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Read twice and referred to the Committee on Banking, Housing, and Urban
Affairs

AN ACT

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Association
3 of Registered Agents and Brokers Reform Act of 2008”.

4 **SEC. 2. REESTABLISHMENT OF THE NATIONAL ASSOCIA-**
5 **TION OF REGISTERED AGENTS AND BRO-**
6 **KERS.**

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

10 **“Subtitle C—National Association**
11 **of Registered Agents and Brokers**

12 **“SEC. 321. NATIONAL ASSOCIATION OF REGISTERED**
13 **AGENTS AND BROKERS.**

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

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

18 “(1) be a nonprofit corporation;

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

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

23 “(4) except as otherwise provided in this sub-
24 title, be subject to, and have all the powers conferred
25 upon a nonprofit corporation by the District of Co-

1 olumbia Nonprofit Corporation Act (D.C. Code, sec.
2 29–301.01 et seq.).

3 **“SEC. 322. PURPOSE.**

4 “‘The purpose of the Association shall be to provide
5 a mechanism through which licensing, continuing edu-
6 cation, and other nonresident insurance producer quali-
7 fication requirements and conditions can be adopted and
8 applied on a multi-state basis (without affecting the laws,
9 rules, and regulations pertaining to resident insurance
10 producers or appointments or producing a net loss of pro-
11 ducer licensing revenues to States), while preserving the
12 right of States to license, supervise, discipline, and estab-
13 lish licensing fees for insurance producers, and to pre-
14 scribe and enforce laws and regulations with regard to in-
15 surance-related consumer protection and unfair trade
16 practices.

17 **“SEC. 323. MEMBERSHIP.**

18 “(a) ELIGIBILITY.—

19 “(1) IN GENERAL.—Any insurance producer li-
20 censed in its home State shall be eligible to become
21 a member in the Association.

22 “(2) INELIGIBILITY FOR SUSPENSION OR REV-
23 OCATION OF LICENSE.—Notwithstanding paragraph
24 (1), a State-licensed insurance producer shall not be
25 eligible to become a member if a State insurance

1 regulator has suspended or revoked such producer's
2 license in that State during the 3-year period pre-
3 ceding the date on which such producer applies for
4 membership.

5 “(3) RESUMPTION OF ELIGIBILITY.—Paragraph
6 (2) shall cease to apply to any insurance producer
7 if—

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

11 “(B) the suspension or revocation is subse-
12 quently overturned.

13 “(4) CRIMINAL BACKGROUND CHECK RE-
14 QUIRED.—

15 “(A) IN GENERAL.—A State-licensed in-
16 surance producer shall not be eligible to become
17 a member unless the producer has submitted to
18 a national criminal background record check.

19 “(B) CRIMINAL BACKGROUND CHECK OR-
20 DERED BY HOME STATE.—Any insurance pro-
21 ducer licensed in a State that, as a condition
22 for such licensure, requires the submission of
23 identification information to the Federal Bu-
24 reau of Investigation for a national criminal
25 background record check shall be deemed to

1 have submitted to a national criminal back-
2 ground record check for purposes of subpara-
3 graph (A).

4 “(C) CRIMINAL HISTORY CHECK ORDERED
5 BY ASSOCIATION.—

6 “(i) IN GENERAL.—The Association
7 may submit identification information ob-
8 tained from any State-licensed insurance
9 producer licensed in a State that has not
10 submitted to a national criminal back-
11 ground record check, and a request for a
12 national criminal background record check
13 of such producer, to the Federal Bureau of
14 Investigation.

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

23 “(D) ATTORNEY GENERAL AUTHORIZA-
24 TION.—Upon receiving a request from the Asso-
25 ciation, the Attorney General shall—

1 “(i) search the records of the Criminal
2 Justice Information Services Division of
3 the Federal Bureau of Investigation, and
4 any other similar database over which the
5 Attorney General has authority and deems
6 appropriate, for any criminal background
7 records (including wanted persons informa-
8 tion) corresponding to the identification in-
9 formation provided under subparagraph
10 (F); and

11 “(ii) provide any relevant information
12 contained in such records that pertain to
13 the request directly to the Association.

14 “(E) RELEVANT INFORMATION DE-
15 FINED.—For purposes of subparagraph (D)(ii),
16 the term ‘relevant information’ means any of
17 the following records:

18 “(i) All felony convictions.

