policy.

16 (v) ALTERNATIVE INSURANCE POLI-
17 CIES.—Alternative policies adopted or
18 issued by the Corporation shall be subject
19 to approval by the Commissioner.

20 (vi) TERMINATION OF BENEFITS.—
21 Benefits under this title with respect to
22 coverage under any policy of an insolvent
23 National Life Insurer or under any re-
24 issued or alternative policy shall cease on
25 the date the coverage or policy is replaced

1 by another similar policy by the policy-
2 holder, the insured, or the Corporation.

3 (3) TREATMENT OF PREMIUMS.—

4 (A) NONPAYMENT OF PREMIUMS.—The
5 nonpayment of premiums within 31 days after
6 the date required under the terms of any guar-
7 anteed, assumed, alternative, or reissued policy
8 or substitute coverage provided pursuant to
9 paragraphs (1) or (2) shall terminate benefits
10 under this title with respect to the policy, ex-
11 cept with respect to any claims incurred or any
12 net cash surrender value that may be due in ac-
13 cordance with the provisions of this title.

14 (B) PREMIUMS DUE AFTER LIQUIDATION
15 INITIATED.—Premiums due for coverage under
16 covered policies after the Commissioner has ini-
17 tiated the liquidation of a National Life Insurer
18 shall belong to and be payable at the direction
19 of the Corporation, and the Corporation shall
20 be liable for unearned premiums due to the pol-
21 icyholders under the covered policies.

22 (4) PERMANENT AND TEMPORARY LIENS.—In
23 carrying out the duties under paragraph (2), the
24 Corporation may, subject to the approval of the
25 Commissioner—

1 (A) impose permanent policy liens in con-
2 nection with a guarantee, assumption or rein-
3 surance contract, if the Corporation finds that
4 the amounts which can be assessed under this
5 title are less than the amounts needed to assure
6 full and prompt performance of the protections
7 provided under this title, or that the economic
8 or financial conditions as they affect the insur-
9 ance industry are sufficiently adverse to render
10 the imposition of such permanent policy liens to
11 be in the public interest; or

12 (B) impose temporary moratoriums or
13 liens on payments of cash values and policy
14 loans, or any other right to withdraw funds on
15 payments of cash values and policy loans, or
16 any other right to withdraw funds held in con-
17 junction with insurance policies, in addition to
18 any contractual provisions for deferral of cash
19 or policy loan value.

20 (5) INDEXED INSURANCE POLICIES.—In car-
21 rying out its duties in connection with paragraphs
22 (1) or (2), the Corporation may, subject to the ap-
23 proval of the Commissioner, issue substitute cov-
24 erage for an insurance policy that provides an inter-
25 est rate, crediting rate, or similar factor determined

1 by use of an index or other external reference stated
2 in the insurance policy employed in calculating re-
3 turns or changes in value by issuing an alternative
4 insurance policy in accordance with the following
5 provisions:

6 (A) In lieu of the index or other external
7 reference provided for in the original insurance
8 policy, the alternative insurance policy provides
9 for—

10 (i) a fixed interest rate;

11 (ii) payment of dividends with min-
12 imum guarantees; or

13 (iii) a different method for calculating
14 interest or changes in value.

15 (B) There shall be no requirement for evi-
16 dence of insurability, waiting period, or other
17 exclusion that would not have applied under the
18 replaced insurance policy.

19 (C) The alternative insurance policy is sub-
20 stantially similar to the replaced insurance pol-
21 icy in all other material terms.

22 (b) POWERS AND DUTIES RELATED TO NATIONAL
23 PROPERTY/CASUALTY INSURERS.—Subject to the terms
24 of this title, when a National Property/Casualty Insurer
25 is placed into receivership for purposes of liquidation, the

1 Corporation shall exercise the powers and duties specified
2 in this subsection.

3 (1) ASSUME OBLIGATIONS.—The Corporation
4 shall be deemed the insurer to the extent of its obli-
5 gation on covered claims and to that extent shall
6 have all rights, duties, and obligations of the insol-
7 vent National Property/Casualty Insurer as if such
8 Insurer had not become insolvent, including but not
9 limited to the right to pursue and retain salvage and
10 subrogation recoverable on covered claims obliga-
11 tions to the extent paid by the Corporation.

12 (2) INVESTIGATE AND PAY CLAIMS.—The Cor-
13 poration shall investigate claims brought against the
14 Corporation and adjust, compromise, settle and pay
15 covered claims to the extent of the Corporation's ob-
16 ligations. The Corporation shall pay claims in any
17 order that it determines reasonable, including the
18 payment of claims as they are received from the
19 claimants or in groups or categories of claims. The
20 Corporation may review settlements, releases and
21 adjustments to which the insolvent National Prop-
22 erty/Casualty Insurer or its insured were parties to
23 determine the extent to which the settlements, re-
24 leases and judgments may be properly contested.
25 The Corporation shall have the right to appoint or

1 substitute and to direct legal counsel retained under
2 liability insurance policies for the defense of covered
3 claims.

4 (c) OTHER CORPORATION POWERS.—In addition to
5 the rights and powers provided elsewhere in this title, the
6 Corporation may—

7 (1) enter into such contracts as are necessary
8 or proper to carry out the provisions and purposes
9 of this title;

10 (2) sue or be sued, including taking any legal
11 actions necessary or proper to recover any unpaid
12 assessments under section 1607 and to settle claims
13 or potential claims against the Corporation;

14 (3) borrow money to effect the purposes of this
15 title and any notes or other evidence of indebtedness
16 of the Corporation not in default shall be legal in-
17 vestments for National Insurers and may be carried
18 as assets;

19 (4) employ or retain such persons as are nec-
20 essary or appropriate to handle the financial trans-
21 actions of the Corporation and to perform such
22 other functions as become necessary or proper under
23 this title;

1 (5) take such legal action as may be necessary
2 or appropriate to avoid or recover payment of im-
3 proper claims;

4 (6) exercise, for the purposes of this title and
5 to the extent approved by the Commissioner, the
6 powers of a National Insurer, except that the Cor-
7 poration may not issue insurance policies or annuity
8 contracts other than those issued to provide the pro-
9 tections under this title;

10 (7) request information from a person seeking
11 protection under this title in order to aid the Cor-
12 poration in determining its obligations under this
13 title with respect to the person, and the person shall
14 promptly comply with the request; and

15 (8) take other necessary or appropriate action
16 to discharge the Corporation's duties and obligations
17 under this title or to exercise the Corporation's pow-
18 ers under this title.

19 **SEC. 1607. SUBROGATION.**

20 (a) IN GENERAL.—Persons receiving benefits or pay-
21 ments for claims under this title shall be deemed to have
22 assigned their rights under, and any causes of action
23 against any person for losses arising under, resulting
24 from, or otherwise relating to, their covered policies to the
25 Corporation, and the Corporation shall have a claim by

1 way of subrogation to the rights of such persons against
2 the assets of the National Insurer, to the extent of the
3 benefits received or claims paid because of this title. The
4 Corporation shall also have the right to require an assign-
5 ment to the Corporation of such rights and cause of action
6 by any payee, policyowner, beneficiary, insured, or annu-
7 itant as a condition precedent to the receipt of any right
8 or benefits conferred by this title upon the person.

9 (b) COMMON LAW RIGHTS.—In addition to sub-
10 section (a), the Corporation shall have all common law
11 rights of subrogation and any other equitable or legal rem-
12 edy that would have been available to the National Insurer
13 or policyowner, beneficiary, or payee of an insurance policy
14 with respect to the policy.

15 (c) PRIORITY.—The priority of the subrogation rights
16 of the Corporation against the assets of a National Insurer
17 shall be governed by the regulations issued by the Com-
18 missioner pursuant to section 1504.

19 (d) RESULT IF FOUND INVALID OR INEFFECTIVE.—
20 If the preceding provisions of this section are invalid or
21 ineffective with respect to any person or claim for any rea-
22 son, the amount payable under this title with respect to
23 the related benefits or payments under this title shall be
24 reduced by the amount realized by any other person with
25 respect to the person or claim that is attributable to the

1 insurance policies (or portion of the insurance policies)
2 covered by this title.

3 (e) PAYMENT OF PORTION.—If benefits or payments
4 have been provided under this title with respect to a cov-
5 ered obligation and a person recovers amounts as to which
6 the Corporation has rights as described in the preceding
7 subsections, the person shall pay to the Corporation the
8 portion of the recovery attributable to the insurance poli-
9 cies (or portion of the insurance policies) covered by this
10 title.

11 **SEC. 1608. ASSESSMENTS.**

12 (a) ASSESSMENTS BY CORPORATION AUTHORIZED.—
13 For the purpose of providing the funds necessary to pro-
14 vide the benefits or payments under this title, the Corpora-
15 tion shall be authorized to assess National Insurers doing
16 business in nonqualified States separately for each ac-
17 count, at such time and for such amounts as the board
18 of directors of the Corporation finds necessary, in accord-
19 ance with the provisions of this section.

20 (b) CLASSES OF ASSESSMENTS.—The Corporation
21 shall impose 3 classes of assessments as follows:

22 (1) GENERAL ADMINISTRATIVE ASSESS-
23 MENTS.—

24 (A) IN GENERAL.—Each National Insurer
25 that is a member of the Corporation shall be

1 assessed an amount necessary to cover the gen-
 2 eral administrative and legal costs of the Cor-
 3 poration, other than the costs specified in para-
 4 graphs (2) and (3).

5 (B) AMOUNT.—In setting the amount of
 6 the assessment under subparagraph (A), the
 7 Corporation shall divide such administrative
 8 and legal expenses equally among all members
 9 of the Corporation.

10 (C) DEPOSIT.—The amount collected pur-
 11 suant to this paragraph shall be deposited, in
 12 equal amounts, in the 5 accounts established
 13 pursuant to section 1603(f).

14 (2) PROPERTY/CASUALTY ASSESSMENTS.—

15 (A) IN GENERAL.—The Corporation
 16 shall—

17 (i) allocate claims paid and expenses
 18 incurred among the workers' compensation
 19 account, the automobile insurance account,
 20 or the other property/casualty account; and

21 (ii) assess National Property/Casualty
 22 Insurers that are members of the Corpora-
 23 tion separately for each account described
 24 in clause (i) the amounts necessary to pay
 25 the obligations of the Corporation under

1 section 1605 and the expenses of handling
2 such claims.

3 (B) AMOUNT.—The assessment established
4 under subparagraph (A)(ii) for a National
5 Property/Casualty Insurer shall equal an
6 amount that bears the same ratio to the total
7 amount of claims and expenses allocated to an
8 account pursuant to subparagraph (A)(i) as the
9 premiums received by such National Property/
10 Casualty Insurer on the kind of insurance in
11 the account in nonqualified States during the
12 calendar year preceding the assessment bears to
13 the premiums received by all assessed National
14 Property/Casualty Insurers on the kind of in-
15 surance in the account in nonqualified States
16 during the year preceding the assessment.

17 (C) DEPOSIT.—The assessments received
18 pursuant to this paragraph shall be deposited in
19 the workers' compensation account, the auto-
20 mobile insurance account, or the other property/
21 casualty account, as appropriate.