19 “(ii) All misdemeanor convictions in-
20 volving—

21 “(I) violation of a law involving
22 financial activities;

23 “(II) dishonesty or breach of
24 trust, within the meaning of section
25 1033 of title 18, United States Code,

1 including taking, withholding, mis-
2 appropriating, or converting money or
3 property;

4 “(III) failure to comply with
5 child support obligations;

6 “(IV) failure to pay taxes; and

7 “(V) domestic violence, child
8 abuse, burglary of a dwelling, or a
9 criminal offense that has as an ele-
10 ment the use or attempted use of
11 physical force, or threat of great bod-
12 ily harm, or the use, attempted use,
13 or threatened use of a deadly weapon,
14 against an individual, including com-
15 mitting or attempting to commit mur-
16 der, manslaughter, kidnapping, aggra-
17 vated assault, forcible sex offenses,
18 robbery, arson, extortion, and extor-
19 tionate extension of credit.

20 “(F) FORM OF REQUEST.—A request
21 under subparagraph (C) shall include a copy of
22 any necessary identification information re-
23 quired by the Attorney General concerning the
24 person about whom the record is requested and

1 a statement signed by the person acknowledging
2 that the Association may request the search.

3 “(G) LIMITATION ON PERMISSIBLE USES
4 OF INFORMATION.—Information obtained under
5 this section may—

6 “(i) be used only for regulatory or law
7 enforcement purposes or for purposes of
8 determining compliance with membership
9 criteria established by the Association;

10 “(ii) be disclosed only to the Associa-
11 tion, State insurance regulators, or Federal
12 or State law enforcement agencies; and

13 “(iii) be disclosed only if the recipient
14 agrees to—

15 “(I) maintain the confidentiality
16 of such information; and

17 “(II) limit the use of such infor-
18 mation to the purposes described in
19 clause (i).

20 “(H) PENALTY FOR IMPROPER USE.—
21 Whoever uses any information obtained under
22 this section knowingly and willfully for an un-
23 authorized purpose shall be fined under title 18,
24 United States Code, imprisoned for not more
25 than 2 years, or both.

1 “(I) RELIANCE ON INFORMATION.—Nei-
2 ther the Association nor any of its directors, of-
3 ficers, or employees who reasonably rely on in-
4 formation provided under this section shall be
5 liable in any action for using information as
6 permitted under this section in good faith.

7 “(J) CLARIFICATION OF SECTION 1033.—

8 “(i) IN GENERAL.—With respect to
9 any action brought under section
10 1033(e)(1)(B) of title 18, United States
11 Code, no person engaged in the business of
12 conducting financial activities shall be sub-
13 ject to any penalty resulting from such sec-
14 tion if the individual whom the person per-
15 mitted to engage in the business of insur-
16 ance is a member of the Association or is
17 licensed, or approved (as part of an appli-
18 cation or otherwise), by a State insurance
19 regulator that performs criminal back-
20 ground checks under this section, unless
21 such person knows that the individual is in
22 violation of section 1033(e)(1)(A) of such
23 title.

1 “(ii) FINANCIAL ACTIVITIES DE-
2 FINED.—For purposes of this subpara-
3 graph, the term ‘financial activities’—

4 “(I) means banking activities (in-
5 cluding the ownership of a bank), se-
6 curities activities, insurance activities,
7 or commodities activities; and

8 “(II) includes all activities that
9 are financial in nature or are inci-
10 dental to a financial activity (as de-
11 fined under section 4(k) of the Bank
12 Holding Company Act of 1956).

13 “(K) FEES.—The Attorney General may
14 charge a reasonable fee for the provision of in-
15 formation under this paragraph.

16 “(L) RULE OF CONSTRUCTION.—No provi-
17 sion of this paragraph shall be construed as—

18 “(i) requiring a State insurance regu-
19 lator to perform criminal background
20 checks under this section; or

21 “(ii) superseding or otherwise limiting
22 any other authority that allows access to
23 criminal background records.

1 “(M) REGULATIONS.—The Attorney Gen-
2 eral may prescribe regulations to carry out this
3 paragraph.