22 (3) LIFE AND ANNUITY ASSESSMENTS.—

23 (A) IN GENERAL.—The Corporation
24 shall—

1 (i) allocate benefits paid and expenses
2 incurred among the life insurance account
3 and the annuity account; and

4 (ii) assess National Life Insurers that
5 are members of the Corporation separately
6 for each account described in clause (i) the
7 amounts necessary to pay the obligations
8 of the Corporation under section 1604 and
9 the expenses of handling such benefits.

10 (B) AMOUNT.—The assessment established
11 under subparagraph (A)(ii) for a National Life
12 Insurer shall equal an amount that bears the
13 same ratio to the total of benefits and expenses
14 allocated to an account pursuant to subpara-
15 graph (A)(i) as the premiums received by such
16 National Life Insurer on the kind of insurance
17 in the account in nonqualified States during the
18 calendar year preceding the assessment bears to
19 the premiums received by all assessed National
20 Life Insurers on the kind of insurance in the
21 account in nonqualified States during the year
22 preceding the assessment.

23 (C) DEPOSIT.—The assessments received
24 pursuant to this paragraph shall be deposited in

1 the life insurance account or the annuity ac-
2 count, as appropriate.

3 (c) NOTICE AND IMPOSITION OF ASSESSMENTS.—

4 (1) WRITTEN NOTICE REQUIRED.—The Cor-
5 poration shall provide each National Insurer a writ-
6 ten notice of an assessment, and assessments shall
7 be payable not less than 30 days after such notice.

8 (2) LATE PAYMENT.—National Insurers that
9 fail to pay an assessment when due shall be subject
10 to an interest charge on the assessment, as set by
11 the Corporation.

12 (3) ASSESSMENTS NOT MADE UNTIL NEED-
13 ED.—The Corporation shall not impose an assess-
14 ment described in paragraph (2) or (3) of subsection
15 (b) until such funds are needed.

16 (4) MAXIMUM ASSESSMENT.—

17 (A) IN GENERAL.—The Corporation may
18 not assess a National Insurer in any year on
19 any account an amount greater than 2 percent
20 of the Insurer's net direct written premiums for
21 the calendar year preceding the assessment on
22 the kind of insurance in the account.

23 (B) INSUFFICIENT AMOUNT IN LIFE IN-
24 SURANCE ACCOUNT OR ANNUITY ACCOUNT.—

1 (i) INSUFFICIENT AMOUNT IN LIFE
2 INSURANCE ACCOUNT.—If the maximum
3 assessment in any year does not provide an
4 amount sufficient to make all necessary
5 payments from the life insurance account,
6 the Corporation may assess the annuity ac-
7 count for the necessary additional amount.

8 (ii) INSUFFICIENT AMOUNT IN ANNU-
9 ITY ACCOUNT.—If the maximum assess-
10 ment in any year does not provide an
11 amount sufficient to make all necessary
12 payments from the annuity account, the
13 Corporation may assess the life insurance
14 account for the necessary additional
15 amount.

16 (C) INSUFFICIENT AMOUNT IN WORKERS'
17 COMPENSATION ACCOUNT, AUTOMOBILE INSUR-
18 ANCE ACCOUNT, OR OTHER PROPERTY/CAS-
19 UALTY INSURANCE ACCOUNT.—

20 (i) INSUFFICIENT AMOUNT IN WORK-
21 ERS' COMPENSATION ACCOUNT.—If the
22 maximum assessment in any year does not
23 provide an amount sufficient to make all
24 necessary payments from the workers'
25 compensation account, the Corporation

1 may assess the automobile insurance ac-
2 count or the other property/casualty insur-
3 ance account, or both, for the necessary
4 additional amount.

5 (ii) INSUFFICIENT AMOUNT IN AUTO-
6 MOBILE INSURANCE ACCOUNT.—If the
7 maximum assessment in any year does not
8 provide an amount sufficient to make all
9 necessary payments from the automobile
10 insurance account, the Corporation may
11 assess the workers' compensation account
12 or the other property/casualty insurance
13 account, or both, for the necessary addi-
14 tional amount.

15 (iii) INSUFFICIENT AMOUNT IN OTHER
16 PROPERTY/CASUALTY INSURANCE AC-
17 COUNT.—If the maximum assessment in
18 any year does not provide an amount suffi-
19 cient to make all necessary payments from
20 the other property/casualty insurance ac-
21 count, the Corporation may assess the
22 workers' compensation account or the
23 automobile insurance account, or both, for
24 the necessary additional amount.

1 (d) ABATED OR DEFERRED ASSESSMENTS.—The
2 board of directors of the Corporation may abate or defer,
3 in whole or in part, the assessment of a National Insurer
4 if, in the opinion of the board, payment of the assessment
5 would endanger the ability of the National Insurer to ful-
6 fill the Insurer’s contractual obligations. In the event an
7 assessment against a National Insurer is abated or de-
8 ferred, in whole or in part, the amount by which the as-
9 sessment is abated or deferred may be assessed against
10 the other National Insurers doing business in non-quali-
11 fied States, in a manner consistent with the basis for as-
12 sessments set forth in this section. Once the conditions
13 that caused a deferral have been removed or rectified, the
14 National Insurer shall pay all assessments that were de-
15 ferred pursuant to a repayment plan approved by the
16 board of directors of the Corporation.

17 (e) REFUNDS.—The board of directors of the Cor-
18 poration may, by an equitable method as established by
19 operating rules, refund to National Insurers, in proportion
20 to the contribution of each Insurer to that account, the
21 amount by which the assets of the account exceed the
22 amount the board finds is necessary to carry out during
23 the coming year the obligations of this title with regard
24 to that account, including assets accruing from assign-
25 ment, subrogation, net realized gains, and income from in-

1 vestments. A reasonable amount may be retained in any
2 account to provide funds for the continuing expenses of
3 the Corporation, and for future claims.

4 (f) ASSESSMENT PROTESTS.—

5 (1) IN GENERAL.—A National Insurer that
6 wishes to protest all or part of an assessment shall
7 pay when due the full amount of the assessment as
8 set forth in the notice provided by the Corporation.
9 The payment shall be available to meet obligations
10 under this title during the pendency of the protest
11 or any subsequent appeal. Payment shall be accom-
12 panied by a statement in writing that the payment
13 is made under protest and setting forth a brief
14 statement of the grounds for the protest.

15 (2) NOTIFICATION OF DETERMINATION.—With-
16 in 60 days following the payment of an assessment
17 under protest by a National Insurer, the Corporation
18 shall notify the National Insurer in writing of the
19 Corporation's determination with respect to the pro-
20 test unless the Corporation notifies the Insurer that
21 additional time is required to resolve the issues
22 raised by the protest.

23 (3) FINAL DECISION.—Within 30 days after a
24 final decision has been made, the Corporation shall
25 notify the protesting National Insurer in writing of

1 the final decision. Within 60 days of receipt of notice
2 of the final decision, the protesting National Insurer
3 may appeal that final action to the Commissioner.

4 (4) REFERRAL.—In the alternative to rendering
5 a final decision with respect to a protest based on
6 a question regarding the assessment base, the Cor-
7 poration may refer protests to the Commissioner for
8 a final decision, with or without a recommendation
9 from the Corporation.

10 (5) PROTEST OR APPEAL UPHELD.—If the pro-
11 test or appeal on the assessment is upheld, the
12 amount paid in error or excess shall be returned to
13 the National Insurer. Interest on a refund due a
14 protesting National Insurer shall be paid at the rate
15 actually earned by the Corporation.

16 (g) INFORMATION REQUESTS.—The Corporation may
17 request information of National Insurers doing business
18 in nonqualified States in order to aid in carrying out the
19 Corporation's duties under this section and such Insurers
20 shall promptly comply with such a request.

21 **SEC. 1609. REGULATION.**

22 In addition to the duties and powers enumerated else-
23 where in this title, the Commissioner shall issue such regu-
24 lations as the Commissioner determines necessary to fa-

1 cilitate the operations of the Corporation and implement
2 the terms of this title.

3 **SEC. 1610. STATE TAXATION.**

4 No State shall have the power to impose its premium,
5 franchise, or income tax on any National Insurer unless
6 deductions or offsets of the Corporation and association
7 assessments against such premium, franchise, or income
8 tax are allowed National Insurers to the same extent and
9 in the same manner as allowed State insurers.

10 **SEC. 1611. EXAMINATION OF THE CORPORATION; ANNUAL**
11 **REPORT.**

12 The Corporation shall be subject to examination and
13 regulation by the Commissioner. The Corporation shall
14 submit to the Commissioner and each State insurance
15 commissioner in each non-qualified State, a financial re-
16 port in a form approved by the Commissioner and a report
17 of the Corporation's activities during the preceding fiscal
18 year, as the activities relate to the duties and functions
19 carried out under this title.

20 **TITLE VII—CONFORMING**
21 **AMENDMENTS AND MIS-**
22 **CELLANEOUS PROVISIONS**

23 **SEC. 1701. NONDISCRIMINATION.**

24 No State may discriminate, in any manner, against—

1 (1) any State insurer because such insurer or
2 any affiliate has applied to become, or has declared
3 its intention to become, a National Insurer chartered
4 under this Act;

5 (2) any State-licensed insurance producer be-
6 cause such insurance producer or an affiliate has ap-
7 plied to become, or has declared its intention to be-
8 come, a National Agency chartered under this Act or
9 a federally licensed insurance producer licensed
10 under this Act;

11 (3) any affiliate of a National Insurer, National
12 Agency, or a federally licensed insurance producer
13 because the affiliate is so affiliated;

14 (4) any policyholder, insured, claimant, State-li-
15 censed insurance producer, or any person engaged in
16 the acts described in section 1404(b) because of any
17 dealing with a National Insurer, National Agency, a
18 federally licensed insurance producer, or an affiliate
19 of a National Insurer, National Agency, or a feder-
20 ally licensed insurance producer; or

21 (5) any State-licensed insurance producer (in-
22 cluding with respect to such producer's sales, solici-
23 tation, or negotiation of any insurance policy written
24 or sold by a State insurer) because it sells, solicits,

1 or negotiates an insurance policy written or sold by
2 a National Insurer.

3 **SEC. 1702. APPLICATION OF THE FEDERAL ANTITRUST**
4 **LAWS TO NATIONAL INSURERS, NATIONAL**
5 **AGENCIES, AND FEDERALLY LICENSED IN-**
6 **SURANCE PRODUCERS.**

7 (a) APPLICATION.—Except as provided in subsection
8 (b), the Sherman Act (15 U.S.C. 1 et seq.), the Clayton
9 Act (15 U.S.C. 12 et seq.), the Federal Trade Commission
10 Act (15 U.S.C. 41 et seq.), and the Act of June 19, 1936
11 (49 Stat. 1526) (commonly known as the Robinson-Pat-
12 man Antidiscrimination Act), shall be applicable to Na-
13 tional Insurers, National Agencies, and federally licensed
14 insurance producers to the same extent as other busi-
15 nesses are subject to such laws, except as follows:

16 (1) Such laws shall not apply to the develop-
17 ment, dissemination, or use of standard insurance
18 policy forms (including, standard endorsements,
19 addendums, and policy language), or to activities in-
20 cidental thereto, by National Insurers, National
21 Agencies, and federally licensed insurance producers.

22 (2) Section 3 of the Act of March 9, 1945 (59
23 Stat. 33; 15 U.S.C. 1013), shall apply to National
24 Insurers, National Agencies, and federally licensed

1 insurance producers to the extent that such insurers
2 and producers are subject to State law.