4 “(N) INELIGIBILITY FOR MEMBERSHIP.—
5 The Association may deny membership to any
6 State-licensed insurance producer on the basis
7 of criminal history information obtained pursu-
8 ant to subparagraph (D).

9 “(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
10 TERIA.—The Association may establish membership cri-
11 teria that—

12 “(1) bear a reasonable relationship to the pur-
13 poses for which the Association was established; and

14 “(2) do not unfairly limit the access of smaller
15 agencies to the Association membership, including
16 imposing discriminatory membership fees on smaller
17 insurance producers.

18 “(c) ESTABLISHMENT OF CLASSES AND CATEGORIES
19 OF MEMBERSHIP.—

20 “(1) CLASSES OF MEMBERSHIP.—The Associa-
21 tion may establish separate classes of membership,
22 with separate criteria, if the Association reasonably
23 determines that performance of different duties re-
24 quires different levels of education, training, experi-
25 ence, or other qualifications.

1 “(2) CATEGORIES.—

2 “(A) SEPARATE CATEGORIES FOR PRO-
3 DUCERS PERMITTED.—The Association may es-
4 tablish separate categories of membership for
5 producers and for other persons within each
6 class, based on the types of licensing categories
7 that exist under State laws.

8 “(B) SEPARATE TREATMENT FOR DEPOSI-
9 TORY INSTITUTIONS PROHIBITED.—No special
10 categories of membership, and no distinct mem-
11 bership criteria, shall be established for mem-
12 bers which are depository institutions or for
13 employees, agents, or affiliates of depository in-
14 stitutions.

15 “(d) MEMBERSHIP CRITERIA.—

16 “(1) IN GENERAL.—The Association may estab-
17 lish criteria for membership which shall include
18 standards for personal qualifications, education,
19 training, and experience.

20 “(2) QUALIFICATIONS.—In establishing criteria
21 under paragraph (1), the Association shall consider
22 the NAIC Producer Licensing Model Act and the
23 highest levels of insurance producer qualifications
24 established under the licensing laws of the States.

25 “(3) ASSISTANCE FROM STATES.—

1 “(A) IN GENERAL.—The Association may
2 request a State to provide assistance in inves-
3 tigating and evaluating a prospective member’s
4 eligibility for membership in the Association.

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

10 “(4) DENIAL OF MEMBERSHIP.—The Associa-
11 tion may deny membership to any State-licensed in-
12 surance producer for failure to meet the membership
13 criteria established by the Association.

14 “(e) EFFECT OF MEMBERSHIP.—

15 “(1) AUTHORITY OF ASSOCIATION MEMBERS.—
16 Membership in the Association shall—

17 “(A) authorize an insurance producer to
18 sell, solicit, negotiate, effect, procure, deliver,
19 renew, continue, or bind insurance in any State
20 for which the member pays the licensing fee set
21 by such State for any line or lines of insurance
22 specified in such producer’s home State license,
23 and exercise all such incidental powers, as shall
24 be necessary to carry out such activities, includ-
25 ing claims adjustments and settlement, risk

1 management, employee benefits advice, retire-
2 ment planning, and any other insurance-related
3 consulting activities;

4 “(B) be the equivalent of a nonresident in-
5 surance producer license issued in any state
6 where the member pays the licensing fee; and

7 “(C) subject an insurance producer to all
8 laws, regulations, provisions or other action of
9 any State concerning revocation or suspension
10 of a member’s ability to engage in any activity
11 within the scope of authority granted under this
12 subsection and to all state laws, regulations,
13 provisions and actions preserved under para-
14 graph (4).

15 “(2) DUPLICATIVE LICENSES.—No State, other
16 than the member’s home State, may require an indi-
17 vidual member to obtain a business entity license or
18 membership in order to engage in any activity within
19 the scope of authority granted in paragraph (1) or
20 in order for the member or any employer, employee,
21 or affiliate of the member to receive compensation
22 for the member’s performance of any such activity.

23 “(3) AGENT FOR REMITTING FEES.—The Asso-
24 ciation shall act as any member’s agent for purposes

1 of remitting licensing fees to any State pursuant to
2 paragraph (1).

3 “(4) PRESERVATION OF STATE CONSUMER PRO-
4 TECTION AND MARKET CONDUCT REGULATION.—No
5 provision of this section shall be construed as alter-
6 ing or affecting the continuing effectiveness of any
7 law, regulation, provision, or other action of any
8 State which purports to regulate market conduct or
9 unfair trade practices or establish consumer protec-
10 tions to the extent that such law, regulation, provi-
11 sion, or other action is not inconsistent with the pro-
12 visions of this subtitle, and then only to the extent
13 of such inconsistency.

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

16 “(g) CONTINUING EDUCATION.—

17 “(1) IN GENERAL.—The Association shall es-
18 tablish, as a condition of membership, continuing
19 education requirements which shall be comparable to
20 the continuing education requirements under the li-
21 censing laws of a majority of the States.

22 “(2) STATE CONTINUING EDUCATION REQUIRE-
23 MENTS.—A member may not be required to satisfy
24 continuing education requirements imposed under

1 the laws, regulations, provisions, or actions of any
2 State other than such member's home State.

3 “(3) RECIPROCITY.—The Association shall not
4 require a member to satisfy continuing education re-
5 quirements that are equivalent to any continuing
6 education requirements of the member's home State
7 that have been satisfied by the member during the
8 applicable licensing period.

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

12 “(h) PROBATION, SUSPENSION AND REVOCATION.—
13 The Association may place an insurance producer that is
14 a member of the Association on probation or suspend or
15 revoke such producer's membership in the Association, as
16 the Association determines to be appropriate, if—

17 “(1) the producer fails to meet the applicable
18 membership criteria of the Association; or

19 “(2) the producer has been subject to discipli-
20 nary action pursuant to a final adjudicatory pro-
21 ceeding under the jurisdiction of a State insurance
22 regulator.

23 “(i) OFFICE OF CONSUMER COMPLAINTS.—

24 “(1) IN GENERAL.—The Association shall es-
25 tablish an office of consumer complaints that shall—

1 “(A) receive and, when appropriate, inves-
2 tigate complaints from both consumers and
3 State insurance regulators related to members
4 of the Association;

5 “(B) maintain records of all complaints re-
6 ceived in accordance with subparagraph (A) and
7 make such records available to the National As-
8 sociation of Insurance Commissioners (herein-
9 after in this subtitle referred to as the ‘NAIC’)
10 and to each State insurance regulator for the
11 State of residence of the consumer who filed the
12 complaint; and

13 “(C) refer, when appropriate, any such
14 complaint to any appropriate State insurance
15 regulator.

16 “(2) TELEPHONE AND OTHER ACCESS.—The
17 office of consumer complaints shall maintain a toll-
18 free telephone number for the purpose of this sub-
19 section and, as practicable, other alternative means
20 of communication with consumers, such as an Inter-
21 net web page.

22 **“SEC. 324. BOARD OF DIRECTORS.**

23 “(a) ESTABLISHMENT.—There is established the
24 board of directors of the Association (hereafter in this sub-
25 title referred to as the ‘Board’) for the purpose of gov-

1 erning and supervising the activities of the Association
2 and the members of the Association.

3 “(b) POWERS.—

4 “(1) IN GENERAL.—The Board shall have such
5 powers and authority as may be specified in the by-
6 laws of the Association.

7 “(2) QUORUM REQUIRED.—All decisions of the
8 Board shall require an affirmative vote of a simple
9 majority of Board members.

10 “(c) COMPOSITION.—

11 “(1) IN GENERAL.—The Board shall be com-
12 posed of 11 members, of whom—

13 “(A) 6 shall be State insurance commis-
14 sioners appointed in the manner provided in
15 paragraph (2), and

16 “(B) 5 shall be insurance industry rep-
17 resentatives appointed in the manner provided
18 in paragraph (3).

19 “(2) MEMBERS APPOINTED BY THE NAIC.—

20 “(A) IN GENERAL.—The NAIC shall ap-
21 point 1 member of the Board from among State
22 insurance commissioners in each of the fol-
23 lowing 3 categories of States:

1 “(i) The 18 States with the smallest
2 total direct written premiums from all in-
3 surance policies written in such States.

4 “(ii) The 18 States with the largest
5 total direct written premiums from all in-
6 surance policies written in such States.

7 “(iii) The States that are not among
8 the States described in clauses (i) and (ii).

9 “(B) AT-LARGE MEMBERS.—The NAIC
10 shall appoint 3 Board members pursuant to cri-
11 teria established by the NAIC’s membership.