3 (b) EXCEPTION.—Section 5 of the Federal Trade
4 Commission Act (15 U.S.C. 45) shall not apply to Na-
5 tional Insurers, National Agencies, and federally licensed
6 insurance producers.

7 **SEC. 1703. APPLICATION OF STATE LAW AND REGULATION**
8 **TO NATIONAL INSURERS, NATIONAL AGEN-**
9 **CIES, AND FEDERALLY LICENSED INSURANCE**
10 **PRODUCERS.**

11 Except to the extent expressly provided in this Act,
12 National Insurers, National Agencies and federally li-
13 censed insurance producers shall not be subject under
14 State law to any form of licensing, examination, reporting,
15 regulation, or other supervision relating to the sale, solici-
16 tation, or negotiation of insurance, to the underwriting of
17 insurance, or to any other insurance operations.

18 **SEC. 1704. FEDERAL COURT JURISDICTION.**

19 Chapter 87 of part IV of title 28, United States Code,
20 is amended by adding at the end the following:

21 **“§ 1414. National Insurer as party**

22 “The district courts shall have original jurisdiction
23 of any civil action—

24 “(1) commenced by the United States, or by di-
25 rection of any officers thereof, against any National

1 Insurer, National Agency or any federally licensed
2 insurance producer;

3 “(2) to enjoin the Commissioner of National In-
4 surance in the Commissioner’s capacity as head of
5 the Office of National Insurance or as the receiver
6 of a National Insurer.”.

7 **SEC. 1705. FEDERAL COURT VENUE.**

8 Chapter 87 of part IV of title 28, United States Code,
9 as amended by section 1704, is further amended by adding
10 at the end the following:

11 **“§ 1415. National Insurer or National Agency action**
12 **against Commissioner of National Insur-**
13 **ance**

14 “Any civil action by a National Insurer or a National
15 Agency to enjoin the Commissioner of National Insurance,
16 under the provisions of any Act of Congress relating to
17 such insurers or agencies, may be prosecuted in the judi-
18 cial district where such insurer or agency is located.”.

19 **SEC. 1706. JUDICIAL REVIEW.**

20 Except as otherwise expressly provided in this Act,
21 any party aggrieved by an order of the Commissioner
22 under this Act may obtain a review of such order in the
23 United States Court of Appeals within any circuit wherein
24 such party has its main office, or in the Court of Appeals
25 for the District of Columbia, by filing in the court, within

1 30 days after the entry of the Commissioner's order, a
2 petition praying that the order of the Commissioner be
3 set aside, modified, or terminated. A copy of such petition
4 shall be forthwith transmitted to the Commissioner by the
5 clerk of the court, and thereupon the Commissioner shall
6 file in the court the record made before the Commissioner,
7 as provided in section 2112 of title 28, United States
8 Code. Upon the filing of such petition, the court shall have
9 jurisdiction to affirm, set aside, modify, or terminate the
10 order of the Commissioner and to require the Commis-
11 sioner to take such action with regard to the matter under
12 review as the court determines proper. Review of an order
13 under this section shall be had as provided in chapter 7
14 of part I of title 5, United States Code. The judgment
15 and decree of the court shall be final, except that the same
16 shall be subject to review by the Supreme Court upon cer-
17 tiorari, as provided in section 1254 of title 28, United
18 States Code.

19 **SEC. 1707. AMENDMENT TO FREEDOM OF INFORMATION**
20 **ACT.**

21 Section 552(b)(8) of title 5, United States Code, is
22 amended by inserting “(including National Insurers and
23 National Agencies)” after “financial institutions”.

1 **SEC. 1708. AMENDMENTS TO THE FEDERAL SECURITIES**
 2 **LAWS.**

3 (a) SECURITIES ACT OF 1933.—The Securities Act
 4 of 1933 (15 U.S.C. 77a et seq.) is amended—

5 (1) in section 2(a)(13), by inserting “the Com-
 6 missioner of National Insurance or” after “subject
 7 to supervision by”;

8 (2) in section 2(a)(14), by inserting “the
 9 United States or” after “the laws of”;

10 (3) in section 3(a)(8), by inserting “the Com-
 11 missioner of National Insurance or” after “subject
 12 to the supervision of”; and

13 (4) in section 4(5)(A)(ii), by inserting “the
 14 Commissioner of National Insurance or” after “sub-
 15 ject to the supervision of”.

16 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
 17 curities Exchange Act of 1934 (15 U.S.C. 78a) is amend-
 18 ed—

19 (1) in section 17(i)(3)(C)(iii), by inserting “or
 20 by the Commissioner of National Insurance” after
 21 “appropriate State insurance regulator”; and

22 (2) in section 17(i)(4)—

23 (A) in subparagraph (A), by striking
 24 “and” after the semicolon;

25 (B) in subparagraph (B), by striking the
 26 period at the end and inserting “; and”; and

1 (C) by adding at the end the following:

2 “(D) the Commissioner of National Insur-
 3 ance with regard to all interpretations of, and
 4 the enforcement of, the National Insurance Act
 5 of 2006 relating to the activities, conduct, and
 6 operations of National Insurers, National Agen-
 7 cies, and federally licensed insurance pro-
 8 ducers.”.

9 (c) AMENDMENTS TO INVESTMENT COMPANY ACT OF
 10 1940.—The Investment Company Act of 1940 (15 U.S.C.
 11 80a–1 et seq.) is amended—

12 (1) in section 2(a)(17), by inserting “the Com-
 13 missioner of National Insurance or” after “subject
 14 to supervision by”;

15 (2) in section 2(a)(37), by inserting “the
 16 United States or” after “the laws of”;

17 (3) in section 12(g)—

18 (A) by inserting “the Commissioner of Na-
 19 tional Insurance or” after “affect or derogate
 20 from the powers of”; and

21 (B) by inserting “Federal or” after “affect
 22 the right under”;

23 (4) in section 26(f)(2)(B)(ii), by inserting “or,
 24 in the case of a National Insurer chartered under
 25 the National Insurance Act of 2006, files with the

1 Commissioner of National Insurance,” after “files
 2 with the insurance regulatory authority of the State
 3 which is the domiciliary State of the insurance com-
 4 pany,”; and

5 (5) in section 26(f)(2)(B)(iii), by inserting “or,
 6 in the case of a National Insurer chartered under
 7 the National Insurance Act of 2006, the Commis-
 8 sioner of National Insurance” after “insurance au-
 9 thority of such State”.

10 **SEC. 1709. AMENDMENTS TO THE EMPLOYEE RETIREMENT**
 11 **INCOME SECURITY ACT OF 1974.**

12 The Employee Retirement Income Security Act of
 13 1974 (29 U.S.C. 1001 et seq.) is amended—

14 (1) in section 401(b)(2)(A), by inserting “or li-
 15 censed as a National Insurer” after “qualified to do
 16 business in a State”; and

17 (2) in section 733(b)(2), by inserting “or which
 18 is licensed as a National Insurer and which is sub-
 19 ject to the authority of the Commissioner of Na-
 20 tional Insurance” after “(within the meaning of sec-
 21 tion 514(b)(2))”.

22 **SEC. 1710. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
 23 **ACT.**

24 (a) INTERAGENCY CONSULTATION.—

1 (1) AMENDMENTS.—Section 307 of the
2 Gramm-Leach-Bliley Act (15 U.S.C. 6716) is
3 amended by adding at the end the following:

4 “(g) OFFICE OF NATIONAL INSURANCE.—In this sec-
5 tion, the terms ‘State insurance regulator’, ‘State insur-
6 ance regulators’, and ‘insurance regulator of any State’
7 shall include the Office of National Insurance.”.

8 (2) NO WAIVER.—The provision of information
9 or material by the Office of National Insurance to
10 a Federal banking agency (as defined in section 3 of
11 the Federal Deposit Insurance Act (12 U.S.C.
12 1813)) shall not constitute a waiver of, or otherwise
13 affect, any privilege or other form of legal protection
14 or exemption from public disclosure to which such
15 information or material is otherwise subject.

16 (b) PRIVACY.—The Gramm-Leach-Bliley Act (Public
17 Law 106–102; 113 Stat. 1338) is amended—

18 (1) in section 504(a)(1), by inserting “the Com-
19 missioner of National Insurance,” after “Federal
20 banking agencies,”;

21 (2) in section 504(a)(3), by inserting “, except
22 that, in the case of the Commissioner of National
23 Insurance, such regulations shall be issued in final
24 form not later than 12 months after the date of en-

1 actment of the National Insurance Act of 2006”
2 after “enactment of this Act”;

3 (3) in section 505(a)(6), by inserting “(other
4 than a person subject to the jurisdiction of the Of-
5 fice of National Insurance under paragraph (8))”
6 after “providing insurance”;

7 (4) in section 505(a)—

8 (A) by redesignating paragraph (7) as
9 paragraph (8); and

10 (B) by inserting after paragraph (6) the
11 following:

12 “(7) Under subtitle C of title I of the National
13 Insurance Act of 2006, by the Commissioner of Na-
14 tional Insurance with respect to any National In-
15 surer or National Agency, any subsidiaries of such
16 an entity (except any financial institution or other
17 person subject to the jurisdiction of any agency or
18 authority under paragraphs (1) through (6)), and
19 any federally licensed insurance producer.”;

20 (5) in section 505(a)(8), as redesignated by
21 paragraph (4) of this section, by striking “through
22 (6)” and inserting “through (7)”;

23 (6) in section 505(b)(2), by striking “and (7)”
24 and inserting “(7), and (8)”;

25 (7) in section 509(2)—

1 (A) by redesignating subparagraphs (E)
2 and (F) as subparagraphs (F) and (G), respec-
3 tively; and

4 (B) by inserting after subparagraph (D)
5 the following:

6 “(E) the Commissioner of National Insur-
7 ance;”;

8 (8) in section 521(e), by inserting “or Federal”
9 after “such institution under State”;

10 (9) in section 522(b)(1)—

11 (A) in subparagraph (A)(iv), by striking
12 “and” after the semicolon;

13 (B) in subparagraph (B), by striking the
14 period at the end and inserting “; and”; and

15 (C) by inserting after subparagraph (B)
16 the following:

17 “(C) subtitle C of title I of the National
18 Insurance Act of 2006, by the Commissioner of
19 National Insurance with respect to any Na-
20 tional Insurer or National Agency and any fed-
21 erally licensed insurance producer.”; and

22 (10) in section 525, by inserting “the Commis-
23 sioner of National Insurance,” after “National Cred-
24 it Union Administration,”.

1 (c) OTHER CONFORMING AMENDMENTS.—The
 2 Gramm-Leach-Bliley Act (Public Law 106–102; 113 Stat.
 3 1338) is amended—

4 (1) in section 104(b), by inserting “, or as re-
 5 quired by the Commissioner of National Insurance
 6 in accordance with the National Insurance Act of
 7 2006” after “subject to subsections (c), (d), and
 8 (e)”;

9 (2) in section 104(f)—

10 (A) by striking “Subsections (c) and (d)”
 11 and inserting the following:

12 “(1) IN GENERAL.—Subsections (c) and (d)”;

13 (B) by striking “(1) the jurisdiction” and
 14 inserting the following: “(A) the jurisdiction”;

15 (C) by striking “(A) to investigate” and in-
 16 serting the following: “(i) to investigate”;

17 (D) by striking “(B) to require” and in-
 18 serting the following: “(ii) to require”;