12 “(3) MEMBERS APPOINTED BY INSURANCE
13 TRADE ASSOCIATIONS.—

14 “(A) INSURANCE PRODUCER REPRESENTA-
15 TIVES.—3 of the 5 members who are insurance
16 industry representatives shall be appointed as
17 follows by the following trade associations or
18 their successor organizations:

19 “(i) 1 member appointed by the Coun-
20 cil of Insurance Agents and Brokers from
21 among representatives of such association.

22 “(ii) 1 member appointed by the Inde-
23 pendent Insurance Agents and Brokers of
24 America from among representatives of
25 such association.

1 “(iii) 1 member appointed by the Na-
2 tional Association of Insurance and Finan-
3 cial Advisors from among representatives
4 of such association.

5 “(B) PROPERTY AND CASUALTY INSURER
6 REPRESENTATIVE.—1 of the 5 members who
7 are insurance industry representatives shall be
8 appointed by the American Insurance Associa-
9 tion, the National Association of Mutual Insur-
10 ance Companies, and the Property and Cas-
11 ualty Insurers Association of America from
12 among representatives of each such association,
13 on a rotating basis.

14 “(C) LIFE AND HEALTH INSURER REP-
15 RESENTATIVE.—1 of the 5 members who are
16 insurance industry representatives shall be ap-
17 pointed by the American Council of Life Insur-
18 ers and the Association of Health Insurance
19 Plans from among representatives of each such
20 association, on a rotating basis.

21 “(4) ALTERNATE APPOINTMENT.—

22 “(A) IN GENERAL.—If the NAIC or a
23 nominating group of insurance trade associa-
24 tions fails to make appointments to the Board
25 as required under paragraph (2) or (3), the

1 President shall appoint such members of the
2 Association's Board from lists of candidates
3 provided by the NAIC, in the case of a member
4 described in paragraph (2) or the nominating
5 group of insurance trade associations pursuant
6 to the relevant subparagraph of paragraph (3),
7 in the case of a member described in any such
8 subparagraph.

9 “(B) PROCEDURES FOR OBTAINING NAIC
10 APPOINTMENT RECOMMENDATIONS.—

11 “(i) PRESIDENTIAL APPOINTMENT
12 FROM LIST.—If the NAIC fails to appoint
13 members of the Board as provided under
14 subparagraph (A) or (B) of paragraph (2)
15 within 60 days after the date of the enact-
16 ment of the National Association of Reg-
17 istered Agents and Brokers Reform Act of
18 2008, the President shall, with the advice
19 and consent of the Senate, appoint 6 mem-
20 bers to the Board who are current State
21 insurance commissioners in accordance
22 with the requirements of subparagraphs
23 (A) and (B) of paragraph (2) from a list
24 of candidates recommended to the Presi-
25 dent by the NAIC.

1 “(ii) PRESIDENTIAL APPOINTMENT
2 WITHOUT A LIST.—If the NAIC fails to
3 provide a list within 90 days after the date
4 of the enactment of the National Associa-
5 tion of Registered Agents and Brokers Re-
6 form Act of 2008, or if any list that is pro-
7 vided does not include at least 10 rec-
8 ommended candidates or comply with the
9 requirements of paragraph (2), the Presi-
10 dent shall, with the advice and consent of
11 the Senate, appoint 6 members to the
12 Board without considering the views of the
13 NAIC, in accordance with requirements of
14 paragraph (2).

15 “(C) PROCEDURES FOR OBTAINING INSUR-
16 ANCE TRADE ASSOCIATION GROUP APPOINT-
17 MENT RECOMMENDATIONS.—

18 “(i) PRESIDENTIAL APPOINTMENT
19 FROM LIST.—If any group of nominating
20 insurance trade associations identified
21 under subparagraph (A), (B), or (C) of
22 paragraph (3) fails to appoint members of
23 the Board as provided under such subpara-
24 graph within 60 days after the date of the
25 enactment of the National Association of

1 Registered Agents and Brokers Reform
2 Act of 2008, the President shall, with the
3 advice and consent of the Senate, make the
4 requisite appointments pursuant to each
5 such subparagraph from a list of can-
6 didates recommended to the President by
7 such group.