19 (E) by striking “(2) State laws” and in-
 20 serting the following: “(B) State laws”; and

21 (F) by adding at the end the following:

22 “(2) OTHER.—Notwithstanding any provision
 23 of subsection (d), paragraphs (2) and (3) of sub-
 24 section (d) and subsection (e) shall not apply to any
 25 person to the extent that such person is engaged in

1 the business of insurance or other insurance oper-
 2 ations pursuant to authority provided under the Na-
 3 tional Insurance Act of 2006.”;

4 (3) in section 104(g)(4), by striking “business
 5 of insurance.” and inserting “business of insurance,
 6 but only to the extent that such person is doing so
 7 pursuant to a license issued under the authority of
 8 State law.”;

9 (4) in section 112, by inserting in the heading
 10 **“COMMISSIONER OF NATIONAL INSURANCE”**
 11 after **“AUTHORITY OF STATE INSURANCE REGU-**
 12 **LATOR”**;

13 (5) in section 301, by inserting “, except that
 14 the insurance activities of a National Insurer, Na-
 15 tional Agency, and a federally licensed insurance
 16 producer shall be functionally regulated by the Of-
 17 fice of National Insurance” after “subject to section
 18 104”; and

19 (6) in section 311, by inserting at the end the
 20 following: “This subtitle shall not apply to a Na-
 21 tional Insurer in mutual form that is reorganizing
 22 into a mutual holding company.”.

1 **SEC. 1711. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**
 2 **SURANCE ACT.**

3 The Federal Deposit Insurance Act (12 U.S.C. 1811
 4 et seq.) is amended—

5 (1) in section 45, by inserting in the heading “,
 6 **COMMISSIONER OF OFFICE OF NATIONAL IN-**
 7 **SURANCE,”** after “**STATE INSURANCE REGU-**
 8 **LATOR”**; and

9 (2) in section 47(g)(1)—

10 (A) in subparagraph (A), by striking “or”
 11 after the semicolon;

12 (B) in subparagraph (B), by striking the
 13 period at the end and inserting “; or”; and

14 (C) by adding at the end the following:

15 “(C) any authority of the Commissioner of
 16 National Insurance under the National Insur-
 17 ance Act of 2006.”.

18 **SEC. 1712. AMENDMENTS TO THE BANK HOLDING COM-**
 19 **PANY ACT OF 1956.**

20 The Bank Holding Company Act of 1956 (12 U.S.C.
 21 1841 et seq.) is amended—

22 (1) in section 4(k)(4)(I)(iii), by inserting “or
 23 Federal” after “relevant State”;

24 (2) in section 5(c)(2)(E)(iii), by inserting “or
 25 by or on behalf of the Commissioner of National In-

1 surance” after “for the supervision of insurance
2 companies”;

3 (3) in section 5(c)(3)(A)(ii)(I), by inserting “or
4 the Office of National Insurance” after “Securities
5 and Exchange Commission”;

6 (4) in section 5(c)(4)(B), by inserting “or the
7 Commissioner of National Insurance” after “a State
8 insurance authority”;

9 (5) in section 5(c)(5)(B)(iv), by inserting “or by
10 the Commissioner of National Insurance” after
11 “State insurance regulator”;

12 (6) in section 5(g), by inserting in the heading
13 “, COMMISSIONER OF NATIONAL INSURANCE” after
14 “STATE INSURANCE REGULATOR”;

15 (7) in section 5(g)(1)(B), by inserting “or the
16 Commissioner of National Insurance” after “State
17 insurance authority”;

18 (8) in section 5(g)(2)—

19 (A) in the heading, by inserting “, COM-
20 MISSIONER OF NATIONAL INSURANCE,” after
21 “STATE INSURANCE AUTHORITY”; and

22 (B) by inserting “or the Commissioner of
23 National Insurance” after “the Board shall
24 promptly notify the State insurance authority”;
25 and

(a) AMENDMENTS TO 18 U.S.C. 1033.—Section 1033(b) of title 18, United States Code, is amended—

10 (A) by inserting “removes, conceals, alters,
11 destroys,” after “willfully embezzles, abstracts,
12 purloins,”; and

(A) in the first sentence, by inserting “re-
moval, concealment, alteration, destruction,”
after “embezzlement, abstraction, purloining,”;
and

(b) ADDITION OF A NEW SECTION 1037A.—Title 18,
United States Code, is amended by inserting after section
1037 the following:

1 **“§ 1037A. Insurance fraud**

2 “(a) Whoever commits a fraudulent insurance act or
3 whoever knowingly and intentionally interferes with the
4 enforcement of the provisions of subtitle D of title I of
5 the National Insurance Act of 2006 or investigations of
6 suspected or actual violations of this section shall be pun-
7 ished as provided in subsection (b).

8 “(b)(1) Except as provided in paragraph (2), the
9 punishment for an offense under subsection (a) is a fine
10 as provided under this title or imprisonment for not more
11 than 10 years, or both.

12 “(2) Where the person committing an offense under
13 subsection (a) is a National Insurer, National Agency, in-
14 surer-affiliated party, or a federally licensed insurance
15 producer, punishment for an offense under subsection (a)
16 shall be a fine, the maximum of which is the greater of—

17 “(A) \$1,000,000 per violation; or

18 “(B) a fine as provided under this title; or im-
19 prisonment for not more than 10 years, or both.

20 “(3) If the fraudulent insurance act involved an
21 amount or value not exceeding \$5,000, whoever violates
22 subsection (a) shall be fined as provided in this title or
23 imprisoned not more than 1 year, or both.

24 “(4) The punishment in this subsection shall be in
25 addition to any other penalties under the National Insur-
26 ance Act of 2006.

1 “(c)(1) Any individual who has been convicted of any
2 criminal felony involving dishonesty or breach of trust,
3 and who participates in the business of insurance, shall
4 be fined as provided in this title or imprisoned not more
5 than 5 years, or both.

6 “(2) Any insurance person who is engaged in the
7 business of insurance who knowingly and intentionally
8 permits the participation described in paragraph (1) shall
9 be fined as provided in this title or imprisoned not more
10 than 5 years, or both.

11 “(3) A person described in paragraph (1) or (2) may
12 participate in the business of insurance or permit such
13 participation, as the case may be, if such person has the
14 written consent of the Commissioner of National Insur-
15 ance.

16 “(d) In this section—

17 “(1) the terms ‘Commissioner,’ ‘insurance pol-
18 icy,’ ‘insurance producer,’ ‘insurer-affiliated party,’
19 ‘National Agency,’ ‘National Insurer,’ ‘person,’ and
20 ‘policy of insurance’ have the meanings given to the
21 terms in section 3 of the National Insurance Act of
22 2006;

23 “(2) the term ‘business of insurance’ has the
24 meaning given to the term in section 1033(f)(1);

1 “(3) the term ‘fraudulent insurance act’ means
2 an act or omission committed by a person who,
3 knowingly and with intent to defraud, commits or
4 conceals any material information concerning, 1 or
5 more of the following—

6 “(A) presenting, causing to be presented or
7 preparing with knowledge or belief that it will
8 be presented to or by a National Insurer, Na-
9 tional Agency, or an insurance producer acting
10 with respect to a policy of insurance written by
11 a National Insurer, false information as part of,
12 in support of or concerning a fact material to
13 1 or more of the following—

14 “(i) an application for a new or re-
15 newal of an insurance policy or reinsurance
16 contract;

17 “(ii) the rating of a National Insurer
18 that writes an insurance policy or enters
19 into a reinsurance contract;

20 “(iii) a claim for payment or benefit
21 pursuant to an insurance policy or reinsur-
22 ance contract;

23 “(iv) premiums paid on an insurance
24 policy or reinsurance contract;

1 “(v) payments made in accordance
2 with the terms of an insurance policy or
3 reinsurance contract;

4 “(vi) a document filed with the Com-
5 missioner;

6 “(vii) the financial condition of a Na-
7 tional Insurer;

8 “(viii) the formation, acquisition,
9 merger, consolidation, dissolution, or with-
10 drawal from 1 or more lines of insurance
11 or reinsurance by a National Insurer;

12 “(ix) the issuance of evidence of in-
13 surance, whether in writing, electronic
14 form or otherwise; or

15 “(x) the reinstatement of an insurance
16 policy;

17 “(B) solicitation or acceptance of new or
18 renewal insurance risks on behalf of a National
19 Insurer, National Agency, or other persons en-
20 gaged in the business of insurance by a person
21 who knows or should know that the National
22 Insurer or other person responsible for the risk
23 is insolvent at the time of the transaction;

24 “(C) removal, concealment, alteration, or
25 destruction of the records of a National In-

1 surer, National Agency, or other person en-
 2 gaged in the business of insurance;

3 “(D) transaction of the business of insur-
 4 ance in violation of laws requiring a license
 5 therefore under the National Insurance Act of
 6 2006; or

7 “(E) attempting to commit, aiding or abet-
 8 ting in the commission of, or conspiracy to com-
 9 mit the acts or omissions specified in, this para-
 10 graph; and

11 “(4) the term ‘insurance person’ means officers,
 12 directors, agents, or employees of National Insurers
 13 or National Agencies, or other persons authorized to
 14 act on behalf of National Insurers or National Agen-
 15 cies.”.

16 **SEC. 1714. AMENDMENTS TO AMERICANS WITH DISABIL-**
 17 **ITIES ACT OF 1990.**

18 Section 501(c) of the Americans with Disabilities Act
 19 of 1990 (42 U.S.C. 12201(c)) is amended—

20 (1) in paragraph (1), by inserting “or Federal”
 21 after “based on or not inconsistent with State”;

22 (2) in paragraph (2), by inserting “or Federal”
 23 after “based on or not inconsistent with State”; and

24 (3) in paragraph (3), by inserting “or Federal”
 25 after “subject to State”.

1 **SEC. 1715. AMENDMENT TO AGE DISCRIMINATION IN EM-**
2 **PLOYMENT ACT.**

3 Section 12(c)(2) of the Age Discrimination in Em-
4 ployment Act of 1967 (29 U.S.C. 631(c)(2)) is amended
5 by inserting “and the Commissioner of National Insur-
6 ance” after “after consultation with the Secretary of the
7 Treasury”.

8 **SEC. 1716. AMENDMENTS TO THE FAIR CREDIT REPORTING**
9 **ACT.**

10 Section 621 of the Fair Credit Reporting Act (15
11 U.S.C. 1681s) is amended—

12 (1) in subsection (b)—

13 (A) in paragraph (5), by striking “and”
14 after the semicolon;

15 (B) in paragraph (6), by striking the pe-
16 riod at the end and inserting “; and”; and

17 (C) by inserting after paragraph (6) the
18 following:

19 “(7) subtitle C of title I of the National Insur-
20 ance Act of 2006, by the Commissioner of National
21 Insurance with respect to any National Insurer, Na-
22 tional Agency, and any federally licensed insurance
23 producer.”; and

24 (D) by adding after the flush matter at the
25 end the following: “The terms used in para-
26 graph (7) that are not defined in this Act shall

1 have the meaning given to them in section 3 of
2 the National Insurance Act of 2006.”; and

3 (2) in subsection (e), by adding at the end the
4 following:

5 “(3) The Commissioner of National Insurance
6 shall prescribe such regulations as necessary to carry
7 out the purpose of this Act with respect to any per-
8 sons identified under subsection (b)(7).”.

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