8 “(ii) PRESIDENTIAL APPOINTMENT
9 WITHOUT A LIST.—If the nominating
10 group of insurance trade associations iden-
11 tified under subparagraph (A), (B), or (C)
12 of paragraph (3) fails to provide a list
13 within 90 days after date of the enactment
14 of the National Association of Registered
15 Agents and Brokers Reform Act of 2008,
16 or if any list that is provided does not com-
17 ply with the requirements of the subpara-
18 graph, the President shall, with the advice
19 and consent of the Senate, make the req-
20 uisite appointments without considering
21 the views of such group.

22 “(iii) LIST OF RECOMMENDATIONS.—
23 Any list of recommended candidates pro-
24 vided to the President by a nominating
25 group of insurance trade associations iden-

1 tified under subparagraph (A), (B), or (C)
2 of paragraph (3) shall include—

3 “(I) at least 2 recommended can-
4 didates from each association identi-
5 fied under paragraph (3)(A);

6 “(II) at least 2 recommended
7 candidates, in the case of associations
8 identified under paragraph (3)(B);
9 and

10 “(III) at least 2 recommended
11 candidates, in the case of associations
12 identified under paragraph (3)(C).

13 “(D) ALTERNATE APPOINTMENT OF STATE
14 INSURANCE COMMISSIONERS.—If fewer than 6
15 State insurance commissioners accept appoint-
16 ment to the Board pursuant to subparagraph
17 (B), the President, with the advice and consent
18 of the Senate, may appoint the remaining State
19 insurance commissioner members of the Board
20 from among individuals who are current or
21 former State insurance commissioners, to the
22 extent that—

23 “(i) any former insurance commis-
24 sioner appointed by the President shall not
25 be employed by or have a present direct or

1 indirect financial interest in any insurer or
2 other entity in the insurance industry
3 other than direct or indirect ownership of,
4 or beneficial interest in, any insurance pol-
5 icy or annuity contract written or sold by
6 an insurer; and

7 “(ii) not more than 3 members ap-
8 pointed to membership on the Board under
9 this subparagraph belong to the same po-
10 litical party as the President.

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

17 “(d) TERMS.—

18 “(1) IN GENERAL.—The term of each Board
19 member shall, after the initial appointment of the
20 members of the Board, be for 2 years, with $\frac{1}{2}$ of the
21 members to be appointed each year and divided as
22 evenly as possible between members appointed under
23 paragraphs (2) and (3) of subsection (c).

24 “(2) LIMITATION ON SUCCESSIVE TERMS.—
25 Only Board members appointed under subsections

1 (c)(2) and (c)(3)(A) may be re-appointed for an ad-
2 ditional term.

3 “(e) BOARD VACANCIES.—

4 “(1) IN GENERAL.—Any vacancy on the board
5 of directors shall be filled as provided under sub-
6 paragraph (A) or (B) of paragraph (2), and any
7 member appointed to fill a vacancy occurring before
8 the expiration of the term for which the member’s
9 predecessor was appointed shall be appointed only
10 for the remainder of that term.

11 “(2) ALTERNATE APPOINTMENT.—If the NAIC
12 or a nominating group of trade associations fails to
13 appoint a member to the Board to fill a vacancy
14 within 60 days from the date that such vacancy oc-
15 curs, the President shall, with the advice and con-
16 sent of the Senate, make the requisite appointment
17 pursuant to the procedures established under the ap-
18 plicable subparagraph of subsection (c)(4).

19 “(f) MEETINGS.—The Board shall meet at the call
20 of the chairperson, or as otherwise provided by the bylaws
21 of the Association.

22 **“SEC. 325. OFFICERS.**

23 “(a) POSITIONS.—The officers of the Association
24 shall consist of a chairperson and a vice chairperson of
25 the Board, an executive director, secretary, and treasurer

1 of the Association, and such other officers and assistant
2 officers as may be deemed necessary.

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

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

8 “(a) ADOPTION AND AMENDMENT OF BYLAWS.—

9 “(1) COPY REQUIRED TO BE FILED.—The
10 board of directors of the Association shall submit to
11 the President, the Congress, and the NAIC any pro-
12 posed bylaw or rules of the Association or any pro-
13 posed amendment to the bylaws or rules, accom-
14 panied by a concise general statement of the basis
15 and purpose of such proposal.

16 “(2) EFFECTIVE DATE.—Any proposed bylaw
17 or rule or proposed amendment to the bylaws or
18 rules shall take effect, after notice published in an
19 insurance trade journal and opportunity for com-
20 ment, upon such date as the Association may des-
21 ignate.

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

23 “(1) SPECIFICATION OF CHARGES.—In any pro-
24 ceeding to determine whether membership shall be
25 denied, suspended, revoked, or not renewed (here-

1 after in this section referred to as a ‘disciplinary ac-
2 tion’) or to determine whether a member of the As-
3 sociation should be placed on probation, the Associa-
4 tion shall bring specific charges, notify such member
5 of such charges, give the member an opportunity to
6 defend against the charges, and keep a record.

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

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

12 “(B) the specific provision of this subtitle,
13 the rules or regulations under this subtitle, or
14 the rules of the Association which any such act
15 or practice is deemed to violate; and

16 “(C) the sanction imposed and the reason
17 for such sanction.

18 **“SEC. 327. POWERS.**

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

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

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

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

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

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

18 “(6) To borrow money.

19 “(7) To assess board member organizations and
20 associations fees for such amounts that the Associa-
21 tion determines to be necessary and appropriate to
22 organize and begin operations of the Association,
23 which shall be treated as loans to be repaid by the
24 Association with interest at market rate.

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

2 “(a) IN GENERAL.—As soon as practicable after the
3 close of each fiscal year, the Association shall submit to
4 the President, the Congress, and the NAIC a written re-
5 port regarding the conduct of its business, and the exer-
6 cise of the other rights and powers granted by this sub-
7 title, during such fiscal year.

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

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

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

1 “(b) LIABILITY OF THE ASSOCIATION, ITS DIREC-
2 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-
3 tion nor any of its directors, officers, or employees shall
4 have any liability to any person for any action taken or
5 omitted in good faith under or in connection with any mat-
6 ter subject to this subtitle.

7 **“SEC. 330. PRESIDENTIAL REVIEW.**

8 “(a) REMOVAL.—If the President determines and
9 certifies to the Speaker of the House, the House Minority
10 Leader, the Senate Majority Leader and the Senate Mi-
11 nority Leader that the Association is acting in a manner
12 contrary to the purposes of this subtitle or has failed to
13 perform its duties under this subtitle, the President may
14 remove the entire existing Board for the remainder of the
15 term to which the members of the Board were appointed
16 and appoint, in accordance with section 324(c)(4) with the
17 advice and consent of the Senate, new members to fill the
18 vacancies on the Board for the remainder of such terms.

19 “(b) SUSPENSION OF RULES OR ACTIONS.—The
20 President, or a person designated by the President for
21 such purpose, may suspend the effectiveness of any rule,
22 or prohibit any action, of the Association which the Presi-
23 dent or the designee determines and certifies to the Speak-
24 er of the House, the House minority leader, the Senate

1 majority leader, and the Senate minority leader is contrary
2 to the purposes of this subtitle.

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

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

8 “(b) PROHIBITED ACTIONS.—

9 “(1) IN GENERAL.—No State shall—

10 “(A) impede the activities of, take any ac-
11 tion against, or apply any provision of law or
12 regulation to, any insurance producer because
13 that insurance producer or any affiliate plans to
14 become, has applied to become, or is a member
15 of the Association;

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

20 “(C) impose any continuing education re-
21 quirements on nonresident insurance producers;
22 or

23 “(D) impose any licensing, registration, or
24 appointment requirements upon any non-
25 resident insurance producer that sells, solicits,

1 negotiates, effects, procures, delivers, renews,
2 continues, or binds insurance for commercial
3 property and casualty risks to an insured with
4 risks located in more than 1 State, provided
5 that such nonresident insurance producer is
6 otherwise licensed as an insurance producer in
7 the State where the insured maintains its prin-
8 cipal place of business and the contract of in-
9 surance insures risks located in that State.

10 “(2) STATES OTHER THAN A HOME STATE.—

11 No State, other than a member’s home State,
12 shall—

13 “(A) impose any licensing, integrity, per-
14 sonal or corporate qualifications, education,
15 training, experience, residency, continuing edu-
16 cation, or bonding requirement upon a member
17 of the Association that is different from the cri-
18 teria for membership in the Association or re-
19 newal of such membership;

20 “(B) impose any requirement upon a mem-
21 ber of the Association that it be licensed, reg-
22 istered, or otherwise qualified to do business or
23 remain in good standing in such State, includ-
24 ing any requirement that such insurance pro-

1 ducer register as a foreign company with the
 2 secretary of state or equivalent State official; or
 3 “(C) require that a member of the Associa-
 4 tion submit to a criminal history record check
 5 as a condition of doing business in such State.

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

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

9 “(1) establish a central clearinghouse, or utilize
 10 the NAIC or any other entity as a central clearing-
 11 house, through which members of the Association
 12 may pursuant to section 323(e) disclose their intent
 13 to operate in 1 or more States and pay the licensing
 14 fees to the appropriate States; and

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

19 “(b) COORDINATION WITH THE FINANCIAL INDUS-
 20 TRY REGULATORY AUTHORITY.—The Association shall
 21 coordinate with the Financial Industry Regulatory Au-
 22 thority in order to ease any administrative burdens that
 23 fall on persons that are members of both associations, con-
 24 sistent with the purposes of this subtitle and the Federal
 25 securities laws.

1 **“SEC. 333. JUDICIAL REVIEW AND ENFORCEMENT.**

2 “(a) JURISDICTION.—The appropriate United States
3 district court shall have exclusive jurisdiction over litiga-
4 tion to which the Association is a party or any matter aris-
5 ing under this subtitle, including disputes between the As-
6 sociation and its members that arise under this subtitle,
7 subject to chapter 7 of title 5, United States Code.

8 “(b) EXHAUSTION OF REMEDIES.—An aggrieved
9 person shall be required to exhaust all available adminis-
10 trative remedies before the Association before it may seek
11 judicial review of an Association decision.

12 “(c) EQUAL WEIGHT AND DEFERENCE.—In any
13 other proceeding involving this subtitle, the court shall
14 give at least equal weight and deference to the interpreta-
15 tions of the Association as would be given to any State
16 or Federal agency with respect to any law, regulation, in-
17 terpretation, or order addressing the same issues.

18 **“SEC. 334. DEFINITIONS.**

19 “For purposes of this subtitle, the following defini-
20 tions shall apply:

21 “(1) HOME STATE.—The term ‘home State’
22 means the State in which the insurance producer
23 maintains its principal place of residence or business
24 and is licensed to act as an insurance producer.

25 “(2) INSURANCE.—The term ‘insurance’ means
26 any product, other than title insurance, defined or

1 regulated as insurance by the appropriate State in-
2 surance regulatory authority.

3 “(3) INSURANCE PRODUCER.—The term ‘insur-
4 ance producer’ means any insurance agent or
5 broker, excess or surplus lines broker or agent, in-
6 surance consultant, limited insurance representative,
7 and any other individual or entity that solicits, nego-
8 tiates, effects, procures, delivers, renews, continues
9 or binds policies of insurance or offers advice, coun-
10 sel, opinions or services related to insurance.

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

17 “(5) STATE LAW.—

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

22 “(B) LAWS APPLICABLE IN THE DISTRICT
23 OF COLUMBIA.—A law of the United States ap-
24 plicable only to or within the District of Colum-

1 bia shall be treated as a State law rather than
2 a law of the United States.”.

3 (b) CLERICAL AMENDMENT.—The table of contents
4 for the Gramm-Leach-Bliley Act is amended by striking
5 the items relating to subtitle C of title III and inserting
6 the following new items:

“Subtitle C—National Association of Registered Agents and Brokers

“Sec. 321. National association of registered agents and brokers.

“Sec. 322. Purpose.

“Sec. 323. Membership.

“Sec. 324. Board of directors.

“Sec. 325. Officers.

“Sec. 326. Bylaws, rules, and disciplinary action.

“Sec. 327. Powers.

“Sec. 328. Report by association.

“Sec. 329. Liability of the association and the directors, officers, and employees
of the association.

“Sec. 330. Presidential review.

“Sec. 331. Relationship to state law.

“Sec. 332. Coordination with other regulators.

“Sec. 333. Judicial review and enforcement.

“Sec. 334. Definitions.”.

Passed the House of Representatives September 17,
2008.

Attest: LORRAINE C. MILLER,
Clerk.